"Refreshing… straightforward and authoritative…
a unique guide for the perplexed …
The authors, Dr. Haim Katz and Adv. Sam Katz ..
clearly are experts on this subject"
The Jerusalem Report

The Complete Guide To

Wills And Inheritance In Israel

* * *

Dr. Haim Katz, Advocate
Sam Katz, Advocate

With an introduction by ***Prof. Gabriela Shalev****, The Hebrew University of Jerusalem, Chairperson of Israel Council for Higher Education's Committee for Appointment of Professors in Law and formerly Israel's Ambassador to the United Nations*

"An outstanding work…straightforward but authoritative answers to questions on inheritance issues. English-speakers…will greatly benefit from this guide."
Prof. Shalev

Dr. Haim Katz brings 30 years' experience in the practice of law in Israel, dealing with inheritance and family matters in his offices in Tel Aviv and Jerusalem. Dr. Katz has written several authoritative books on inheritance and family law. Dr. Katz regularly appears on the Israeli radio and television and deals with questions and answers from the general public on these important issues.

Dr. Katz serves on the Israel Bar Association National Inheritance Law Committee as well as the Trusts and Family Committees. He also serves as chairman of the B'nai B'rith World Center, as trustee of the Rubin Academy of Music and is a member of the international inheritance and succession planning organization STEP. Dr. Katz has been appointed by the Minister of Justice to serve as the Chair of the Hadassah Hospital Ethics Committee (equivalent appointment to a District Court Judge).

Advocate Sam Katz practices in Jerusalem and Tel Aviv and specializes in Inheritance Law and Wills. He is the co-author of a successful Hebrew-language book about Inheritance and Probate in Israel which was published by Am Oved, one of Israel's prominent publishing houses. Sam writes a popular column in the Jerusalem Post on legal issues called "Legal Ground". He also serves on the Israel Bar Association National Inheritance Law Committee. Sam has dealt with cross-national inheritance issues.

Both authors are originally from the United Kingdom and received their law license in Israel. Between them they have over 30 years' experience of practising law in Israel appearing regularly in the Israeli courts. They serve as a bridge between English-speakers and the Israeli legal system.

"A succinct user-friendly explanation of the Inheritance Law in Israel. I am certain that this is a great service to the Anglo community in Israel and abroad."
Prof. Ron Shapira

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The Complete Guide To

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In Memory of My Father

"It is incumbent upon us to uphold the wishes of the deceased."

Rabbi Yehuda HaNasi
Talmud Bavli, *Gittin,* 14b

"The words of the deceased should be honored. This principle forms part of our culture. It is derived from the autonomy of the will of the individual and the proprietary right of the testator and this in Israel is a constitutional right."

Aharon Barak, Nasi (President)
the Supreme Court in Jerusalem
Ettinger vs. Even Tov

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Introduction

by Prof. Gabriela Shalev

It gives me great pleasure to write an introduction to this outstanding work by my friends and colleagues, Dr. Haim Katz and Adv. Samuel Katz. This book provides the general public with direct access to the intricacies of the laws of inheritance, and yet, at the same time, lawyers and other professionals can delve into the references to the statutes and the latest case law right up to 2019.

In particular, I would like to congratulate the younger member of the Katz team (which has specialized in writing works that make complicated legal issues easily understandable to the public), Adv. Samuel Katz. Sam has contributed his expertise in researching and simplifying the up-to-date material which provides the main body of this book. It is always good to see young jurists contribute to the general understanding of the law, and it is an axiom that understanding the law is a pre-condition to respect of and adherence it, which in turn buttresses Israeli society as a whole. Certainly, in our society, continuity is important, and Sam, as a fourth-generation lawyer, (father, grandfather, and great-grandfather are/were all jurists) is another link in this chain.

Inheritances are not merely reflections of dry documents. They can spark intense conflicts within a family, which often have little to do with just money and property. Rather, they relate to emotions and family histories. The knowledge that this guide provides is a significant tool in making sure that people make advised decisions, which hopefully may avoid unnecessary disputes.

This book follows Haim and Sam's popular guide to Wills, Probate, and Inheritance in Hebrew which, like this guide, is divided into questions and answers, with the footnotes providing references for those who wish to delve deeper into the subject. This updated English-language version serves the increasingly growing English-speaking population in Israel, who require straightforward but authoritative answers to questions on inheritance issues.

I feel sure that English speakers who are Israeli residents, or non-residents who have an affinity with Israel, will greatly benefit from this guide.

Gabriela Shalev
Even Yehuda
September 2019

Preface

The field of inheritance and wills often touches on charged and sensitive matters. There is no legal document comparable to a will as a special expression of an individual's innermost concerns, and thus, the legal technicalities covered in this volume can become crucial. In this matter, the words written by the Supreme Court Justice (ret.) Yaakov Turkel are particularly appropriate:[1]

> *"A will is a legal document, but this document does not lack soul. It is like a final personal letter, an expression of wishes, loves, emotions, and even reckonings, that emanate from the depths of the soul of a person thinking about his death and what he wishes to take place after his death. Here he anticipates the last station of his life — and the first after his death. Here is his final attempt to shape the lives of those he leaves behind and sometimes influence them. Here is his last hope to live in their memory in love and in gratitude… Here lies before us a piece of paper embodying the world of the deceased. And we, who are commanded to uphold the wishes of the deceased, must hear his voice, understand his words, and lend an ear to the echoes resounding from his heart."*

Indeed, we listen to the voice of the deceased, so much so that in Israeli law, the right of a person to bequeath is deemed to be a fundamental expression of his liberty as a human being.

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1. In F.A.R. 4282/03 Olga Lerner vs. Yaakov Pierre (Felix), Nevo: The Israeli Legal Database, hereinafter: Nevo.

However, such wish to realize the aspirations of the deceased also gives rise to many difficulties when we seek to uphold his will. We do indeed wish to honor the deceased's wishes. But there are limitations. A will cannot contradict public policy and order. For example, we as a society cannot uphold wills that give expression to a deceased's wish to control (from the grave) the lives of his heirs. Where is the line drawn? This and other examples of limits placed on wills are described in the court decisions discussed in this volume.

Furthermore, the law provides that all necessary caution should be exercised in order to prevent coercion, deception, and undue influence over helpless testators. Wills are voided by the courts when a will is drawn up under certain unacceptable circumstances, as described in Chapter 4.

Of course, there are also the simple questions with regard to the method of drawing up a will: Is a handwritten will valid? What about a will made orally? What is the law with regard to a will containing technical defects? Is it possible to correct it? Chapter 3 discusses these issues.

Many questions also arise in connection with a testator's right to revoke his will. How can he do this? Is destruction of the will sufficient evidence? There are wills that are not easily revocable. What kinds of wills fall into this category?

But the will is not the be-all and end-all in inheritance matters, because the majority of Israelis do not make wills. Most of the population in Israel inherits not in accordance with instructions given in a specific document (*testate succession*) but by the default conditions laid down by the law where there is no will (*intestate succession*). The difference between testate and interstate succession is described in Chapter 8.

As in our previous books, we illustrate the literal law by means of descriptions of various scenarios, most if not all of which are taken from actual events following which judgments were written.

For the use of lawyers and those wishing to delve deeper into the subject, we have indicated a reference for each legal ruling mentioned in the book.

Needless to say, despite the book supplying comprehensive information and serving as a portal to the laws of wills and inheritance, it is not a substitute for consultation with a lawyer who specializes in the subject.

The book is divided into various subjects concerning the laws of inheritance from the question of who has the capacity to draw up a will right up to international law ruling on wills by non-Israeli residents relating to their Israeli assets. The book concludes with a list of the questions so that you can easily find the issues that interest you.

