

If There's a Will, Is There a Way?

By Rabbi Meir Orlian

The Bergers had a long and eventful life behind them. They had lost their families in Europe, but had managed to reestablish themselves in America, where they were privileged to have three sons and a daughter.

One by one, as their families grew, their children moved away; only their daughter Bracha remained nearby, in a rented apartment a few blocks away.

The close proximity allowed Bracha's children to spend many afternoons with their grandparents. On Shabbos, the Bergers would often join Bracha for a meal. When it became harder for the elderly couple to walk, they would often sleep over for Shabbos.

One Motzoei Shabbos, Bracha mentioned to her parents that she was beginning to look for a house elsewhere. Their rented apartment would not suffice for the growing family indefinitely.

Mr. Berger was not surprised, but could not conceal his pain at the thought of their moving away. He confided to Bracha, "Don't worry about a house. We bequeathed our house to you in our will, since your siblings already have their own houses. The remaining money they will divide equally. We would love it if you could continue living in this neighborhood."

Bracha had not been expecting this at all. The thought of living in the comfortable house in which she grew up, the thought of the backyard where her children played so frequently... Yet she caught herself.

"That's so, so kind of you. We would love to stay here. But I don't know if we can take the house based on your will."

Mr. Berger was now surprised. "Why not?"

"As you know," Bracha began slowly, "when there are sons, the Torah awards inheritance only to them; I am not entitled to inherit. Furthermore, the oldest one is a firstborn and entitled to a double share."

"Of course that is the default inheritance of the Torah," Mr. Berger assured her, "but can't I draft a will disposing of my estate as I see fit?"

"I don't know," said Bracha. "It would be best to ask Rabbi Dayan about this."

"I'll call him right now and ask him," said Mr. Berger.

"Although a person can usually stipulate terms in monetary matters," answered Rabbi Dayan, "the Torah refers to the laws of inheritance as 'chukas mishpat,' a statute that cannot be easily altered. People who are not immediate heirs cannot be designated as inheritors."

Mr. Berger persisted, "But civil law has defined laws of inheritance and gives legal validity to wills. And halacha gives credence to 'the law of the land' (dina d'malchusa dina)."

"The issue of dina d'malchusa in regard to inheritance has been discussed by poskim for centuries," replied Rabbi Dayan. "The Rashba was asked this question almost 750 years ago, and he emphatically rejected the suggestion to follow the common law of inheritance against Torah law. The Beis Yosef (C.M. 26) and the Rema (369:11) both cite this ruling, and limit the concept of dina d'malchusa dina to issues relating to the state itself, such as taxes, or to proper functioning of society."

“But I asked a lawyer about this,” protested Mr. Berger. “He said that many of his clients are religious Jews, and no one raised a problem in this regard.”

“Not many people are aware of the halachic issues of wills,” sighed Rabbi Dayan. “Two Torah giants of the recent century, Harav Chaim Ozer Grodzenski, zt”l (Responsa Achiezer 4:66), and Harav Moshe Feinstein, zt”l (Igros Moshe, E.H. 1:104), suggested innovative approaches to explain the common practice of honoring wills. However, both approaches are questionable. There is growing awareness of the need to draft wills in accordance with halacha.”

A gleam appeared in Mr. Berger’s eyes. “So there is a way of making a will conform to halacha?”

“Yes,” said Rabbi Dayan. “However, it is best to do so through a Rav or beis din familiar with both the halachic and legal issues. We can set up an appointment for next week. Bring a copy of your current will with you.” *(To be continued next week, iy”H.)*