

Ed. note: We are introduced to the Torah's Laws of Inheritance in this week's sedra, Pinchas. Specifically, it was in the context of the 'question' of the daughters of Tzelofchad, that the Torah presents DINEI N'CHALOT.

We asked the namesake of one of those special women to write a piece for this week's Torah Tidbits on some of the modern aspects of the Torah's Law of Inheritance.

Because of the space constraints that we placed on today's Tirtza, the following article is understandably sketchy. If you have questions, please address them to tirtzaj@gmail.com or to any other lawyer who specializes in Kosher Wills (Halachic Estate Planning).

If You Want Your Wife, Daughters and Grandchildren to Inherit You...

by Tirtza Jotkowitz, Esq.

Halachically, a wife does not inherit her husband, but he inherits all that she has acquired as of their marriage; this includes inheritances, earnings, investments, etc.... If they have sons, they are the Torah heirs, to the exclusion of daughters. If they only have daughters, they are the Torah heirs. One who unwittingly comes into assets that do not halachically belong to him/her, is considered a thief, unless the Torah-entitled heirs waive (are mochel) their entitlement.

The Torah's default order of inheritance, as defined in Parshat Pinchas (Bamidbar 27:8-11), is:

1) sons; 2) daughters; 3) father; 4) brothers; 5) sisters; 6) paternal grandfather; 7) uncles [father's brothers]; 8) children of the uncles [nephews before nieces]; 9) aunts

[father's sisters]; 10) children of the aunts [nephews before nieces].

If an inheritor already died but has descendants, they inherit in his/her place. Thus, hypothetically, a great-nephew or niece could inherit to the exclusion of a wife!

Typically, spouses wish to leave their assets first to the survivor and then, if they are blessed, to their biological children, regardless of gender. Adopted children or converts) are not Torah-entitled heirs, but parents, typically, wish to treat these children as such. Therefore, if a husband dies first, without having made an intervivos (lifetime) gift to his wife via a Halachic Will, she is considered a thief, unless the Torah-entitled heir is mochel her; this is not an enviable position for any wife, mother or daughter to find herself in. As noted, if the wife dies first, halachically, her husband is the Torah-entitled heir. Grandparents usually intend that inherited assets pass to their biological/adopted/geirim grandchildren when their child dies. I emphasize "biological" because in today's complex world, where many families are comprised of "his, hers and our" children, achieving objectives while comporting with Halacha, requires halachic estate planning.

For example, when parents marry off a daughter, her new husband is her Torah-entitled heir. If the parents (who do no estate planning) die first, or the daughter dies before her parents, the inherited assets, halachically, belong to the son-in-law. What is to guarantee that he will leave the grandparents' assets to their intended grandchildren?

Halachically, he can remarry and leave those assets, which are his, to anyone!

Another increasingly common example, whether due to widowhood, divorce or older singles marrying a widowed or divorced person with children, is the blended family. A man and/or a woman with children and/or grandchildren from a prior marriage, marry without writing a pre/post-nuptial agreement. They then have children together. If they had written this agreement, they could have precluded the following problem: During their marriage, they acquire assets (whether through respective inheritances, earnings, investments, etc...) and start to think about to whom these assets should be left after they are gone. What should children from a prior marriage inherit compared to mutual children? How can the surviving spouse be protected from the pressure of children waiting for their inheritances?

Therefore, if you want your sons and daughters to inherit so that their children inherit you and/or your wife, you must provide for these objectives via a Halachic Will (too complicated to discuss here).