I would like to thank Adv. Miriam Shatsky and Adv. Avishag Cohen for their invaluable help in preparing this book. Thanks are also due to Adv. Maxine Rosen Cohen for her assistance.

I would like to give heartfelt thanks to my dear son Sam Katz for our longstanding collaboration in this and other legal works and with whom I have written this book. Sam, who has been described by Israel Television as an "authority on Inheritance Law" lent his profound understanding of the complex issues of this area and led the writing in this work.

We are also most grateful to one of Israel's significant and pre-eminent jurists, Prof. Gabriela Shalev, who has written the introduction to this book. Prof. Shalev herself needs no introduction due to her renowned role in the world of Israeli law, as professor of law at Hebrew University, as senior faculty member at Ono Academic College, and as the chairperson of Israel Council for Higher Education's ("Malag") Committee for Appointment of Professors in Law. Prof. Shalev was the Chief Editor of the Israel

Supreme Court judgments and editor of the legal section of the Hebrew Encyclopedia. Most notably, Prof. Shalev is recognized for her seminal books and many articles which constitute the very cornerstone of Israeli legal thought. Outside of the law, Prof. Shalev also completed a two-year term (2008-2010) as Israel's Ambassador to the United Nations, the first woman in Israel to hold this position.

Dr. Haim Katz, Adv. • Sam Katz, Adv.
Jerusalem, 2019

Disclaimer

This book contains general information about wills, inheritance, and probate in Israel. This information is not legal advice and should not be treated as such. You must not rely on the information in this book as an alternative to legal advice from an appropriately qualified professional. If you have any specific questions about any legal matter you should consult an appropriately qualified professional. The law changes, sometimes rapidly, and each case must be examined individually; thus, we recommend you seek legal advice for your specific case.

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CHAPTER 1

General Issues

1. What is an "Estate?"

When a person dies, people talk about the deceased's estate. But what is the "estate?" In Israeli law, a person's estate (in Hebrew: *izavon*) in the context of inheritance law consists of all assets and rights which a person may leave to his heirs, as well as such a person's debts and liabilities.

However, in Israeli law, there are also a few exceptions to the rule, and not all types of rights are considered part of one's estate. Insurance policies, for example, as well as savings plans and other pension plans in which beneficiaries are named, are not considered part of one's estate[1] and are transferred directly to the named beneficiaries without going through the deceased's estate and the usual rules governing inheritance.

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1. The Inheritance Law, 5725-1965, s. 147.
   See also: H.C.J. 2673/06 Aviva Shawa-Shuwa vs. National Labour Court (Nevo);
   S.C. (C.A.R.) 8622/13 National Insurance Institute vs. Rachela Shachar (Nevo, 2016);
   D.L.C. (Tel-Aviv) (P.F.F) 21603-11-16 Matityahu Sankowitz vs. Clal Pensions and Provident Ltd. — Decided July 31, 2018;
   D.L.C. (Tel-Aviv) (P.F.F) 71315-07-17 Mont Asos Bizam vs. Makefet Merkaz Pension Fund Cooperative Society Ltd. — Decided September 05, 2018.
   D.L.C. (Tel-Aviv) (P.F.F) 42515-12-16 Geula Ben-Eliyahu vs. Tel-Aviv Municipality's Employees' Compensation Fund — Decided September 05, 2018.

WHAT DOES THE LAW SAY?

§147. Amounts payable in consequence of a person's death under insurance contracts, because of his membership in a pension fund or benefit fund or on similar grounds are not part of the estate, unless it was stipulated that they should accrue to the estate.

2. Joseph and Ruth are the named beneficiaries in a savings scheme belonging to their recently departed father. Do they need to turn to the Family Court to obtain an inheritance order to obtain the money?

No, they do not need to refer to the court as these funds are **outside the estate** and thus do not need **the process of probate** or an inheritance order. The money is paid directly to them without reference to the court.

Note: ***Probate*** (from the Latin *probare* — to prove) is the name of the legal process by which the courts verify the rightful heirs of an estate. This is described below, but generally, heirs are unable to receive their part of the inheritance until probate or an inheritance order is declared by the court.

3. Can I stipulate in my will that I would like my insurance policies, savings plans, and other pension plans — assets which are not usually considered part of the estate — to accrue to my estate to be divided among my heirs just like all my other assets?

Yes, you can. However, this stipulation should be made clearly in the will. In the case of insurance policies, a formal notification to the insurance company relating to the stipulations of the will can help avoid any future disputes. Some judges hold that a mere stipulation in a will regarding savings, insurance policies, and pension plans (which are normally not considered part of the deceased's estate) does not take effect without formal notification to the bodies administering these plans.

4. What if there are no beneficiaries named in the insurance contracts?

A lack of identification of specific beneficiaries can be construed as indicating a testator's presumed intention. In a recent case, the court had to grapple with the issue of an insurance policy which had no beneficiary named at all. Furthermore, there was no mention of a beneficiary in the will. The court decided his presumed intent was to distribute the assets *pro rata* among the heirs mentioned in the will.[2]

5. What is the difference between Probate and an Inheritance order?

There are two ways in which a person may inherit in Israel.

The first — if there is a will — the estate is divided in accordance with the terms that the testator laid out in that will (*Testate Succession*). The court interprets the terms of the will and issues a probate order (in Hebrew: *zav kiyum tsava*).

Alternatively, if there is no will, then the inheritance is divided in accordance with the conditions laid down in Inheritance Law (*Intestate Succession*).[3] The court determines how the inheritance is divided and issues an inheritance order (in Hebrew: *zav yerusha*).

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2. F.C. (Tel Aviv) (E.F.) 30957-02-17 Harel Insurance Co. Ltd. vs. Plonit et al, Nevo. The Inheritance Law, 5725-1965, s. 54.
3. All references to "Inheritance Law" or "the Law" throughout this book refer to The Inheritance Law, 5725-1965 and amendments thereto.

6. Is there a requirement to write a will in Israel?

Every person who has attained the age of majority is entitled to make a will as long as he is of sound mind and body and does so of his own free will. There is, however, **no legal requirement to make a will**, although often there are great advantages to doing so, as described below. If a person dies intestate, i.e., without making a will, his heirs receive his estate in the order of legal succession as defined by the Inheritance Law and, as described below, this can bring about entirely unintended consequences.

7. So, what is "inheritance by law" or *Intestate Succession* and what are the relevant Hebrew legal terms?

The Inheritance Law determines who the heirs of a deceased person are and how the deceased's estate is to be distributed. This arrangement is called "inheritance by law" or *Intestate Succession* (in Hebrew: *yerusha al pi din*).

The Inheritance Law's default arrangements are applicable when there is no will, and its default instructions apply. In such a case, *Testate Succession* (in Hebrew: *yerusha al pi zavaa*) applies.[4]

As most of the members of the Israeli public do not make wills, *Intestate Succession* is the most common form of distribution of estates.

8. Who can inherit?

As the law stands today, generally, only a person who was alive at the time of the decedent's death is qualified to inherit. Having said that, it should be noted that Israeli law deems **anyone who is born within 300 days after the death** of the decedent to have

4. The Inheritance Law, 5725-1965, s. 2.

been "alive" at the time of the decedent's death. This period allows a child who was conceived even very shortly before the death of the decedent to inherit.[5]

WHAT DOES THE LAW SAY?

§3. (a) Anyone who was alive when the deceased person died is qualified to inherit from him.

(b) Anyone who was born within 300 days after the death of the deceased shall be treated like a person who was alive when the deceased died, unless it is proven that he was conceived thereafter.

