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Survey of Recent Halakhic Periodical Literature

THE *KETUBAH*

Recent years have seen the phenomenon of a veritable explosion in the publication of works on Halakhah. No doubt, the vast increase in such publications may be attributed in part to several secondary factors. In general, more books are now being sold than ever before. Computer typesetting has both speeded production and reduced costs, leading, at times, to hastily produced works of less than highest quality. The relative affluence of our society has resulted in ease of purchase and a vastly expanded marketplace. We live in an age of material acquisition. At a time that people are buying clothes, furnishings, gadgets, musical tapes and video cassettes with apparent abandon, it is not surprising to find many Jewish men and women of means purchasing new books as quickly as they are published. Jews, always known as the *am ha-sefer*, are now purchasing all manner of books and *sefarim* in large numbers. Primarily, however, the writing, publishing and purchase of Judaica and Hebraica reflect a pervasive "*zama le-kha nafshi*," a thirst for Torah study and knowledge among all segments of the Jewish community.

A particular genre of writing has achieved a new measure of popularity. As this writer has noted elsewhere[1], the thirst for knowledge among members of the committed and observant community has spawned a plethora of publications, both in Hebrew and in the vernacular, devoted to matters of Halakhah. The reception greeting the appearance of these works reflects an ardent search, not only for knowledge of theoretical matters, but also for practical guidance and instruction. The past two decades or so have witnessed the appearance of an apparently never-ending series of monographs devoted to a single *mizvah* or even to a particular aspect of a *mizvah.* Since there are 613 biblical *mizvot* and innumerable rabbinic extensions, there is no shortage of fertile ground for research. Some of these volumes appear in the form of encyclopedic studies; others are brief and concise how-to books. Some are

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compilations of essays and responsa; others are cryptic restatements of Halakhah, usually accompanied by copious annotations.

To be sure, these publications are not of uniform quality. Nevertheless, in many, if not most, cases these compilations contain valuable material presented in a carefully organized manner with exquisite attention to comprehensive detail. At times, addition of charts, diagrams, and pictures enhance the usefulness of the work as, for example, is the case with regard to several works on laws of the four species and a number of monographs devoted to *shehitah* and *kashrut*. In many instances multiple works have been published dealing with the same halakhic problems. Thus, no fewer than four volumes devoted to the *mizvah* of *shiluah ha-ken* (sending away the mother bird) have appeared. The number of works devoted to laws of usury and family purity are too numerous to count. Almost, but not quite, in that category are compendia devoted to the laws of marriage and, in particular, the marriage ceremony. A number of those works contain material illuminating several aspects of the preparation of the *ketubah* that have aroused curiosity but with regard to which precedents and sources were heretofore virtually unknown to rabbis and laymen alike.

DELIVERY OF THE *KETUBAH*

In recent years a novel practice has arisen in some circles with regard to delivery of the *ketubah* to the bride. In the past, it was standard practice for the officiant, after reading the document, simply to hand the *ketubah* to the bride or, alternatively, to a member of the bride's family to hold on her behalf.[2] It is now quite common for the officiant to give the *ketubah* to the groom and to direct him to deliver it to the bride[3] and, moreover, to designate the individuals who served as attesting witnesses to the presentation of the ring to the bride to serve as well as witnesses to the delivery of the *ketubah*.

Both the source of this practice and its rationale are unclear. The most prominent contemporary reference to this practice is that of R. Moshe Sternbuch, *Teshuvot ve-Hanhagot*, II (Jerusalem, 5754), no. 650, who reports that this was the practice of the *Brisker Rav*, R. Yitzchak Ze'ev ha-Levi Soloveitchik. A number of informative references to this innovation are also made by R. Samuel Eliezer Stern in his recently published monograph, *Seder Ketubah ke-Hilkhatah* (Bnei Brak, 5753). Included in that work is a letter by R. Joseph Efratti in which he conveys the views of R. Yosef Shalom Eliashiv. The report states that Rabbi

Eliashiv does not regard the practice to be mandated by Halakhah, but that he nevertheless conducts himself in that manner because such was the wont of the late R. Iser Zalman Meltzer.[4]

