

## OU VEBBE REBBE

### Excluding a Son from Inheritance

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Question: Are there sins that would cause a son to automatically lose his share? If a father is angry at a son, is he allowed to use a device to disinherit him?

Answer: It is unclear whether this question is theoretical or practical. In any case, our answer is general.

The Torah laws of inheritance are set monetary rights that are not affected by the righteousness or sins of inheritors. In that way, it resembles the fact that the Torah does not confiscate a sinner's property. On the other hand, a person is capable of taking steps during his lifetime to effectively obviate inheritance laws. See our survey of some details in *Living the Halachic Process IV, I-9*.

The main question is whether it is proper to exclude an inheritor due to his moral level.

Rashbag (Bava Batra 133b) says that it is a positive thing for a father to transfer his assets to others if his sons act improperly. However, the gemara concludes that others disagree and cites Shmuel's statement that it is wrong to transfer one's property even from a "bad son" to a "good son." Shmuel goes beyond Rashbag, as presented. He rejects not only giving to a non-inheritor but even to one son at the expense of another and states that neither the badness of one inheritor nor the goodness of another is a

satisfactory reason. The Shulchan Aruch (CM 282:1) paskens like Shmuel.

There is discussion as to whether this rule is a Torah-level law (difficult), a Rabbinic binding law, or Rabbinical guidance (see *S'dei Chemed*, vo. IV, p. 27). One reason given for it is that we cannot know what will be with the offspring down the line (Ketubot 53a). The Tur (Choshen Mishpat 282) gives another reason – it causes jealousy and ill-feeling within the family. These are apparently not the primary reasons behind the halacha but the secondary ones, as we will explain. On the basic level, the Torah says that the proper thing is to give as the Torah prescribes (Aruch Hashulchan, CM 282:2). Inheritance is one of the tools of Divine Providence as to a person's financial resources. A person may ask: "If I can halachically and (ostensibly) morally devise systems that seem more equitable in this specific case than Hashem's general system, shouldn't I do that?" The answers are: you cannot know what is truly equitable, as Hashem knows what will happen down the line, and you do not; you have to consider the negative of your plan (i.e., jealousy).

Poskim discuss different cases where it is arguable that the indications for "playing favorites" may be compelling. There is a machloket whether the halacha applies to one whose behavior and the way he raises his children is antithetical to Torah Judaism (see *Pitchei Choshen*, Yerusha 4:(4)). It is not simple if one must give a full inheritance to one who mistreats his parents (Rambam, *Nachalot* 6:11 seems

to indicate that he should still receive) or tried to oust his siblings from inheritance (see *S'dei Chemed*, IV p. 34). There is also a machloket if he can keep everyone as an inheritor and only give more to one than to another (see Rashbam, *Bava Batra* *ibid.*; *Sdei Chemed*, IV p. 33).

While the Rambam (*ibid.* 13) urges to give children equal financial treatment throughout life and the gemara (*Ketubot* 53a) indicates that large gifts to one of the children during his lifetime could be wrong, one must put things in perspective. One may use his money during his lifetime for any reasonable need, desire, or mitzva cause, as long as it is not exaggerated in a way that fundamentally alters inheritance (see our column, *Mishpatim* 5779). Therefore, a parent may give somewhat more to some children based on need. He can also earmark money in a way that benefits those with similar values to the parents (e.g., pay for grandchildren's day school education), and if a child chooses not to take advantage of such resources (e.g., sends to public school) that is his decision.

To summarize a general answer on a sensitive family issue, we urge to listen to this halacha's "voice": "Don't be holy; be smart"; "Don't try to 'outsmart' the Torah."