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9. Is a child born through artificial insemination or other medical methods entitled to inherit?

The Inheritance Law was enacted in 1965, well before it was possible to bear children after one's own death. Although the law has since been amended, it is certainly not up to date with the medical technology and treatments that are currently available. Thus, a child born over 300 days after the decedent's death **does not inherit,** even though clearly such a child is the direct offspring of the deceased. Even if the testator writes in his will that he is leaving his property to all his children, born or unborn, such a provision would not be considered valid.

This creates a problem, especially for people who are engaged in dangerous occupations or soldiers going to war, who sometimes make the decision to deposit sperm in a sperm bank. Such sperm banks allow spouses and partners to conceive if the depositor dies and they can thus bear children after the depositor's death. However, the 300-day rule still applies and blocks such children from inheriting.

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5. The Inheritance Law, 5725-1965, s. 3(b).

There was a proposal placed before the Knesset by then-MK Gila Finkelstein which would have amended the law and allowed any child born within 660 days of the death of the testator to inherit as if he or she were alive on the date of the death of the decedent.[6] This proposal was never passed.

However, a similar amendment *is* included in the proposed Israeli civil code, which was proposed for a first hearing before the Knesset in 2011. This new civil code, which has been in progress for over half a century now, intends to create a general reform of Israeli law and legislation. However, progress is very slow due to the profound political and religious disagreements between the parties in the Knesset; thus, it is unclear when such reform will actually be enacted.

With regard to this specific matter, the new code proposes that a biological child of a decedent may inherit him provided that he was born within three years of the decedent's death and provided that the decedent expressed his wishes in the will that such a child be deemed an heir.[7]

10. Is an "illegitimate child" entitled to inherit?

A child born out of wedlock, whether to an unmarried mother or as a result of an adulterous union, inherits in the same way as any other child. Israeli law adopted Jewish law and has determined that there is no significance to the question of the "legitimacy" of the child in the case of inheritance.[8] It is worthwhile mentioning that the Hebrew

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6. Law Proposal P/2586, The Inheritance Law (Amendment — Inheritance of one born from a fertilized egg), 5764-2004.
   See also then-MK Zvulun Orlev's parallel proposal (Law Proposal P/1663/17) on this matter.
7. Government Law Proposal 712 — The Monetary Law, 5771-2011, s. 697.
8. The Inheritance Law, 5725-1965, s. 3(c).

term *mamzer*, which is rooted in Jewish law, refers to a child born of an adulterous union, but **not** to a child born to an unmarried mother. Either way all children, legitimate or not, inherit their parents.

WHAT DOES THE LAW SAY?

§3. (c) For the purposes of a child's right to inherit, it is immaterial whether or not his parents were married to each other at the time of his birth.

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11. Can a corporate body such as a company, nonprofit organization, or any other legal entity inherit?

Any legal entity, including limited companies and non-profit organizations, is qualified to inherit as if it were a person.[9] Care should be taken, however, when setting up such organizations, as they are not qualified to inherit if the corporation's by-laws specifically forbid the acceptance of bequests. Special attention should be paid to older entities, which have, in the past, been discovered to have such clauses within their by-laws or articles of association.

Another important point is that if the legal entity can amend its by-laws so that it becomes qualified to inherit and this is done within one year (extendable depending on the circumstances) of probate then it can inherit.

WHAT DOES THE LAW SAY?

§4. A body corporate is qualified to inherit if, when the deceased died, it was qualified to acquire assets or if it became qualified to acquire assets within one year after probate was granted. The court may extend this period by an additional year.

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9. The Inheritance Law, 5725-1965, s. 4.

12. What if the testator leaves all or part of his estate to a foundation or any other legal entity which did not exist at all at the time of his death? Will such an entity be able to inherit?

Sometimes, entities are only established after the death of the testator. Such organizations are often set up directly as a result of an instruction in a will. Entities that are established within one year from probate are entitled to inherit even though they were not in existence at the time of his death.[10]

13. Can a person accused of bringing about the demise of the decedent or attempting to do so qualify as an heir to such a person's estate?

The inheritance law stipulates specifically that anyone convicted of deliberately causing or attempting to cause the death the decedent cannot qualify as an heir based on the age-old biblical accusation: "Have you murdered and also taken possession?"[11] Such a rule is common worldwide and is known as the Slayer Rule or Forfeiture Rule.

However, if the killer was never convicted, he may still qualify as an heir.

There have been tragic incidents in which a person murdered his spouse and then afterwards committed suicide. In such a case, the murderer will never face trial and thus will never be convicted. Therefore, they would have survived the victim even if it was just for a few moments.

As spouses inherit each other, the murderer thus inherits the slain spouse, and while the murderer himself won't enjoy the inheritance, it is passed to his heirs after he has committed suicide. If there were no children, the murderer's parents and siblings can

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10. The Inheritance Law, 5725-1965, s. 4.
11. 1 Kings 21:19.

inherit him, sometimes causing a transfer of substantial wealth from the victim to the murderer's family.

There have been proposals to change the law,[12] but no amendments have yet been accepted. The proposed civil code does, however, incorporate such a change, as it dropped the requirement for a conviction.[13]

WHAT DOES THE LAW SAY?

Not qualified to inherit:

§5. (a) The following are disqualified from inheriting from the testator:

(i) A person convicted of having intentionally caused the testator's death or of having attempted to cause his death;

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14. So, can an intended victim formally forgive his attacker and thus make him eligible again to inherit?

A nephew who attempted to murder his uncle was convicted for attempted murder. After many years in jail, the nephew and the uncle actually reconciled, and the uncle drew up a new will in which he left his entire fortune to this convicted nephew. A doubt was raised whether the uncle was legally empowered to enable this convicted felon to inherit. Does the Inheritance Law not state specifically that such a person, convicted of attempted murder, is barred from inheriting?

The answer is that in some circumstances, such a person may inherit. The testator himself, the intended victim, has the power of forgiveness. This power can be exercised either by writing a will

12. Law Proposal P/1958.

13. Government Law Proposal 712 — The Monetary Law, 5771-2011, s. 699.

in favor of the convicted person, in a formal letter of forgiveness, or by behavior that the court would interpret as meaning that the testator deems such a person acceptable to him as his heir.[14]

Additionally, it should be noted that if the assailant was not successful in his attempted murder, and the testator passed away long after the attempt yet **did not change** the will although he had the opportunity to do so, such an **omission to do** so may most likely be considered as expressing an intent of forgiveness and a wish to include the attempted killer as an heir.

15. Who else is precluded from inheriting?

The law disqualifies from inheriting any person who is convicted of attempting to frustrate the will of the testator by destroying, concealing, or falsifying a will.[15]

There have been instances of people hiding or even attempting to falsify wills, particularly handwritten ones (rather than typed documents, which are more difficult to manipulate). When such attempts come to light, these potential heirs could lose all their rights.[16]

16. If a person is disqualified from inheriting, what is to be done with the share allocated to him?

The share of the person who is disqualified to inherit is added to the share allocated to the other heirs under the terms of the will in the proportions allocated to those heirs by the testator. If there is no will, then the disqualified person's share is added to the share of those who would inherit by law (i.e., via intestate succession).

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14. The Inheritance Law, 5725-1965, s. 5(b).
15. The Inheritance Law, 5725-1965, s. 5(a)(2).
16. The Inheritance Law, 5725-1965, s. 5(a)(1).

17. Does Israeli law permit me to exclude my children or my spouse from my inheritance?

In many countries, the law does not permit a person to exclude his children or his spouse from his inheritance.