Upon first analysis, the practice seems to be without foundation. There is indeed a tannaitic controversy with regard to whether halakhic instruments such as a bill of divorce or a deed acquire validity by virtue of the signatures of witnesses or by virtue of the presence of attesting witnesses at the delivery of the instrument. As is evident from the discussion of the Gemara, *Gittin* 3b, R. Meir maintains that the efficacy of such instruments is conditioned upon the signatures of witnesses while, according to R. Eleazar, the instrument is effective only by virtue of the presence of witnesses at the time of delivery. According to many authorities, R. Eleazar maintains that the signature of witnesses on a deed is discretionary and is designed solely for evidentiary purposes, i.e., in the event that the witnesses die or are otherwise not available to testify to their earlier presence at the time of delivery of the instrument, their signatures demonstrate that such was in fact the case. Signatures of witnesses are indeed required on a bill of divorce but, according to R. Eleazar, only by reason of rabbinic decree designed to promote "perfection of the world" (*tikkun ha-olam*), i.e., in order to assure that the divorcée will be able to prove her capacity to contract a subsequent marriage. However, Rambam, *Hilkot Geirushin* 1:16, rules that the presence of witnesses at the time of delivery is not an absolute requirement[5] and accordingly declares that a bill of divorce is valid if it is either signed by witnesses or delivered in their presence. Nevertheless, Rambam also cites the view of "some of the Ge'onim" who ruled that the presence of witnesses at the time of delivery is an absolute requirement. Rambam's own position reflects the view that R. Eleazar recognizes that an instrument is validated either upon signature of witnesses or upon delivery in their presence.

That controversy is, however, limited to instruments that are performative in nature, e.g., bills of divorce whose execution serves to sever the matrimonial bonds or deeds that serve to effect transfer of title from the seller to the purchaser.[6] There is no controversy with regard to non-performative instruments such as promissory notes. The obligation to repay a debt is engendered simply by acceptance of the funds advanced; the promissory note is but a memorial of the debt and, as such, its purpose is entirely evidentiary in nature. Since the purpose of a promissory note is evidentiary, there is no need—and indeed no role—for witnesses at the time of delivery of such a writing. Execution of a *ketubah* generates no new obligation. The obligation with regard to the

statutory sum recorded in the *ketubah* arises from the marriage itself; additional obligations are generated by delivery and acceptance of a kerchief. The *ketubah* is designed to serve only as evidence of the assumption of the various obligations recorded in the instrument. Since that evidentiary function is fulfilled by the witnesses who sign the document there appears to be no further reason to require the presence of witnesses at the time of delivery.[7]

Nevertheless, Rabbi Stern cites two very early sources that regard the *ketubah* as more than an evidentiary document reciting the groom's debt to his bride. A marriage need not necessarily be effected by means of presentation of a ring by the groom to the bride. It may also be effected by delivery of a properly executed document containing the formula "Be thou consecrated unto me etc." However, execution of such an instrument requires scrupulous adherence to myriad halakhic minutiae virtually identical to those surrounding execution of a bill of divorce. Presumably, it is because of the fact that the drafting and execution of the requisite instrument is as cumbersome as the execution of a bill of divorce that employment of an instrument (*shetar*) as a means of effecting a marriage is unheard of in our day and indeed may never have been widespread. Yet, judging from the contents of two geonic sources, the practice seems to have been common in at least some communities during the early post-talmudic period. In a responsum published in *Teshuvot ha-Ge'onim*, ed. Simhah Asaf (Jerusalem, 5787), no. 113, Rav Hai Ga'on decries use of a ring rather than a *shetar* as an innovation that should be abolished. In urging that a *shetar* be used for that purpose Rav Hai Ga'on writes:

> You should know that you incur great detriment by virtue of your custom of betrothing a woman other than at the time of the *ketubah* or *shetar* of betrothal. . . . Such was previously unheard of in Babylonia; they have no knowledge of marriage other than at the time of the *ketubah*. Many years ago, more than a hundred years, there was a custom in Kurasan (Kurdistan?) to betroth by means of a ring at a banquet or the like. There were many allegations, allegations of denial that marriage took place, and the matter resulted in detriment. Our master and teacher, Yehudah Ga'on, promulgated an ordinance that they not betroth other than in accordance with the manner of Babylonia, [i.e.,] with a *ketubah*, signature of witnesses and the blessing of the betrothal, and that any marriage not solemnized in this manner should be disregarded. . . . You also should set aside this practice and anyone who betroths without a *ketubah* and a *shetar* of betrothal, punish him until he rectifies the matter.

