

Customs and Laws from the Parsha: Devarim

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And this land, which we possessed at that time; ... half of Mount Gilead and its cities I gave to the Reubenites and to the Gadites. (Deuteronomy 3:12)

The Tribes of Gad and Reuven, together with half the tribe of Menashe previously asked Moses if they could settle on the east side of the Jordan River. Moses agreed provided that they assist with the conquest of the land of Canaan (Numbers 32:20-24). The language of Moses' condition forms the paradigm for legal stipulations in Jewish law known as a *tnai kaful* (lit. double condition) in which (among other things) one must state both the terms of compliance and non-compliance (Kiddushin 61a).

If a married man dies without children but leaves an unmarried brother, his widow is obligated to either marry the brother (known as *yibbum*, levirate marriage) or perform the *chalitzah* ceremony to release her of this obligation (Deuteronomy 25:5). In a case where the husband is gravely ill, the Gemara addresses whether he could grant his wife a divorce on condition that he dies. *Tnai kaful* is necessary to state that if he does die, the divorce would take effect retroactively and obviate the need for *yibbum* or *chalitzah* and if he recovers, the divorce is void and the couple remain happily married.

If someone wanted to purchase a house on condition that necessary repairs were made within three months, as this is a fiscal matter, there is some discussion as to whether a *tnai kaful* is necessary. If so, the contract must state 'If the repairs are made within three months, the sale is valid; if the repairs are not made within three months, the sale is void.'

Maimonides (d. 1204) does require *tnai kaful* in monetary matters (Ishut 6:14). Others such as Rabbi Yaakov Lorberbaum (d. 1832) only require it for real estate and not for moveable items (Netivot HaMishpat 207:1).

Nevertheless, based on the Talmudic dictum of *situmta* (Bava Metzia 74a) contemporary authorities have ruled that all agreements formulated in a legal contract are binding on the basis that they are commonly recognised as methods of transaction, even though they are not identified as such in the Torah.

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