In Israel, however, the law recognizes the constitutional rights of the testator to decide what is to be done with his property after his death. This right is enshrined in the Basic Law: Human Dignity and Liberty, as part of the basic right to property ownership.[17] Thus, any person is entitled to dispose of his property in any way he wishes, even though this may mean the exclusion of his immediate family from the will.

Having said that, it should be pointed out that the estate is not free of duties to the deceased's family. For example, a spouse or another dependent may be entitled to receive maintenance from the estate, and the deceased cannot deny that privilege from his dependents. Furthermore, a spouse may lay claim to assets despite the fact that these are registered solely in the name of the deceased. This is possible if the spouse can show that he/she has acquired rights in those assets as a result of rights granted by marital property laws.

18. What if an heir refuses to inherit either because he wishes to waive his right in favor of another person or because he simply refuses to inherit a particular person for personal reasons?

Until the estate is actually distributed, any potential heir is allowed to inform the Registrar of Inheritances or the court that he renounces his right to his share in the estate.[18]

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17. Basic Law: Human Dignity and Liberty, s. 3, states: "There shall be no violation of the property of a person."
18. The Inheritance Law, 5725-1965, s. 6(a).

19. What is the status of an heir who renounces his right to his share in the inheritance?

Once a person has formally renounced his rights to a share in the inheritance, the renouncement is applied retroactively (*ab initio* — right from the start), and he is considered as if he had never been an heir at all.[19]

20. Can an heir make a conditional renunciation of his or her rights to an inheritance? For example, a person renounces his right to inherit but only on the condition that his sister does the same. Is such a conditional renouncement valid?

There is no such thing as a conditional renouncement. Any renouncement has to be clear, irrevocable, and unconditional.[20] A person notifying the court of a conditional renouncement will still be considered an heir, since the renouncement is not valid.

WHAT DOES THE LAW SAY?

§6. (d) A conditional renunciation is void

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21. Can a testator prevent a beneficiary, through a direct instruction in his will ("I am leaving the house to my son, who is precluded from renouncing his share in favor of his mother"), from renouncing his inheritance?

Such an instruction in a will by a testator which attempts to force someone to inherit, when he is unwilling to do so, is void.[21]

19. The Inheritance Law, 5725-1965, s. 15.
20. The Inheritance Law, 5725-1965, s. 6(d).
21. S. Shilo, Commentary to the Succession Law, 1965, Jerusalem: Nevo, 2002, p. 88.

22. Can a renouncement be retracted?

Judicial opinions have varied regarding a situation in which a person who renounced his rights to an inheritance changes his mind and notifies the court that he does indeed wish to inherit. The Supreme Court decided that such a renouncement is considered a legal transaction with the other heirs and is similar to a contract; thus, such a renouncement, once made, is irrevocable.

However, precisely because of the analogy to a contractual agreement, the court may allow the renouncement to be retracted under certain conditions. Judges apply criteria similar to those applied to the validity of contracts. So, in the same way that a contract would be voided due to deception, duress, and similar circumstances, then in these circumstances, a renouncement may be voided if the renouncing heir can show that his renunciation was made under duress or because of deception.[22]

23. Can a renouncement by a potential heir be rejected by the courts and, if so, under what circumstances?

In some cases, a potential heir to a substantial inheritance renounces his rights. However, it sometimes becomes apparent that the heir renouncing his inheritance has many creditors or is bankrupt and that such a waiver is in fact a ploy to avoid creditors. In such circumstances, the court could void the renouncement.[23] In a recent 2019 decision, the court reaffirmed that as the heir

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22. F.C. (Beer Sheva) E.F. 31693-06-11 G.A. vs. S.A., Nevo, and further references there. See also question 246 below.
23. D.C. (Haifa) C.R. 2792/05 Dreyfus Nurit vs. The Official Receiver — Haifa District, Nevo; The Bankruptcy Ordinance (new version) 5740-1980, s. 96;
    D.C. (Jerusalem) (B.F.) 5313-08 Anat Green, Trustee vs. Caroline Gazaouy — Delivered January 01, 2012, Nevo.

renounced his inheritance only ostensibly and in bad faith, such renunciation was rejected by the court.[24]

24. Can a person renounce his rights to inherit naming a specific person who would step in and take his place? Would such a stipulation be considered a conditional renunciation and thus be void?

Within certain limitations, a person waiving his rights to an inheritance can name a person to inherit in his place. However, the law enumerates **a limited list** of people in whose favor an heir could waive his rights. A waiver is acceptable if it is in favor of the decedent's **spouse, siblings, or children.** The most common waiver is that of the decedent's children waiving their rights in favor of a surviving parent. A renunciation in favor of someone outside of this list is ineffective.[25]

WHAT DOES THE LAW SAY?

§6. (b) Renunciation cannot be in favor of any other person, except in favor of the testator's spouse, children, or siblings.

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25. What if an heir renounces his share without naming a person to take his place?

In such a case, the renouncement is considered **a general renouncement**, and his or her share is divided among the remaining heirs,

24. F.C. (Tel Aviv) (E.F.) 50414-02-16 Hendel vs. Shapira, Nevo.
D.R.C. (Ashkelon) 857293/ Adv. Oren Tsoran Trustee of the Estate of A a Bankrupt vs. A et al children of the deceased *Plonit,* Nevo.
D.C. (Tel-Aviv) (C.F.) 50414-02-16 Shlomo Hendel vs. Yaakov Shapira — Decided January 08, 2019.

25. The Inheritance Law, 5725-1965, s. 6(b).

either according to the division of the assets in proportions instructed by the will (if there is one) or according to the rules of intestacy, i.e., according to the rules laid down by the law in the absence of a will.

CHAPTER 2

Inheritance Without a Will (Intestate Succession)

26. When there is no will, inheritance takes place under the default rules found in the Inheritance Law. Who inherits according to the Inheritance Law?

Israeli law distinguishes between a spouse and other heirs. The spouse always receives preferential treatment.[1] Possible heirs are defined below.

WHAT DOES THE LAW SAY?

§10. Heirs by law are the following:

(1) whoever was the **spouse** of the deceased at the time of the death;

(2) the **children** of the deceased **and their offspring**, **his parents** and their **offspring**, **his grandparents and their offspring** *(my emphasis, HVK)*.

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1. The Inheritance Law, 5725-1965, s. 10.

27. Yaakov died unexpectedly leaving behind a large family — a wife and children; grandchildren; and a brother and sister. As he died fairly young, his parents were also alive when he died. Yaakov had left no will. All the members of the family turned to the deceased's lawyer demanding to know what share they would get in the inheritance.

Who inherits what?

Other than the spouse, who has a special standing in the law, there are three circles of heirs and potential heirs who may inherit. These three circles or levels of kinship, are called *parenteles* (originally from Latin, meaning "link of kinship" or relationship).[2]

28. How do the *parentele*s work?

The *parentele*s determine which family members take priority over the other family members, aside from the spouse, whose status and rights are described separately below.

The first *parentele*, the first level of kinship, consists of the deceased's issue or offspring: This means their children, grandchildren, and great-grandchildren.

The second *parentele* consists of the deceased's parents and *their* offspring, namely, the deceased's siblings and their children, i.e., the deceased's nieces and nephews.

The third *parentele* consists of the most distant circle of relatives, the deceased's grandparents and *their* offspring, i.e., the deceased's aunts and uncles and cousins.[3]

If any heirs are alive within the first *parentele*, then they are the heirs of the deceased. If no person falls into the category of the

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2. See definition in Prof. M. Korinaldi, Inheritance Law — Inheritance, Wills and Estate, The Israel Bar Publications 2008, p. 57.
   S.C. (C.A.) 237/68 Zuckerman vs. Zuckerman, I.L.R. 28, 782, 784.
3. The Inheritance Law, 5725-1965, s. 12.

first *parentele*, inheritance then moves to the second *parentele*. If no person fits the description of the second *parentele*, then inheritance falls to those in the third *parentele*.