The concern expressed by Rav Hai Ga'on seems to have been that, in the absence of the evidence supplied by a properly witnessed *shetar* of betrothal, it was relatively easy to deny that a marriage had actually occurred. The terminology of the ordinance ascribed to R. Yehudah Ga'on seems to indicate that the *ketubah* itself served as a *shetar* of betrothal.

The format of the wedding ceremony included in the *siddur* of R. Sa'adia Ga'on provides that the bridegroom declare to the bride that she is consecrated to him "with this goblet and with its contents and with this *ketubah* and with what is written therein" and further instructs the groom to take the *ketubah* in his hand, deliver it to the bride and declare,"Take the *ketubah* in your hands so that with it you enter my domain according to the law of Moses and Israel." Rabbi Stern asserts that R. Sa'adia Ga'on describes a ceremony in which two separate modes of betrothal are employed, i.e., presentation of a goblet as an object of value and delivery of the *ketubah* as a *shetar kiddushin*.[8]

Rabbi Stern also cites two somewhat later sources that speak of the *ketubah* as fulfilling a secondary role as a *shetar kiddushin*. R. Aaron of Lunel, *Orhot Hayyim*, *Hilkhot Ketubah*, sec. 1, writes, "The groom takes the *ketubah* and gives it to the bride . . . for, if the earlier betrothal was not effective, the [betrothal] will be effective by means of *shetar* for thus is written in [the *ketubah*]: 'Be thou my wife in accordance with the law of Moses and Israel.'" Similarly, *Teshuvot R. Eli'ezer me-Trashkun*, no. 56, writes that the phrase "Be thou my wife" endows the *ketubah* with the status of a *shetar kiddushin* with the effect that if, as at times is the case, a borrowed ring is used in the marriage ceremony the marriage is effected by means of *shetar*.

The thesis that a *ketubah* may also be effective as a *shetar kiddushin* (instrument of betrothal) is subject to a number of objections:

1) No transaction is valid without intent of the parties. Since neither the bride nor the groom have the vaguest notion that the *ketubah* is a *shetar kiddushin*, there is no reason to assume that they intend to effect a marriage through its delivery and acceptance. Moreover, the witnesses to delivery of the *ketubah* are not at all aware of the fact that they are witnessing an act of betrothal. Consequently, the purported marriage by means of *shetar* should fail for lack of attesting witnesses.

2) As is the case of a *get*, or a bill of divorce, which must be written for the express purpose of divorce (*le-shem gerushin*), a *shetar kiddushin* must be written for the express purpose of marriage. That rule is recorded by Rambam, *Hilkhot Ishut* 3:4, and by *Shulhan Arukh*, *Even ha-Ezer* 32:1. In particular, the operative clause, "Be thou my wife,"

must be written by the scribe for the express purpose of generating a *shetar kiddushin*. Such intent on the part of the scribe is generally lacking; indeed the requirement of intent makes utilization of a printed form impossible. Since a printed *ketubah* cannot serve as *shetar kiddushin*, delivery of that document in the presence of witnesses seems to serve no purpose. Moreover, *Shulhan Arukh*, *Even ha-Ezer* 32:1, rules that a *shetar kiddushin* must be drafted with the prior knowledge of the bride. The bride certainly has no knowledge that the *ketubah* is drafted as a *shetar kiddushin*.

It is indeed the case that *Or Sameah*, *Hilkhot Ishut* 3:4, cites a number of talmudic sources in suggesting that the requirement of intent (*le-shemah*) pertaining to a *shetar kiddushin* is somewhat different from that pertaining to a bill of divorce. A *get* must be written for the specific purpose of divorce and, moreover, for the specific purpose of the divorce of a particular husband and wife. The same principle applies to a *shetar kiddushin*. *Or Sameah* suggests, however, that a *shetar kiddushin*, unlike a *get*, may be valid even if there is no specific declaration of intent on the grounds that the requisite intent is to be presumed or imputed (*setama le-shemah ka'i*).

