

ISSUES OF INHERITANCE

by Rabbi Doniel Neustadt

Question: If a testator (a person who made a will) drew 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 in accordance with halachah. But in the event that such a will was drawn up by an attorney and probated in court, either out of the ignorance of the testator 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[1]. Other poskim, however, hold that a legal will which was probated in court is valid and cannot be contested in beis din[2].

To better understand the issues involved, let us list some of the basic differences in the laws of inheritance between the Torah law and secular law:

- **Children:** According to civil law, all children — sons and daughters, adopted or natural — inherit equally[3]. According to halachah, if there are natural sons, daughters and adopted sons do not inherit the estate at all.
- **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.
- **Maternal relatives:** According to civil law, there is no distinction between paternal and maternal relatives. The halachah, however, holds that maternal relatives are not considered relatives regarding the halachos of inheritance.
- **Firstborn:** Civil law does not differentiate between the first born son and his younger siblings. The halachah does; the firstborn 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 one to divide his estate in a manner that is at variance with any of the four points enumerated above? For example, if he 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 so 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 yesterday 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 in many circles^[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.

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; *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; *Teshuvos 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 (in 1966) that leaving a thousand dollars to each 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 Mi-Dor l'Dor and Mishapt ha-Tzava'ah, pg. 66.

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