It's important to note that each *parentele* receives absolute priority over the subsequent one. For example, if the deceased left even just one surviving child (first *parentele*), then the deceased's parents and siblings (second *parentele*) do not inherit ***at all***. If the deceased never had any children (first *parentele*), but he had siblings, then his siblings (second *parentele*) would inherit him, but his grandparents and uncles and cousins (third *parentele*) would not.

Furthermore, there are different **levels of priority within each *parentele***. For example, grandchildren inherit only if the children are no longer alive (although both are in the first *parentele*), and siblings inherit only if the deceased's parents are no longer alive (both in second *parentele*), and so on.

There are further intricacies regarding the distribution within each *parentele*, which are discussed in the following questions and answers.

WHAT DOES THE LAW SAY?

Order of priority among relatives of the deceased

§12. The children of the deceased take precedence over his parents, and his parents take precedence over his grandparents.

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29. What is the status of the spouse?

Spouses have a privileged position under Israeli law. The spouse receives the family car and the chattels that form the household contents.

If the deceased left children or grandchildren or parents, the spouse inherits half the rest of the estate.[4]

If there are no parents and no direct issue of the deceased but

4. The Inheritance Law, 5725-1965, s. 11(a) and 11(a)(1).

only nephews and nieces or grandparents, the spouse inherits two thirds of the estate, while the remaining third is distributed among the other heirs.[5] In such a case, the spouse also receives, in addition to the aforementioned two thirds of the estate, **the entire family apartment.**

30. Are there any conditions attached to the right of the spouse to inherit the entire family apartment as described above?

Yes. The spouse had to have **been married to the deceased for three years** or more prior to his death. A further precondition to such right to inherit is that the spouse was living in the said apartment **with the deceased** at the time of his death.[6]

31. What if the deceased or the surviving spouse were living in a nursing home or similar facility at the time of the death? Would the surviving spouse still be entitled to the apartment?

When a spouse moves to an assisted living facility or other medical care institution, the couple are still be seen as living together, and the surviving spouse still inherits the apartment. Such was the case even when the deceased had been in a nursing home for over five years.[7]

32. What if the deceased's only living family members, besides his spouse, are aunts and uncles?

In such a case, the spouse inherits the entire estate, and the rest of the family members do not inherit anything.[8]

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5. The Inheritance Law, 5725-1965, s. 11(a)(2).
6. The Inheritance Law, 5725-1965, s. 11(a)(2).
7. F.C. (Tel Aviv) (E.F.) 105932/03 Estate of the late Menachem Glinert vs. Tova Kalman, Nevo. S.C. (C.A.) 1847/92 Attorney General vs. Gressler, Nevo.
8. The Inheritance Law, 5725-1965, s. 11(b).
   F.C. (Tel-Aviv) (F.F.) 22592-06-15 G.M. vs Z.A;
   D.R.C. (Tiberias) File 593163/2 Jane Doe vs. John Doe, Nevo — Decided January 05, 2014.

33. How would an estate be distributed between grandchildren and a spouse?

The grandchildren are part of the first *parentele*; therefore, the spouse receives half the estate and the remaining half is distributed among the grandchildren.[9]

34. How would an estate be distributed between parents of the deceased and a spouse where the deceased had no other relatives?

The parents are part of the second *parentele*. Therefore, they only have a right to inherit if the decedent had no issue. However, in the case that there was no issue but there is a spouse, the spouse receives half the estate, and the remainder is distributed between the parents.

35. How would an estate be distributed between the deceased's parents, siblings, and a spouse?

The deceased's parents and siblings are both part of the second *parentele*. However, the parents have priority over the siblings. Therefore, the spouse inherits 50% of the estate, and the remaining 50% is divided between the deceased's parents. The siblings do not inherit at all in this case.

36. What if the deceased has no spouse, no children, and no living parents?

In such a case, the deceased's siblings inherit him.

37. What if the only living relatives are grandparents?

In such a case, the grandparents inherit him.

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9. The Inheritance Law, 5725-1965, s. 14(a).

38. What happens if the only living relatives are cousins?

Cousins are part of the third *parentele*, and as such, if they were the closest blood relative, they would inherit. However, if there is a spouse, then in such a case, the spouse would inherit the entire estate.

39. Do common-law spouses inherit their partners?

According to section 55 of the Inheritance Law, a man and a woman **who are not married** but lead a family life and run a joint household, inherits each other just as married spouses would, provided that neither was married to a third party at the time.[10]

WHAT DOES THE LAW SAY?

§55. If a man and a woman have live together as man and wife in a common household but are not married to each other, and if one of them died and at the time of his death, neither was married to another person, the survivor is treated as if the testator bequeathed to him what the survivor would have received by inheritance under law had they been married to each other, and that when there is no different explicit or implied provision in a will left by the testator.

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40. What is the definition of a common-law spouse or partner?

In the past, in order to prove that a person was a common-law spouse for inheritance purposes, the surviving spouse was required to prove that society viewed the couple as legal spouses. This is no longer the case. The Inheritance Law states three cumulative conditions for determining whether or not a person is a common-law spouse or partner:

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10. Under certain circumstances, the courts have determined that common-law spouses are entitled to inherit, despite one of them still being married to another.

1. Neither partner was married to someone else at the time of the death;
2. The couple led a family life as man and wife; and
3. The couple managed a joint household.

These requirements are flexible and depend on the circumstances of each individual case. If the couple lived together, generally maintained a joint household (such as having a joint bank account, for example), they would be considered common-law spouses. Managing a joint bank account or joint tax filings are not prerequisites, but they help establish the status of a common-law spouse.[11]

Over the years, the courts have broadened the definition of common-law spouse and, in fact, have since ruled that common-law spouses need not even be living together in order to fulfill the above-mentioned conditions.[12] In addition, some rare court rulings have since recognized common-law couples even in cases in which one spouse was still married to another.[13]

41. What about same-sex couples? Are they also recognized as common-law spouses?

Even though the law specifically refers to "a man and a woman," over the last few years, the courts have expanded the interpretation of the law to include same-sex couples within the definition of section 55 of the Inheritance Law.[14]

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11. F.C. (Haifa) (E.F.) 3340/00 The Estate of the Late Sima Malka vs. Marcel Tavias, Nevo.
12. S.C. (F.A.R.) 3497/09 John Doe. Vs. Jane Doe, Nevo;
F.C.(Nazareth) (E.F.) 1100/80 Estate of the Late A.K. vs. H.P., Nevo;
D.C. (Tel-Aviv) (F.A.) 11700-12-16 S.A. et al vs. S.T. — Decided October 07, 2018.
13. S. Lifshitz, "Married Against their Will? A Liberal Analysis of Common-law Spouses" Iyunei Mishpat, 25, 171.
14. D.C. (Nazareth) (C.A.) 3245/03 Estate of the late S.R. vs. Attorney General, Nevo; Supreme Court's ruling recognizing same-sex marriage from other countries: H.C.J 3045/05 Ben-Ari vs. The Population Administration Manager, Nevo.

42. Shlomo has two children. Shlomo himself is one of three brothers, who are all children of Isaac. If Isaac dies without a will, Shlomo would most certainly inherit Isaac's estate together with his two siblings. However, tragically, Shlomo dies in a car accident. Isaac dies several years later, leaving no will. Will Shlomo's children step into their late father's shoes and inherit equally with Shlomo's siblings, i.e., their uncles?