Or Sameah's thesis is based upon an examination of the regulations governing similar types of intent (*le-shemah*) in entirely different areas of Halakhah. An analogous requirement of intent is specified with regard to the offering of sacrificial animals. The animal must be slaughtered with intent to offer the animal for the appropriate category of sacrifice and to offer the animal on behalf of the proper party. Nevertheless, provided there is no contradictory intent, the already sanctified animal is deemed to have been offered for its designated purpose and on behalf of its owner. The already sanctified animal is, in a sense, "preprogrammed" for a particular purpose and owner and, hence, constructive intent already exists. Such constructive intent is not imputed in the drafting of a bill of divorce. The distinction lies in the fact that women are not customarily divorced by their husbands and therefore actual intent is required.

Or Sameah notes that the Sages of the Talmud assumed that it is normal and usual for a woman to marry. Hence, argues *Or Sameah*, intent for marriage may be imputed constructively with the result that explicit intent to draft the instrument for purposes of marriage is not necessary. *Or Sameah* himself expresses doubt with regard to the validity of that conclusion. *Or Sameah* notes that it may indeed be normal and usual for a woman to marry, but not necessarily to marry the man named in the *shetar kiddushin*. Accordingly, there is no basis to impute

constructive intent to draft the instrument as a *shetar kiddushin* for the particular parties named therein. Nevertheless, Rabbi Sternbuch tentatively suggests that, if the couple have previously bound themselves by articles of engagement subject to the penalty of *herem* or excommunication for breach of promise, a presumption of intent does arise in the drafting of the *shetar kiddushin* and the presumption encompasses intent to draft the instrument on behalf of the particular parties. Rabbi Sternbuch reiterates this view in a letter addressed to Rabbi Stern that is included in the latter's *Seder Ketubah ke-Hilkhatah*, pp. 164-165. Against this thesis it may be argued that, since the scribe believes that he is writing a simple *ketubah*, that state of mind may be antithetical to intent for *kiddushin*. Moreover, the argument that the *ketubah* acquires the status of a *shetar kiddushin* because it is to be presumed that it is drafted for that purpose is cogent only with regard to a handwritten *ketubah*; in the case of a printed form there is no writer to whom intent can be imputed even constructively.

It seems to this writer that there exists yet another problem that requires analysis. Promissory notes and the like are customarily written in the past tense despite the fact that they are prepared in advance of the assumption of any obligation. Such instruments are contrafactual at the time they are drafted in the sense that they purport to memorialize an event that has as yet not occurred. Yet witnesses are permitted to sign such documents without incurring the onus of perjury. That is so because such documents must be delivered to the person bound thereby who will not be so foolhardy as to transfer the document to the person in whose favor it is executed unless and until the event generating the obligation described therein has actually occurred. Thus, in effect, the document contains an unstated condition upon which the testimony is predicated. In effect, the instrument must be construed as containing a provision declaring that if, and only if, the document is produced by the named beneficiary, his possession of the instrument will constitute evidence that it came into his possession in consideration of the transaction specified herein.[9] Accordingly, such documents are drafted as statements of witnesses testifying to events that have already taken place because, when produced by the beneficiary, those events have indeed occurred. However, performative instruments such as a deed effecting transfer of real property or a bill of divorce are customarily written in the present tense, e.g., "my field is [hereby] sold to you" or "this is to you from me a bill of divorce." Instruments of that nature are couched in the present tense because they are designed to give effect to the sale or to the divorce and are not primarily intended as evidence of the event.

Accordingly, they are drafted as performative statements of the seller or of the husband.

The *ketubah* does indeed record the groom's declaration "Be thou my wife etc." but does so only in the form of a recitation of the fact that a marriage has already taken place, i.e., as the event that gives rise to the financial obligations recorded in that document. Accordingly, it is recited as an integral element of the testimony of the witnesses rather than as a direct declaration of the groom. Thus, the phraseology is: "Thus said so-and-so, our groom . . . 'Be thou my wife according to the law of Moses of Israel,' " i.e., the witnesses testify that such a statement was made. It would be anticipated that a *shetar kiddushin* should consist of a written performative declaration by the groom addressed directly to the bride. It is not clear that a document recording a statement of third parties, i.e., the witnesses, presented as testimony to a past event can serve as a *shetar kiddushin*.

