

# SHE'ALOS AND TESHUVOS

*by Rabbi Doniel Neustadt*

**QUESTION:** If a testator (a person who makes a will) draws up a legal will which makes provisions that run counter to Torah law (e.g., the oldest son is not given a "double portion" of the inheritance), and the will is probated in court, will beis din overturn the will if its validity is contested by the heirs?

**DISCUSSION:** Drawing up a legal will whose provisions run counter to the Torah's laws of inheritance is strictly forbidden by the Torah, and every effort should be made to educate the public regarding the obligation of writing a will according to halachah. But in the event that such a will was drawn up by an attorney and probated in court, either out of the testator's ignorance or because of his disregard for Torah Law, there is a dispute among the poskim whether or not it can be overturned by beis din. Some hold that if the will is contested in beis din as being contrary to halachah, beis din may declare the will null and void and redistribute the estate according to Torah law.<sup>(1)</sup> Other poskim, however, hold that a legal will which was probated in court is valid and cannot be contested in beis din.<sup>(2)</sup> To better understand the issues involved, let us list some of the basic differences that exist between the Torah's laws of inheritance and the secular law:

1. Children: According to civil law, all children -sons and daughters, adopted or natural - inherit equally.<sup>(3)</sup> According to the halachah, when there are natural sons, daughters and adopted sons do not inherit the estate at all.
2. Spouse: According to civil law, upon the death of a spouse, the surviving spouse inherits the estate. According to Torah law, a husband inherits from his wife but a wife does not inherit from her husband; the sons do.
3. Maternal relatives - According to civil law there is no distinction between paternal or maternal relatives. The halachah, however, holds that maternal relatives are not considered relatives regarding the halachos of inheritance.
4. First born - Civil law does not differentiate between the first born son and his younger brothers. The halachah does; the first born receives a "double portion" [of certain parts] of the estate. So if, for instance, one draws up a legal will where he divides his estate equally between his sons and daughters and the estate is probated in court, the poskim debate whether or not the sons have the right to contest the will in beis din, as the division is blatantly contrary to halachah. Beis din will then have to rule whether or not they should disregard the deceased's wishes and redivide the estate according to the halachah. Since there are conflicting views as to the validity of a non-halachic will, and the final ruling will depend on a host of factors, one is well advised to write a will with rabbinical guidance. Otherwise, he runs the risk of having his will overturned by a future ruling

of beis din.

**QUESTION:** Is there any leeway in Torah law for a testator to divide his estate in a manner that is at variance with any of the four points enumerated above? For example, if a testator wanted to disinherit a son, could he do so halachically?

**DISCUSSION:** There is leeway and he may do so. While, in general, Chazal were strongly critical of those who do not follow the Torah's guidelines in matters of inheritance,(4) the halachah recognizes that there are many factors involved in inheritance laws (financial, societal, emotional, familial) that the situation may demand an alternate course of action.(5) For example, we mentioned earlier that according to the Torah daughters do not inherit their father's estate when there are sons. But because this could result in familial strife,(6) in reducing young women to poverty upon the death of their father, or in ruining their chances of marriage for lack of a dowry,(7) Rabbinic leaders searched for halachically permitted methods whereby daughters, too, could inherit at least part of the estate, and indeed, this has become the norm.(8) There are a number of halachic methods available whereby one may distribute a significant part of his estate according to his wishes, as long as a certain percentage(9) of it is distributed according to the Torah's laws of inheritance.(10) One should contact a Torah observant lawyer or beis din and have them draw up the required documents. But it is imperative that all changes from the Torah's laws of inheritance be stipulated and finalized prior to the death of the testator. If, for any reason, the testator failed to prepare a halachic will, his estate will be probated by beis din according to Torah law, though it may run counter to his true wishes.

**QUESTION:** In the U.S. and other countries, the law allows one to declare personal bankruptcy which frees him from the obligation of paying back his debts. Does the halachah, too, recognize the concept of personal bankruptcy?

