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Dear Norman,

I am returning the proofs of my communication and I wish to thank you for including the proof of your reply.

I feel it incumbent upon me however, for the sake of truth, logic and halachic veracity, to inform you that the reply you give in no way answers my objections to your article.

At the outset it would be advisable to bear in mind that the intent of your article was to prove that the Conservative amendment is invalid because of its 'asmakhta'-nature. In order to accomplish that noble purpose it must be shown that no halachic authority would or could consider this amendment other than an 'asmakhta'. If there can be found one authority who would not consider this an 'asmakhta' you have failed in your purpose. Therefore, the fact that "you believe" that Mekhirah 11:17 should be interpreted in a certain manner is no proof that it must so be interpreted. Unless and until you can prove that no other explanation is possible you have failed in your appointed task, for I can with the full sanction of halacha state, as I did, that the Rambam maintains that an agreement to pay an indefinite sum is binding if it is made under a wedding canopy. You may disagree but you have not disproven my contention. You have not shown that the Conservative amendment, except according to your understanding of Mekhirah 11:17, is an 'asmakhta'.

For the same reason your reply to my third point is also not an acceptable answer. Whether or not you personally concede that a 'kinyan' and a retroactive clause are sufficient to neutralize the 'asmakhta'-nature of a contract is immaterial and inconsequential. If there is any halachic basis for such concessions then you cannot with impunity invalidate the Conservative Ketubah. In truth, however, I addressed myself mainly to your very lucid statement that even with these concessions it would remain an 'asmakhta', and you must admit that the reverse is the only logical conclusion.

Regarding my second point, you are confusing a conditional agreement

('tnai') with a non-conditional commitment. The Conservative amendment does not presuppose a happy marriage but conversely an unhappy, sad and deteriorating one. It reads: "Each one agrees to empower the other to summon him to the court mentioned above, should there occur any dissension **between** them". In other words, if they are living in wedded bliss there is no commitment at all; but should there be dissention and difficulties between them then, and only then, is there a commitment to come before the 'Beth Din'. The unhappy married state is the condition ('tnai') which makes the commitment clause operative. In this conditional clause a third party is involved but, as I have shown by the quote from Ishut 6:12, does not invalidate the conditional agreement ('tnai'). In no way is the third party involved in the commitment clause of the agreement. In the case of the wine merchants the third party is involved in the commitment clause and can hinder its fulfillment.

In both cases, the wine merchant and the Ketubah amendment, there is a commitment and a contingent clause making the second party liable to pay a penalty for non-fulfillment of the commitment. If a third party can hinder the fulfillment of this commitment then there is no liability for the contingent penalty clause. In the case of the wine merchant the third party hinders the fulfillment of the commitment, therefore the second party is not liable to pay a penalty. In the Ketubah amendment no one hinders the husband from fulfilling his commitment and therefore, if he wilfully does not appear before the court, the alternate contingent clause becomes effective and he is liable to pay the penalty--this commitment doesn't involve a third party.

As to the last point you have completely misunderstood and misconstrued my remarks. Nowhere do I mention or refer to your note 17 at all and San. 24 has no relevance to the point made, nor do I object to the number of clauses in the contract. My objection is to your treating the two clauses in one contract as two independent contracts. Also B. Batra 3a specifically states that a financial stipulation removes it from the category of 'kinyan devarim',

and you quote the Gemorah in the bottom paragraph of page 107.

I do wish that you will reread my letter and your reply and if you can honestly answer these points that I raise, please do so. However, the reply that you have written does not answer any of the points and does not do justice to halacha, logic and Jewish scholarship.

Best wishes for a pleasant summer.

Sincerely,

Cecil

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