The practice of the groom himself delivering the *ketubah* to the bride is also reported by R. Shimon ben Zemah Duran, *Tashbaz*, III, no. 301. *Tashbaz*, however, advances an entirely different reason for the practice. *Tashbaz* asserts that, according to Rif, the obligation of the "additional *ketubah*" (*tosefet ketubah*) voluntarily undertaken by the groom is not binding unless and until the *ketubah* is delivered to the bride. Rif maintains that a gift conveyed by deed is not effective until the deed is actually conveyed. *Tashbaz* asserts that the voluntary undertaking of the *tosefet ketubah* is in fact a gift and, hence, the same rule applies. However, as Rabbi Stern points out, the requirement that the instrument reach the hand of the beneficiary does not entail the further conclusion that such delivery must be in the presence of witnesses. *Tosafot*, *Gittin* 4a, declare that, even according to R. Eleazar, witnesses need not be present at the delivery of a deed or of a financial instrument since in all financial matters mere acknowledgment on the part of the party adversely affected suffices. That acknowledgment is evidenced by the signatures of the witnesses appended to the instrument.

Rabbi Sternbuch, both in his *Teshuvot ve-Hanhagot* and in his letter to Rabbi Stern, advances yet another reason for seeking to have the groom himself deliver the *ketubah* to the bride in the presence of witnesses. On the basis of a discussion recorded in the Gemara, *Kiddushin* 48a, *Bet Yosef*, *Even ha-Ezer* 32, asserts that, in the event that a *shetar kiddushin* is found to be defective, the marriage may yet be valid on the basis of the intrinsic value of the paper upon which the *shetar* is written. Transfer of the *shetar* to the bride includes conveyance of title to the paper upon which it is drafted. The paper may thus serve as an object of

value constituting *kesef kiddushin*. Accordingly, asserts Rabbi Sternbuch, in the event that a valid marriage was not previously effected by means of delivery of the ring, delivery of the *ketubah* in the presence of witnesses may also serve as a means of effecting a valid marriage on the basis of delivery of an object of value, *viz.*, the paper upon which the *ketubah* is written. Since, according to this thesis, the *ketubah* does not function as a *shetar kiddushin*, but as a chattel, the document need not be drafted for purposes of marriage.

The premise upon which this suggestion is based is the subject of some dispute. Although *Tosefet Rid*, *Kiddushin* 3a, expresses a view similar to that of *Bet Yosef*, Rambam, *Hilkot Ishut* 3:4, appears to disagree.[10] More significantly, there is a material difference between the *ketubah* and a *shetar kiddushin* with regard to potential capacity to function as chattel rather than as a *shetar*. Every *kinyan* requires accompanying intent of conveyance. That intent must be simultaneous with the act of *kinyan*. Thus, a person who performs an act of *kinyan* with regard to property that he erroneously believes already belongs to him does not acquire title thereby. Nevertheless, in delivering and accepting a defective *shetar*, both bride and groom intend to enter into a *kinyan* that effects a valid marriage. Accordingly, *Tosafot Rid* and *Bet Yosef* maintain that, since there was both intent for marriage and a valid *kinyan* in the form of delivery of chattel, the marriage is valid because intent and the act of *kinyan* are simultaneous. Although the intent was for the *kinyan* of *shetar*, rather than of *kesef*, those authorities maintain that there need not be intent for, or knowledge of, the particular *kinyan* that is efficacious. However, in the case of a defect in the delivery of a ring, the bride and groom, who are unaware of the defect, assume that they are already married. Accordingly, at the time of subsequent delivery of the *ketubah*, they have no reason to intend a new *kinyan*. Hence, since there is no intent for *kinyan* that is simultaneous with delivery of the paper upon which the *ketubah* is written, the conveyance of that paper fails as *kesef kiddushin*.

Even if the practice of the groom personally transmitting the *ketubah* to the bride serves no purpose, it might well be regarded as innocuous. That, however, is not the case. In a letter addressed to Rabbi Stern and published in his *Seder Ketubah ke-Hilkhatah*, p. 181, Rabbi Nathan Gestetner points out that immediately following the delivery of the ring the couple are man and wife. Accordingly, if the bride is a *niddah*, the restrictions against handing objects to one another become effective immediately. In such instances, those strictures would serve to prohibit the groom from delivering the *ketubah* to the bride. Assuredly, it is

unseemly publicly to call attention to the status of the bride by insisting that some grooms deliver the *ketubah* to the bride while insisting that others do not.[11]