**DISCUSSION:** No, it does not. While one who declares personal bankruptcy is not legally obligated to pay back his debts, he is still obligated to pay them back under Torah law. Thus one who avoids paying his debts because he has declared bankruptcy violates the Torah prohibition against stealing.(11) Even if one filed for bankruptcy years back and he has all but forgotten about his debts since he was legally exempt from paying them, he is still obligated to make every effort to pay back all of his debts, either to his creditors or, if they are no longer alive, to their estate. The legal concept of "statute of limitations" is not recognized by the halachah.(12)

**QUESTION:** Does one fulfill his obligation of reciting Kerias Shema if he fails to pronounce each word correctly according to the rules of dikduk?

**DISCUSSION:** Chazal attach great significance to pronouncing the words of Kerias Shema correctly, going as far as to say "that one who is particular about reading Shema correctly will be rewarded with a "cooled down" geheinom".(13) Still, Shulchan Aruch rules that b'diavad one fulfills his obligation of Shema even if he was not particular to pronounce each word correctly (e.g., he did not correctly accent each syllable) as long as he clearly articulated every single word and every single

letter. In particular, Chazal were concerned about words whose last letter is the same as the first letter of the next word. In the words bechal levavecha, for example, the letter lamed is both at the end of bechal and at the beginning of levavecha. Both lameds need to be clearly and distinctly pronounced, necessitating a slight pause between the two words; otherwise, the two words will sound like one long word - bechalevavecha. The same holds true for al levavchem, va'avadetem meheirah, and many others.<sup>(14)</sup> It is interesting, though, that while Chazal specifically single out bechal levavecha as one of the word combinations where a pause is necessary, this particular pause must be extremely brief; otherwise, one runs afoul of a different grammatical rule: These two words are connected with a makaf, a hyphen, which means that they are supposed to be read together with no pause between them. Is this not a contradiction - on the one hand a pause is necessary to separate the two lameds, while on the other hand, the two words are supposed to be read together?<sup>(15)</sup> The solution is not to pause fully and leave a space between these two words [like we would between similar combinations, e.g. va'avadetem meheirah], but rather leave a hair-breadth between them - enunciating both lameds clearly and accenting the second word, levavecha.<sup>(16)</sup> One would be well advised to practice reading these words in advance, so that when he recites Kerias Shema the correct pronunciation will come easily.<sup>(17)</sup>

*FOOTNOTES:*

1 See Pischei Choshen, Yerushah 4, note 85 quoting several poskim; Minchas Yitzchak 6:165.

2 See Binyan Tziyon 2:24; Achiezer 3:34; Igros Moshe E.H. 1:104-105.

3 Laws concerning adopted children vary from state to state.

4 Bava Basra 133b, Shulchan Aruch C.M. 282:1.

5 See Ketzos ha-Shulchan C.M. 282, Igros Moshe C.M. 2:49. Minchas Yitzchak 3:135 and Shevet ha-Levi 4:216.

6 See Rama C.M. 257:2

7 See Teshuvos Chasam Sofer E.H. 1:147.

8 See Rama E.H. 90:1; 108:3; 113:2; Maharsham 2:224-29.

9 While all poskim agree that a "sizable" percentage of the estate be distributed according to Torah law, there are different opinions as to the exact percentage. In Igros Moshe C.M. 2:50 Harav M. Feinstein writes that leaving a thousand dollars per son is considered a sizable amount, while in another responsum (C.M. 2:49) he recommends that a fifth of the estate be probated according to Torah Law. See also Igros Moshe E.H. 1:110 where he writes that the house where the deceased lived should be probated according to Torah law, while the rest of the estate can be allocated according to his wishes.

10 See Kuntress Mdor L'dor and Mishapt ha-Tzvahah, pg. 66.

11 See Koveitz ha-Poskim 26, pg. 221; Minchas Yitzchak 3:134; Pischei Choshen, Halvahah 2, note 63; Koveitz Meishiv ba-Halachah 9:129 and 10:141.

12 Pischei Choshen, Halvahah 2, note 72.

13 See explanation of this concept in Mishnah Berurah 62:2.

14 O.C. 61:20.

15 In addition, if these two words are read separately without the makaf, then the proper vocalization is bechol with a cholom, and not bechal with a kamatz.

16 Mishnah Berurah 61:33.

17 A good start is to read and listen to Kuntress Shema B'ni, a guide to grammatically correct pronunciation of Kerias Shema, with an audio companion to the text (Rabbi S. Herhkowitz, Toronto, 2001).

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