

THE TOP 10

QUESTIONS & ANSWERS ABOUT

WILLS, INHERITANCE & HALACHA

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Secular law often conflicts with the Torah's laws of inheritance. As such, every Jew must ensure that assets are distributed to his or her heirs in a way that is both halachically and legally acceptable.

1 WHO ARE HALACHICALLY CONSIDERED YORESHIM (HEIRS)?

The halachot of *yerusha* (inheritance) are derived from Hashem's response to the daughters of Selofhad, who had no brothers, and asked Moshe Rabbenu who would inherit their father's portion in Israel (*Bamidbar* 27:1-11). These halachot include an order of succession. For example, based on these halachot, if a man passes away and is survived by a wife, a son and a daughter, the son is the sole *yoresh* (heir). The widow is entitled to either continued support from the estate or the amount specified in her *ketubah* (marriage agreement), while the daughter is entitled to support until her marriage. If there are no sons, the daughter inherits the entire estate. If there are no children, the husband's father or brothers are the halachic heirs. A wife never inherits her husband's estate. On the other hand, when a woman dies leaving a husband and children, the husband would generally receive the entire estate.

These guidelines are very different from State law. In New York State, if someone dies intestate (without a will) and is survived by a spouse and children, the spouse receives \$50,000 plus half of the remaining estate, and the remainder is divided equally among the children. If there are no children, then the spouse receives the entire estate. If there is no spouse, the entire estate is divided equally among all the children.

2 CAN ONE OVERRIDE THE LAWS OF YERUSHA (JEWISH INHERITANCE) BY PREPARING A WILL?

Based on the halachic principles codified by the Shulhan Aruch and on halachic responsa dating back as far as the Rashba, most *poskim* (halachic authorities) today hold that a written will does not suffice to circumvent the Torah's laws of inheritance. A will takes effect only after death, by which time the Torah's laws of inheritance have already transferred the deceased's property to the *yoreshim* (the halachic heirs). According to other *poskim*, however, including Rabbi Moshe Feinstein *z.s.l.*, a will that is enforceable in a legal court is recognized as a valid document by *halacha*.

People who seek to satisfy the majority view, that a will is not valid, generally accomplish this through a halachic debt to non-*yorshim* or lifetime gifts.

3 IS THERE AN OBLIGATION TO FOLLOW THE DECEASED'S WISHES?

There is a *missva* to obey the wishes expressed either formally (in a will) or informally by the deceased. Nowadays, however,

in most circumstances, the Bet Din (Jewish Court) does not have the power to enforce the fulfillment of this *obligation*. Given the unexpected changes in family dynamics, it is advisable to draw up an estate plan that is enforceable in both court and Bet Din.

4 WHAT HAPPENS IF THERE IS NO WILL?

In most cases, a distribution made according to state law will be contrary to *halacha*, which from the Torah's perspective would constitute *gezel* (stealing) from the *yoreshim*. Neglecting to write a will also promotes *mahloket* (discord) in the family, which we must obviously endeavor to avoid.

It is certainly preferable to rely on those authorities who accept the validity of a will than to have no will at all and leave the property to be handled by the State, contrary to *halacha*. In addition, relatively simple halachic estate planning will satisfy most halachic opinions.

5 DO THE LAWS OF YERUSHA APPLY TO A MARRIED COUPLE'S JOINTLY OWNED ASSETS (SUCH AS BANK ACCOUNTS AND REAL ESTATE)?

The rights of joint owners are determined at the time the joint ownership is established. If the original agreement included rights of survivorship (meaning that when one dies, the survivor is entitled to the entire account or property), then from the Torah's perspective, the surviving spouse is not "inheriting" anything by taking the entire property. Instead, he/she is taking his/her rightful share as determined by the terms of the original agreement between the joint owners.

6 WHAT TYPES OF ESTATE PLANNING ARRANGEMENTS ARE POTENTIALLY PROBLEMATIC?

Wills, revocable living trusts, life insurance policies, annuities, retirement accounts, and any other kinds of beneficiary designation for assets that have value during the owner's life can be problematic. Conceptually, there is no difference between naming a beneficiary in a will and naming a beneficiary on an account application form. According to the *poskim* who hold that a legally binding will poses no halachic problems, any legally enforceable beneficiary designation should likewise be acceptable.

7 HOW CAN ONE PROVIDE FOR A WIFE OR DAUGHTER WITHIN THE HALACHIC FRAMEWORK?

According to some *poskim*, a will or trust is sufficient. Even according to the many *poskim* who disagree, there are techniques for ensuring that the bequests to the wife or daughter are not halachically considered *yerusha* and do not violate the Torah's laws of inheritance. One should consult with a rabbi for guidance, as well as an attorney familiar with halachic estate planning, as there may be unintended legal and tax consequences to some forms of halachic estate planning.

8 ARE THERE ANY HALACHIC REQUIREMENTS PERTAINING TO THE CONTENTS OF A WILL?

There is a rabbinic prohibition against disinheriting rightful *yoreshim*. At the very least, one should leave all *yoreshim* a significant asset. Some opinions suggest that even if one leaves his estate to all his children equally, he should leave something of significance exclusively to the halachic *yoreshim*.

9 ARE CHARITABLE INSTITUTIONS INCLUDED IN HALACHIC ESTATE PLANNING?

There is a *missva* to give charitable bequests. Depending on the circumstances, however, the greatest charity may be ensuring the support and dignity of the surviving family members.

10 WHAT SHOULD SOMEONE DO IF A RELATIVE DIED WITHOUT A WILL?

The need to take control of the assets often makes court involvement unavoidable. Nevertheless, a distribution should be done pursuant to an agreement supervised by a Bet Din so as to avoid halachic pitfalls. Any deviation from state law should be monitored by an attorney for potential unintended legal and tax ramifications. A peaceful settlement will be a *zechut* (merit) for the deceased's *neshama* (soul).

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Reviewed by Rabbi Shmuel Choueka of Congregation Ohel Simha in Long Branch, NJ. The Halachot and customs listed here are not presented in any particular order. These summaries represent a very brief overview of the subject matter to promote general awareness and encourage further study. As always, readers should consult their rabbi with specific queries.



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