WRITING "*VE-KANINA*" BEFORE *KINYAN* TAKES PLACE

The obligations recorded in the marriage contract, including the "additional *ketubah*" and the financial obligation for repayment of the *nedunyah* or dowry, i.e., the funds and chattel brought to the marriage by the bride, are entered into by the groom by acceptance of a kerchief (*sudar*) presented to him on behalf of the bride. There are three distinct customs with regard to the execution of that *kinyan*: 1) The practice described as the "custom of Jerusalem" is for the *kinyan* to take place during the reading of the *ketubah* under the nuptial canopy during the course of the public reading of the document.[12] According to that practice, the text of the *ketubah* is read and upon reaching the word "*ve-kanina*" (we have entered into a *kinyan*) the reading is interrupted, a kerchief is presented to the groom and the witnesses affix their signatures to the document[13] and only then is the reading of the *ketubah* resumed.[14] A variant practice is to execute the *kinyan* and sign the document at the conclusion of the ceremony, i.e., after the final blessing has been pronounced.[15] The prevalent custom, however, is to enter into the *kinyan* and to complete the drafting of the *ketubah* before commencement of the marriage ceremony. That practice is recorded by *Mordekhai*, *Gittin*, chap. 2, sec. 342; *Teshuvot Maharam Minz*, no. 109; and by *Teshuvot Maharil*, no. 13.[16]

Many printed forms of the *ketubah* omit the word "*ve-kanina.*" Others print the word but with an imperfectly formed *kuf*, i.e., without the stroke that forms the left portion of the letter, so that it may be inserted, and hence the word become cognitive, after the *kinyan* is actually performed. The concern reflected in this practice is "the appearance of a falsehood" (*mehazi ke-shikra*), i.e., preparation of a statement declaring that *kinyan* has taken place at a time when, in fact, it has not occurred appears to be untruthful.[17]

The earliest explicit reference to this matter appears to be in the work of a fifteenth-century German authority, *Teshuvot Maharam Minz*, no. 109. *Maharam Minz* records that, properly speaking, not only should the *ketubah* be signed after delivery of the ring, but he further states that the words "*ha-kol sharir ve-kayam*" (and everything is valid and confirmed), which constitute the last line of the *ketubah*, should

not be written until after the ring has been presented by the groom to the bride since "to write the entire *ketubah* before the *kinyan* and before she has become his wife appears to be a falsehood (*mehazi ke-shikra*),[18] *Maharam Minz* regards completion of the *ketubah* as "appearing untruthful" for two reasons: 1) The bride is not yet a wife as is recited in the *ketubah*; 2) *kinyan* has not yet occurred. It is apparent that *Maharam Minz* was not specifically concerned with the writing of the word "*ve-kanina.*" *Maharam Minz* apparently maintains so long as some part of the document is left incomplete there is no "appearance of falsehood" with regard to the obligations recited in that document. *Maharam Minz* himself concedes that the "majority of people" ignore this consideration and draft the *ketubah* before the ceremony. He suggests that they do so because weddings were customarily celebrated on Friday afternoon and there was reason to fear that the ceremony might be delayed until close to the onset of *Shabbat.* R. Ya'akov Yitzchak Newman, in comments published in *Seder Ketubah ke-Hilkhatah*, p. 171, observes that there may well be reason to ignore the "appearance of falsehood" with regard to the marital status of the bride since that could be corrected only by executing the *ketubah* after the marriage has already taken place, at which time there is cogent reason to be concerned that in the course of the festivities the matter may be overlooked. There is, however, no similar reason to ignore the "appearance of falsehood" with regard to the writing of the word "*ve-kanina*" and hence that word should preferably be written only after the *kinyan* is actually executed.

The fifteenth-century German authority, R. Israel Bruna, *Teshuvot Mahari Bruna*, no. 94, peremptorily dismisses the concerns raised by *Maharam Minz* on three grounds: 1) Documents designed to serve as evidence may be prepared in advance of the event memorialized. Thus, a promissory note may be prepared at the behest of the putative debtor and delivered to him in advance of the extension of a loan. 2) Moreover, a bill of divorce contains language declaring a woman to be free of the marital bonds and permitted to every man despite the fact that the divorce is of no effect until she receives the document. As explained in another context by Rabbenu Nissim, *Gittin* 86b, it is self-understood that the statements contained in such instruments are contrafactual in nature and designed to certify those matters to be true only when and if the instrument has passed into the possession of the named recipient.[19] 3) The concluding statement of the relevant discussion of the Gemara, *Ketubot* 85a and *Gittin* 26b, is that, as a halakhic norm, we are not concerned (*lo-haishinan*) with the appearance of untruthfulness. According

to Mahari Bruna there is no objection whatsoever to completing the entire document and having the witnesses affix their signatures provided that *kinyan* is executed before the *ketubah* is presented to the bride.

