Ed. note: On the next pages you will find an article, which we are presenting as a public service. After reading the article, I realize that many people will not follow all of the details, but all TTreaders should at least be aware that legal details of joint ownership of property differ between the United States and Israel (not to mention other countries). Our inclusion of this article in TT should not be construed as an endorsement of Mrs. Jutkowitz (although we are convinced that she is both knowledgable and experienced in these matters). Readers should consult their own lawyer, Rav, knowledgable friends and relatives before acting upon the information contained in this article. What you do or not do with this information is up to you alone.

"Ownership" in the US vs. Israel and the Halachic Implications

by **Tirtza Jotkowitz, Esq.**

A few years before their deaths, Mr. and Mrs. Bloom (fictitious names through-out) left money in a Trust vehicle for their only daughter, Chana, who had five brothers. Subsequently, Chana married Moshe Klein and, together, they bore six children, the youngest an only son. By now, the Kleins, grandparents to children of both genders, greatly appreciated the Bloom's foresight in ensuring that only intended heirs (their biological offspring and not in-law children, who could remarry and have another family) halachically and financially benefit.

Perceptively, the Kleins have unfailingly owned their assets jointly, planning to leave each other everything and afterwards, equally, to their biological children, only, to provide for their biological children; however, the Kleins never wrote Wills.

They have owned and lived in their NY house since marrying, while making annual visits to Israel. Upon reaching retirement age, they jointly purchased an apartment in Israel (hoping to spend Sukkot and Pesach there but other times renting it out) and opened an Israeli joint bank account to manage expenses. A year later, Moshe died.

In shock, Chana became aware that "ownership" translates differently in the US and Israel, and that the "probate" process (proving and accepting a Will or lack thereof in court) also differs. In both countries, probate occurs after death but at different times. In Israel, probate occurs after each death, but in the US, where there is a Joint Tenancy With Rights Of Survivorship JWRO feature of ownership for a married couple, probate is deferred until the survivor's death. Secularly, these differences profoundly affect a surviv-ing joint tenant and heir/s. More importantly, the halachic implications for the Torah-entitled and/or non-Torah-entitled heir/s may result in significant ramifications.

Before presenting (and better under-standing), any example regarding "ownership", the following halachic premises must first be established: A bequest (after death disposition) must follow Torah law, but one can gift during life as one wants (within certain Torah parameters). A husband auto-matically owns/inherits everything that his wife acquires as of their marriage, but a wife does not inherit her husband; a son/s is the Torah-entitled heir/s, unless there is only a daughter/s. One may halachically gift assets during

lifetime to non-Torah-entitled heirs via writing a legally recognized Halachic Will, creating a Trust fund, and/or using other legal vehicles with designated beneficiaries (e.g., life insurance, pension, etc…). If one inadvertently receives an inheritance to which one is not halachically entitled, and the Torah-entitled heir/s does not disclaim (is not mochel) the inheritance, one is considered a gazlan (holding stolen property).

In the US, when a husband and wife jointly own real estate and/or have a bank account (i.e., both names are on the deed and/or account - halachically valid lifetime gift), they are considered one unit with a JWRO feature, so each owns the property/account totally (100%) and either one can transact to that extent. Therefore, since the Kleins wrote no Will and Moshe died, under the secular law of NY, Chana totally owns her house and bank account; probate will not occur until Chana dies. Conversely, if the property and/or account had been in Moshe's name only and there were no Wills, under NY law, Chana would get one-third (1/3) of the house and/or account and the children would share two-thirds (2/3). Since a secular disposition does not differentiate between genders, obviously, there are halachic implications if there are children of both genders, no matter which parent dies first. Furthermore, a widow/er may end up in partnership with a child/ren (whether their own and/or their late spouse's) whose permission will be required to transact (i.e., sell, withdraw money, etc…) - not an enviable position for anyone!

The Kleins, after deciding to jointly buy real estate and open a bank account in Israel, incorrectly assumed that the JWROS feature also applies, but no such feature exists in Israel, and a deceased joint tenant's half (50%) is frozen until probate is completed. Precisely, in Israel, each only own one-half (50%) and can only transact up to their half (50%) - providing the bank had them sign a "Longevity Clause" so that the surviving joint tenant can transact up to their half. While Moshe's estate is being probated and Chana is limited in using money/transacting, she thanks Hashem for her parent's foresight in ensuring that she has an income stream from the Trust!

By jointly putting real estate and/or a bank account in both names, Moshe had automatically made a halachically valid lifetime gift to Chana of half (50%) of the property; but in Israel the Kleins are considered separate half-owners. Therefore, since they never wrote Wills (in which Moshe could have halachically gifted Chana his half, too) and one of them died, the survivor still owns 50% of the property/account - but with the deceased's 50% frozen until probate is completed. At that time, under the laws of the State of Israel, the surviving spouse, will get half (50%) of the deceased's half of the property plus the already owned half (i.e., 25% + 50%, respectively = 75% ownership) and the child/ren of the deceased (but not necessarily of the survivor) will share the remaining one-quarter (25%). Contrastingly, if the property was in the name of the deceased only and there was no Will, the surviving spouse now gets half

(50% of the deceased's 100%) and the child/ren of the deceased (but not necessarily of the survivor) share the remaining (half) 50%. Thus, in both scenarios, since the State of Israel does not differentiate between genders, there are halachic implications: Chana and daughters inherit non-halachically, unless the son/brother is mochel them.

From just the mention of these very few possibilities out of many more, it should now be clearer how important it is to not only write a halachic Will but to have a separate one covering properties in different jurisdictions.

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