If a child of the deceased died before him and left children, then his children inherit in his place.[15] So, in this situation, Shlomo's children inherit his share in the estate. This is subject to the rights of any spouse (if there is one) as described below.

43. When Shlomo's children step forward to claim their part in Isaac's inheritance, they state that there are now four heirs, i.e., Shlomo's two brothers (Isaac's two sons), and now, instead of one Shlomo, his two sons present themselves as equal heirs with his brothers.

Shlomo's brothers vehemently oppose this division, which would give Shlomo's children together one half instead of one third of the inheritance. They claim that if Shlomo was alive, he would have inherited only one third and that is what his children should have — and no more. What's the law?

Jurisdictions throughout the world have treated this issue differently. There are differing methods of distribution in such cases, and various countries have different philosophies on the subject.

One method would distribute the assets equally among all the heirs. In such a case, Shlomo's children's claim for a four-way division would hold.

However, a second method, which corresponds with Jewish law

15. The Inheritance Law, 5725-1965, s. 14.

(as well as that of other countries, such as France), distributes the estate equally per each "branch" of the family. In a different example, if a person dies with three living children, each child would get one third. If one of the three children had died but left descendants (i.e., the grandchildren of the decedent), those descendants would share in the deceased child's one third, **dividing between them the share that their parent would have taken**.

Israeli law has chosen this second method.

So, in Isaac's inheritance described above, Shlomo's children together receive one third of Isaac's inheritance, which is divided equally between them. The two uncles receive the remaining two thirds, which are equally divided between them.

44. Isaac's first wife died several years back. However, two years before his death, Isaac remarried, and his second wife Ruth is now claiming that she has significant rights in the inheritance, which take priority over the rights of the children and grandchildren. Is she right, and if so, what is Ruth's share in the inheritance in the absence of a will?

If there is a spouse and the deceased is survived also by children or their offspring, as in our case here, the spouse gets one half of the inheritance, and the remainder is shared by the other heirs as described above.[16]

45. Ruth's lawyer writes to Isaac's children and grandchildren demanding that, over and above her share in the inheritance, the estate must hand over the family car to her and a variety of objects from the house. How does the law relate to such a demand?

Ruth, as the spouse of the deceased, takes the movable property,

16. The Inheritance Law, 5725-1965, s. 11 (a)(1).

which commonly and under the circumstances belongs to the common household. She is also entitled to the family car.[17]

46. Isaac had been a wealthy businessman, and quite apart from the general chattels of the house had owned a particularly valuable painting by the famous Israeli artist Nahum Gutman, which hung in the main room of the house. Ruth insists that this painting is "part of the household" and that it now belongs to her. The other heirs deny that this particular item, worth hundreds of thousands of dollars, falls within this "common household" rule. Who is right?

The key phrases are "commonly accepted" and "under the circumstances." The court must determine what items are considered part of the household goods "under the circumstances."

For example, in one famous inheritance case, there had been a Marc Chagall painting hanging for years in a room in the house of the deceased. The court determined that although in the normal course of events, pictures are indeed part of the household chattels, such an expensive piece of art was clearly not just meant to be decorative but was also intended to be an investment; thus, it was not considered part of the commonly accepted part of the household chattels.[18]

47. Does the relationship between the spouses impact the inheritance rights? Would an abusive or even a violent spouse be excluded from his mistreated wife's inheritance under law?

Israeli law, unlike some other jurisdictions in the world, does not make reference to the nature of the relationship between the

17. The Inheritance Law, 5725-1965, 11 (a)(1).
18. The Inheritance Law, 5725-1965, s. 11(a).

spouses.[19] Even in a case in which a particularly abusive husband was jailed for attacking his wife (he told her, "I'll kill you when I get out" when he was taken away by the police), he still inherited her when she died, as long as he was not directly responsible for her death. However, the wife did have the right to write a will which excluded him from her inheritance, and had she done so, the husband would obviously not be an heir. In the absence of a will, the deceased woman's husband inherited her.

48. Does whoever had been living with the deceased at the time of their death have any rights in the residence?

Anyone who lived with the deceased, whether in a residence owned or rented by them at the time of their death, is entitled to continue living in the residence **for a period of three months** after the death. If such a person is among the legally recognized heirs of the estate, then they would have the right to live in the residence for **a period of six months** after the decedent's death.[20]

In addition, even after the end of such a period, the deceased's **parents, spouse, and children** are entitled to continue living in the residence owned by the deceased, provided that they pay market rent to the legal heirs of the apartment.[21]

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19. D.C. (Haifa) (F.A.) 32369-09-17 A.B. vs. M.B. — Decided April 18, 2018.
20. The Inheritance Law, 5725-1965, s. 108(a).
21. The Inheritance Law, 5725-1965, s. 115(a);
    S.C. (C.A.) 485/70 Naeema Sayag vs. Chaya Azulay, Executor for the Estate of the late Shlomo Sayag, I.L.R. 25(2) 062.
    Shalom (Tel-Aviv) 13705-09-14 Rotem Ram Ben-Simon vs. Irit Shaham — Decided in 2018;
    D.C. (Haifa) (F.A.) 32369-09-17 A.B. vs. M.B. — Decided April 18, 2018.

WHAT DOES THE LAW SAY?

§115. (a) If the deceased owned a dwelling and lived in it immediately before his death, his spouse, children, and parents who at that time lived there with the deceased may continue to live there as tenants of the heirs.

49. How would such rental terms be determined? And what if there is a dispute between the heirs and those entitled to continue living in the residence?

The rent, duration, and conditions of the tenancy are set by agreement between those entitled to remain in the dwelling and the heirs. If they do not reach such an agreement, the matters are settled by the court.[22]

50. Do the courts restrict relatives' rights to stay in the deceased's apartment?

The court may determine that relatives **who have any other living arrangements available** to them are not allowed to continue to reside in the deceased's home.[23] In addition, the court may instruct in some cases that these relatives use only a certain part of the home (when practical), provided that such a part includes a kitchen and a bathroom.[24]

22. The Inheritance Law, 5725-1965, s. 115(a);
S.C. (C.A.) 513/82 Reisman vs. Woshchin, I.L.R. 37(2) 813;
D.C. (Jerusalem) (A.R.) 4035/02 Estate of the late Hayuka Moshe vs. Daliah Bat-Mordechai Hayuka, Nevo, 2004.
23. The Inheritance Law, 5725-1965, s. 115(b)(1);
S.C. (C.A.) 513/82 Reizman vs. Voshchin, I.L.R. 37(2), 813.
24. The Inheritance Law, 5725-1965, s. 115(b)(2).

51. Does an adopted child inherit his adoptive parents? If so, is his share equal to his adoptive parents' biological children?[25]

It depends on the validity of the adoption. Children who are brought to Israel illegally (this phenomenon has reduced in prevalence due to increasingly strict control) are not considered adopted by law, with all the legal ramifications. However, anyone who has been legally adopted inherits his adoptive parents and is considered equal to a biological child. Furthermore, those rights are passed on by the adopted child to his offspring, who would also inherit in place of the adopted child if the adoptee were to pass away before his adoptive parents.[26],[27]

52. If a man had more than one wife when he dies, which one of the wives would inherit him?

While bigamy is forbidden by law, it does take place. In addition, there have been certain exceptions to the criminal law that forbids a man from being married to more than one wife at any given time. For example, in the early days of the State of Israel, some Jewish immigrants from Middle-Eastern countries arrived with two wives, and this was accepted as a cultural variance on the law.

