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Jewish Laws of Inheritance

Hilchot Yerusha stems from Parshat Pinchas where Tzelofchad's daughters question Moshe Rabeinu regarding inheritance. Their father died never having a son and leaving a widow. They argued that their father left no progeny other than daughters. Since Yibum hadn't been applied (i.e., Tzelafchad's brother didn't marry their mother to yield progeny from Tzelofchad), daughters are children.

Hilchot Yerusha are based on the following principles:

1. Kinship isn't through the mother; inheritance passes through the father. Thus, brothers from the same mother but different fathers don't inherit each other, unless they're from the same father and the deceased brother left no progeny. A son is the heir of his parents, excluding his sister, but a mother isn't the heir of her child; a father is.
2. A firstborn son is a bechor if his birth wasn't preceded by the birth

of another child to his father. A firstborn son is a bechor after an early miscarriage (when there's no recognizable fetus) but isn't a bechor if born through a C-section. If a woman bore a child and then remarried a childless man, if she bears him a firstborn son, he's his father's bechor, but there's no pidyon haben. Thus, a woman can have multiple sons who are bechorim of different fathers. If a girl weds a man who already fathered a child and she gives birth to a first-born son, there's a pidyon haben, but the language is changed to bechor l'emo (mother).

a) A bechor gets twice as much as other sons from their father's muchzak (actual) but not ro'ui (future) property.

b) Offspring of a bechor who predeceases his father, inherit from their father, and a further double portion of their grandfather's estate, when he dies (which would have gone to their father, as their grandfather's bechor, had he been alive).

If a man dies leaving sons, they have sole claim to the estate. If a son dies before his father and leaves offspring, even if there's a daughter/future progeny, only the son's progeny inherits. However, if the son

left no progeny, then the daughter/s or her progeny inherits, with the males receiving priority over the females.

When a will's terms contradict Halacha, compliance may constitute theft (gezeila) on the part of invalid recipients — unless over bar-mitzva-age brothers disclaim inheritance in favor of sisters

If a man left no progeny, then his estate passes to his family as follows: First, to his father (not his mother), if alive. If he's dead, then to his brother/s (from the same father but not necessarily the same mother) or progeny. If the brother/s died childless, then the sisters/progeny inherit, with males receiving priority over females. If the man had no paternal siblings and his father's dead, inheritance reverts to his paternal grandfather. If he's not alive, his sons (uncles of the deceased) inherit; if they're dead, their progeny inherit—males before females. If the paternal grandfather had only daughters, they inherit and, if he had no children but only a sister, she inherits. Thus, a great-aunt or a great-nephew/niece inherits over a wife.

While a husband is his wife's heir of her property, she is not her husband's heir but retains ownership of the property

she owned before marriage and of solely/jointly owned property as of marriage. If she dies after her husband, her progeny (not his) inherits her estate, with sons having priority over daughters. If her son's dead but left progeny, they inherit and her daughter doesn't; a daughter/progeny only inherits if grandma had no sons. If the daughter s/sons died childless, then the estate goes back to the family of the deceased mother's father (only if she left no husband). If her father's not alive, her estate passes to her siblings (brothers before sisters). If no sibling's alive, it passes to progeny. If no sibling/progeny exists, the estate passes to her grandfather/his progeny.

A son inherits his mother just as he inherits his father, but a mother's bechor doesn't get a double portion. If an only child died childless, before his/her mother died, and she left no husband, when she dies, her estate reverts to her family.

If a man died after his son/s had died and left progeny, each deceased son's share goes to their progeny.

A daughter doesn't inherit her father if he has a son, but Chazal established an Obligation of Sustenance as a stipulation in a Ketubah, which a man must write for his wife (i.e., after he dies, their daughter/s must be sustained from his estate until marriage, including wedding expenses. If he'd already married off a daughter/s, the other/s is married according to the same standard, but if he hadn't done so, one-tenth of his estate's allocated for this purpose.

Heirs must pay for their father's widow's sustenance in the manner in which he sustained her — which includes food, clothing, furnishings and dwelling — until she remarries or claims her Ketubah.

A convert is considered newborn and not related to natural parents/family. Therefore, when a whole family converts, no one inherits the other. If a pregnant woman converts, the fetus inherits her.

Adopted children don't inherit adoptive parents.

Given the above, secular testamentary bequests present problems when Jewish asset owners wish to distribute property differently from Halacha. When a will's terms contradict Halacha, compliance may constitute theft (gezeila) on the part of invalid recipients — unless over bar-mitzva-age brothers disclaim inheritance in favor of sisters; otherwise, assets should be returned to rightful Torah heirs.

Halachic Estate Planning (Kosher Wills) today, complies with the letter and the spirit of halacha (the topic of a whole other article), and provides a way for parents to provide for their children in the way that they see fit. ■

Tirtza Jotkowitz, Esq. has been practicing Halachic Estate Planning for the past 25 years in New York and Jerusalem.

For many years on Parshat Pinchas, she has shared her wisdom on the laws of inheritance with Torah Tidbits.



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