The practice of writing the word "*ve-kanina*" before *kinyan* is actually executed is also recorded by R. Shimon ben Zemah Duran, *Tashbaz*, III, no. 301, who remarks that the practice is perfectly acceptable so long as the *kinyan* is performed before the witnesses affix their signatures. Ritva, *Ketubot* 85a, similarly states that any document may be drafted before the events recited therein have occurred. Ritva adds that it is the "appearance of falsehood" in the writing of an instrument that is dismissed by the Gemara as being of no halakhic concern but that signing such a document renders it invalid for reasons of actual falsehood. In context, however, Ritva's statement refers to a declaration made by a *Bet Din*. Ritva's statement clearly does not apply to a promissory note or to a bill of divorce and hence may also not apply to a *ketubah*. Nevertheless, Rema, *Even ha-Ezer* 66:1, cites conflicting views with regard to whether or not it is proper for witnesses to sign the *ketubah* prior to actual execution of the *kinyan*. The permissive view is cited in the name of *Mordekhai*, *Gittin*, chap. 2, sec. 342, who does not offer an explanation similar to that of *Mahari Bruna* but states that since the parties "are engaging in that matter" there is no appearance of falsehood.[20]

The talmudic discussions presented in *Ketubot* 21b and 85a as well as in *Gittin* 26b focus upon the authentication of signatures by the *Bet Din*. A litigant has the power to challenge the validity of an instrument presented as evidence by alleging forgery and challenging the authenticity of the witnesses' signatures. That possibility can be obviated by the witnesses themselves appearing before *Bet Din* and acknowledging their signatures or by the *Bet Din* itself comparing the signatures of the witnesses with signatures on other documents already known to be authentic. The *Bet Din* then appends and signs an endorsement certifying the authenticity of the signatures. According to the vast majority of rabbinic scholars, the issue in the talmudic discussion is the propriety of the *Bet Din* writing the text of the endorsement in anticipation of hearing the relevant testimony but withholding their signatures until such testimony has been presented and accepted. The issue is the propriety of the *Bet Din* committing a matter to writing that gives rise to an "appearance of falsehood," and whether, if improperly committed to writing, such authentication should be recognized. *Shulhan Arukh*, *Hoshen Mishpat* 46:24, records conflicting opinions regarding the matter. The authorities cited differ in their assessment of the conclusion actually recorded in the talmudic discussions.

However, *Shakh*, *Hoshen Mishpat* 46:59 and *Hoshen Mishpat* 39:38, advances a quite different view of the controversy recorded in *Shulhan Arukh*. According to *Shakh*, there is no dispute at all with regard to the writing of the endorsement by the *Bet Din* prior to hearing testimony. The dispute, according to *Shakh*, is with regard to whether the certification may be signed in advance and the document retained by the *Bet Din* until the authenticating evidence is presented. According to *Shakh*, no authority entertains the notion that an unsigned writing can be construed as a falsehood.[21]

All authorities agree that the normative rule is in accordance with the first opinion cited by *Shulhan Arukh*, *viz.*, the position that the "appearance of falsehood" is not a matter of concern. Thus, for most commentators, the writing may be prepared by the *Bet Din*—albeit it may not be signed—before testimony is heard while, according to *Shakh*, the document may even be signed in advance. Moreover, vitually all authorities agree that the controversy regarding concern over the "appearance of falsehood" is limited to documents issued by a *Bet Din*. A *Bet Din* is duty bound to avoid any taint of unscrupulousness in order not to bring disrespect upon the judiciary whereas private individuals are under no such constraint.