Furthermore, despite bigamy being illegal, the marriage itself would still be considered valid in many cases; for example, if the wives had no idea of the other marriages. Therefore, in the case that the deceased had multiple wives, they would all share the inheritance equally.

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25. D.R.C. (Haifa) 483507/ *Ploni* vs. *Ploni* (Nevo)
26. The Inheritance Law, 5725-1965, s. 15(a).
27. The Inheritance Law, 5725-1965, s. 16(a).

WHAT DOES THE LAW SAY?

§146. If at the time of his death a man was married to more than one woman, whatever is due to the spouse on inheritance under law is shared equally by his widows.

CHAPTER 3

Inheritance by Will (Testate Succession)

53. How does one draw up a valid will?

A will can be validly drawn up in any one of the following ways:[1]

3. Handwritten by the testator, with no witnesses;
4. Handwritten or typed, signed before two witnesses;
5. Before an Authority (such as a judge or a notary); or
6. Under exceptional circumstances, the testator can express their wishes orally concerning what will be done with their property after his death.[2]

54. How does one draw up a handwritten will?

A handwritten will must be **written entirely** by the testator, who

1. The Inheritance Law, 5725-1965, s. 18.
2. In the proposed civil code, video-recorded wills will also be valid –Government Law Proposal 712 - The Monetary Law, 5771-2011, s. 713. But don't delay making your will until it becomes law. It has been decades since it was first proposed, and it has still not garnered enough political support to pass the Knesset.

must also **date and sign** it.[3] However, the law allows the court to accept a will even if it lacks a date or even a signature, provided that the court is in no doubt as to the authenticity of the will.[4]

55. Can the court exercise discretion and remedy a flawed will?

Honoring the deceased's wishes is a fundamental principle of inheritance law in Israel.[5] If the court is convinced that the will truly reflects the deceased's wishes, then those wishes can sometimes prevail over some of the "procedural" or technical flaws in the will considered by the court.

The court is also permitted to make use of external evidence in order to determine the deceased's wishes. So, in some cases, the court will not allow technical and structural flaws to prevent fulfillment of the deceased's wishes. [6,7] However, court proceedings are costly and lengthy, and sometimes, the courts can take a formalistic approach. Therefore, it is advisable to ensure that you draw up a

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3. The Inheritance Law, 5725-1965, s. 19.
   S.C. (F.C.H.) Koenig vs. Cohen I.L.R. 36(3) 701, Nevo;
   S.C. (C.A.R.) Landau vs. Wim I.L.R. 49(2) 077;
   Shalom (Jerusalem) 48076-07-14 Gedalyah Aharonoff vs. Hassidi Yechezkel & Miriam — Decided August 16, 2018
4. The Inheritance Law, 5725-1965, s. 25(b);
   D.C. (Jerusalem) (F.A.) 729/05 Sobol vs. Levitan, Nevo;
   S.C. (F.C.H.) 7818/00 Aharon vs. Aharoni, I.L.R. 59(6) 653;
   S.C. (C.A.) 1212/91 L.B.I vs. Weinstock, I.L.R. 48(3) 705 (1994);
   D.C. (Beer Sheva) (B.F.) 3124-07-12 Glila Shamai vs. Administrator General — Decided May 26, 2018;
   D.C. (Tel Aviv) (F.A.) 40614-10-16 D.F vs. C.F. — Decided November 18, 2018.
5. S.C. (C.A.P.) 8047/03 Attorney General vs. Davidson, Nevo.
   6. The Inheritance Law, 5725-1965, s. 25;
   S.C. (F.A.R.) 10223/17 A. M. vs R.B. — Decided April 08, 2018;
   F.C. (Beer Sheva) (E.F.) 25990-08-15 H. vs. D. — Decided January 16, 2018.
7. D.C. (Jerusalem) (C.A.) 729/05 Sobol vs. Levitan, Nevo;
   F.C. (Haifa) (E.F.) 4771/02 The Estate of the Late Aryeh Baum vs. N. Baum, Nevo.

will without mistakes or flaws in such a manner that it will not be challenged by the court.

WHAT DOES THE LAW SAY?

§25. (a) If a will has the basic elements, and if the court has no doubt that it reflects the testator's free and true wish, it [the court] may — by a reasoned decision — grant probate even if there is a fault in one of the particulars or one of the proceedings specified…

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56. How do I sign a will before witnesses? How many do I need?

A will executed before witnesses can be handwritten, typed, or printed. The will is required to be signed before **two witnesses**, before whom the testator declares that the signed document is his will. The witnesses must also sign a declaration that the testator declared as such. The document must indicate the date of the signing.[8]

57. What if there was only one witness?

The law stipulates that the **will must be signed before two witnesses**. The court may rectify a will which is flawed due to having just one witness if the judge has no doubt that it reflects the testator's wishes. The court must provide a reasoned decision, explaining how and why it is remedying **this significant flaw**.[9]

Therefore, the Supreme Court has approved, *post facto*, a will with just one witness, because there was no doubt as to the testator's wishes.[10] Despite this possibility, it is highly recommended, as

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8. The Inheritance Law, 5725-1965, s. 20.
9. S.C. (C.A.) 4885/00 Margalit Cohen vs. Gazoly I.L.R. 55(5), 941.
10. S.C. (F.C.H.) 7818/00 Aharon vs. Aharoni, I.L.R. 59(6) 653. In this case, the decision concerned a document intended to cancel a will, but the majority opinion was that such a flaw can be remedied even in a will itself.

stated above, to sign before two witnesses and adhere to the rules of the Inheritance Law, since one can never be certain whether the court will acquiesce to requests to remedy a flawed will.

Furthermore, if the will is flawed, the burden of proof that the will is valid falls upon the person who wishes to uphold the will. In contrast, **a will is generally presumed to be valid,** and the burden of proof to show otherwise falls on the person wishing to **challenge the validity** of the will.

58. What are the witnesses' responsibilities?

The witnesses at that time attest by their signatures on the will that the testator declared and signed the will. They are not obligated to delve into or verify the testator's physical and mental condition, provided that the testator **seemed to them, as reasonable people,** to be of sound mind and aware of his actions.[11]

59. Who is not qualified to act as a witness?

Minors or any person who has been declared by the court as legally incompetent cannot serve as a witness.[12] Anybody under the age of eighteen is considered a minor.[13]

WHAT DOES THE LAW SAY?

Disqualified witnesses

§24. Minors and persons declared legally incompetent are disqualified from being witnesses to the making of a will.

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11. S.C. (C.A.) 142/80 Mierski vs. Mierski, I.L.R. 35(2) 155.
12. The Inheritance Law, 5725-1965, s. 24.
13. The Legal Capacity and Guardianship Law, 5722-1962, s. 3.

60. When I make my will, am I obligated to sign every page? Are the witnesses obligated to sign every page?

The law does not require the testator to sign every page, and not doing so will not render it invalid.[14] However, it is **recommended** to have the testator sign every page in order to avoid possible challenges that the will has been changed and certain pages replaced.

61. What is the legal status of a will that is signed by the testator in the middle and not at the end of the document?

If the court is convinced that the will reflects the deceased's wishes and that there is a cogent explanation for this action on the part of the deceased, it may approve the will.