The sole authority who expresses a different view is R. Issac of Dampierre recorded in *Tosafot*, *Ketubah* 21b. That authority draws no distinction between writings of a *Bet Din* and writings of a private individual and rules that it is forbidden to draft such documents although, if drafted, such documents are valid. However, *Tosafot*, *Gittin* 26a, s.v. R. Eleazar, indicates that, if there is indeed a concern for the "appearance of falsehood," the names of the borrower and lender, the date and amount of the obligation may not be written until the obligation is actually assumed. Thus, if, in deference to the opinion of R. Issac of Danpierre, "*ve-kanina*" were to be omitted until *kinyan* is actually performed, it would also be necessary to delay filling in the names of the bride and groom, the date and the amount of the obligation.

It is thus not at all surprising that a number of contemporary scholars, including R. Benjamin Silber, *Oz Nidberu*, IX, no. 56, and R. Samuel Eliezer Stern, *Seder Ketubah ke-Hilkhatah*, p. 172, see no reason to delay writing the word "*ve-kanina*" until after *kinyan* is executed. R. Shmu'el ha-Levi Woszner, *Seder Ketubah ke-Hilkhatah*, p. 154, regards the practice of omitting the word to represent, at best, "an enhancement and stringency," whereas Rabbi Stern prefers that the word "*ve-kanina*" be incorporated in the printed forms in order to minimize the potential for inadvertent omissions or error.[22]

NOTES

1. *Contemporary Halakhic Problems*, IV (New York, 1995), introduction, pp. xi-xii.
2. That practice is reflected in a statement of *Knesset ha-Gedolah, Even ha-Ezer* 66:8, who counsels that the *ketubah* not be given to the groom lest he fail to deliver it to the bride but that it be placed directly in the hand of the bride or of one of her relatives.
3. This practice may well have its origin in a consideration expressed by R. Mordecai Winkler, *Teshuvot Levushei Mordekhai, Even ha-Ezer,* no. 49, who remarks that it is not seemly for the officiant to hand the *ketubah* to the bride. *Levushei Mordekhai,* however, suggests that the *ketubah* be given to the bride's father or to another relative.
4. See R. Samuel Eliezer Stern, *Seder Ketubah ke-Hilkhatah* (Bnei Brak, 5753), p. 163.
5. Cf., however, *Tosafot, Gittin* 4a, s.v. *de-kaima lan.*
6. Cf. *Tosafot, loc.cit.*, who assert that a deed is valid even according to R. Eleazar despite the absence of witnesses at the time of delivery since a signed deed is tantamount to acknowledgment by the seller that transfer of title has occurred. In matters effecting only property or financial obligations, a confession of judgment is accorded absolute credence even if it is known to be contrafactual.
7. Rabbi Stern, *Seder Ketubah ke-Hilkhatah*, p. 139, suggests that witnesses to delivery of a *ketubah* are necessary in instances in which the instrument contains erasures or words written between lines. Since such irregularities may represent fraudulent alterations of the instrument, their presence generally invalidates an instrument unless the irregularities are noted and certified as authentic in an endorsement appended to the document itself. *Bet Shmu'el, Even ha-Ezer* 125:35, does indeed state that a *get* containing such a defect but delivered in the presence of witnesses is valid by virtue of the fact that there can be no fraud antecedent to, or contemporaneous with, delivery effected in the presence of the witnesses. That conclusion is entirely cogent with regard to a *shetar kinyan*, or performative instrument, such as a *get*, that need not necessarily also serve as evidence. It appears entirely irrelevant with regard to an evidentiary instrument such as a *ketubah* since the possibility of tampering with the document after its delivery remains a cogent concern. Hence, insofar as the probative value of the instrument is concerned, such defects cannot be cured by delivery in the presence of witnesses.
8. Actually, the words of R. Sa'adia Ga'on lend themselves to an alternative interpretation. Rabbi Stern himself reproduces a manuscript version of an early Palestinian *ketubah* which recites that "so-and-so betrothed so-and-so with one ring and two hundred *zuzim* . . . and added of his own to her betrothal so-many and so-many Constantinian gold coins. . . ." See *Seder Ketubah ke-Hilkhatah*, p. 252. The import of that declaration is quite clear: The two hundred *zuzim* to which the husband obligates himself constitute a debt. This version of the *ketubah* stipulates that incurrence of that debt in favor of the wife is also to be deemed part of the *kesef kiddushin* (money or its equivalent) presented to her for purposes of marriage.