As stated by Supreme Court Justice Bach:

> *"Indeed, usually one would sign at the end of a document and not in the middle, and as far as the ideal circumstance it is proper for testators to sign at the end of the will, but the fact that the testator signed in the middle of the will and not at the end has no impact in this case. The requirement placed by the lawmaker was that the will be signed, but no appropriate signing placement was stipulated. The judicial tendency is towards **easing the formal requirements**, as long as the court is convinced that the document is authentic."*[15]

62. In what situation can a will be made orally, and how?

A person on his deathbed or a person who, under the circumstances, **"has reason to believe he is imminently facing death"**

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14. S.C. (C.A.) 564/71 Adler vs. Nesher, I.L.R. 26(2), 745;
S.C. (C.A.) 298/87 Nechushtan vs. Nechushtan, I.L.R. 43(2), 749;
S. Shilo, Commentary to The Succession Law, 1965, Jerusalem: Nevo, 2002, p. 195, comment 28.
15. S.C. (C.A.) 714/88 Shenzer vs. Rivlin, I.L.R. 45(2) 89.

may make an oral will by voicing his wishes before two witnesses who understand his language. The witnesses must record what they heard in writing as early as possible after the hearing the oral will and deposit this record with the Registrar of Inheritances.[16]

63. Most wills are extant and valid until they are canceled as described below. Is an oral will just as valid as any other will, or are there special legal caveats attached to such a testament?

A well-known case dealt with a situation which began when a young man riding a motorcycle was very badly injured, so much so that he believed that he was going to die. He summoned two witnesses from the hospital staff, told them that he feared his death was imminent, and instructed orally that all his worldly goods should be given to his girlfriend after his death.

Miraculously, and with the intensive care received by him from the hospital staff and doctors, this young man made a miraculous recovery. A couple of years later, he graduated and then married a different woman. He made no will in the rest of his life, and when he died (of natural causes) many years later, his wife and children expected to inherit under the terms of the Inheritance Law. To their astonishment, the prior girlfriend of many years ago applied to the court presenting the memorandum of his oral will, which

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16. The Inheritance Law, 5725-1965, s. 23;
S.C. (C.A.) 88/88 Jacobowitz vs. Attorney General, I.L.R. 44(2) 69;
F.C. (Tel Aviv) 10440/99 (E.F.) Estate of the late Y.H.S. vs. S.A. [Padaor (not published) 313 (12) 05];
S.C. (C.A.) 795/99 Fransua vs. Pozis, I.L.R. 54(3), 107.
D.C. (Haifa) (CA) 64201-09-17 Tal Zoavi et al vs. Nechama Tambour et al, Nevo;
S.C. (C.A.R.) 138/64 Feldman (Schwartz) vs. Tippmann;
F.C. (Tel Aviv) 24293-09-1 YB. et al vs. Administrator General in Tel-Aviv District — Decided August 20, 2018.

left everything to her after his death. As there was no other will ever made by the deceased, this will was the one valid document governing his estate, she claimed.

However, to her disappointment, she was informed that **an oral will becomes void one month** after the circumstances that justified its making had changed, on condition that the testator is still alive.

So, in this case, the circumstances which justified making an oral will, such as severe injury or grave danger, had passed. As the testator was still alive one month after having made the oral will, the oral will was automatically voided.[17]

64. There was a tragic case in which a young man expressed his last wishes orally to his friends stating clearly that that was his last will and testament, and he then committed suicide a few days later.

The question arose as to whether the precondition required for an oral will — that the person making such a will "has reason to believe he is imminently facing death" — was fulfilled?

The Supreme Court has ruled that an oral will is recognized only when the testator lacks the ability or the time to make a written will and when one can reasonably assume that the words expressed by him reflect his true intention. Not every person who expresses a certain wish regarding his property and then takes his own life is considered to be "facing death." The requirements of a valid oral will may not have been met. **However, the Supreme Court did not rule** that an oral will may never be valid in the case of a suicide.[18]

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17. The Inheritance Law, 5725-1965, s. 23(c).
18. S.C. (C.A.) 436/01 Rekab vs. Rekab I.L.R. 58(6) 913;
F.C. (Beer Sheva) 38016-07-14 Y.Z. vs. SHM.Z. — Decided March 25, 2018

65. What is a will before "an Authority?"

This form of will is not particularly common in Israel today. It is a remnant of the early days of the State, when there were many immigrants who were illiterate and unable to read or understand a will and sign.

This provision of the law enables a person to make a will before "an Authority." An Authority for this purpose includes a judge, the registrar of a court, a registrar of inheritances, or the member of a religious Tribunal.

The testator may express his wishes orally before the Authority, **who then writes the content** of the will and **reads it aloud to the testator**, who then declares it to be his will. Following such a declaration, the Authority confirms that the will was read aloud and that the testator declared it to be his will.[19]

66. Can a will be made before a notary?

It's certainly possible and valid to make a will before a notary, because the law states that for purposes of this section, a notary is treated like a judge and is for this purpose an Authority. The notary signs a confirmation and attaches it to the will.[20] However, according to the proposed civil code (which is not yet law at the time of publication of this book), in the future, a notary will no longer be considered an Authority for the purpose of making a will.[21]

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19. The Inheritance Law, 5725-1965, s. 22(a),(b).
20. The Inheritance Law, 5725-1965, s. 22(7);
    S.C. (F.A.R.) 3671/06 John Doe vs. Jane Doe, Nevo, for the difference between a notary as an authority and a notary as a witness;
    S.C. (C.A.) 594/99 Ochana vs. Elazar, I.L.R. 55(3), 355.
21. Government Law Proposal 712 — The Monetary Law, 5771-2011, s. 715(a). Re the making of a will in front of a notary: S.C. (C.A.) 594/99 Ochana vs. Elazar I.L.R. 45(3) 355 and D.C. (Jerusalem) (F.A.) 13612-12-12 Darwish vs. Darwish, Nevo, 2013.

67. Can a person sign a will that is written in a language they do not understand?

Yes, this is possible. if the will is written in a language that is foreign to the testator, it can be translated verbally into a language the testator understands. The translator confirms upon the will in writing that it had been translated for the benefit of the testator. The testator then signs it in the usual way. A will made in accordance with these terms is valid.[22]

68. Can somebody sign a will on behalf of another?

In some countries, a will may be signed by someone else with power of attorney. In Israel, **only the testator can sign his will.** Furthermore, a will cannot be conditional on the agreement of a third party, **e.g. "I make this will on condition that my wife approves of it."**[23]

WHAT DOES THE LAW SAY?

A will is a personal act

§28. (a) A will cannot be made by anyone besides the testator himself.

(b) A testamentary provision thats makes the validity of the will conditional on the volition of a person who is not the testator is void.

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69. What if a person is physically incapable of signing a will, for example, because he is paralyzed?

It would be too harsh for the law to prevent someone who cannot hand sign a document from making a will. There are some

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22. The Inheritance Law, 5725-1965, s. 22(c);
F.C. (Tel Aviv) (E.F.) 3250/00 Cooperberg vs. Goldsmith, Nevo.
23. The Inheritance Law, 5725-1965, s. 28.

opinions that in such a case, another person's signature in his place would suffice.[24] In addition, there is another method of making a will without a signature. This method, which is undisputed, as described above, is a will before an Authority.[25]

70. Can I make my will on video?

In the proposed civil code, a video recording is one of the ways in which one may execute a will.[26]

Furthermore, a legislative attempt has been made to require anybody over the age of seventy-five to have a video recording of the execution of a will.[27] The goal behind this proposal was to protect elderly people from undue influence exercised by people on whom they depend daily. However, this proposal was not incorporated in the proposed civil code, regrettably so, in the opinion of this writer.

However, more and more lawyers are offering this service in addition to and not instead of the usual methods laid down by the present law. Practical litigation experience shows that where a will is disputed, the court gives weight to additional evidence by means of a video, even though this is not part of current legislation.

71. What advantage is there to depositing a will with the Registrar of Inheritances?

There is **no requirement** to deposit a will with the Registrar of Inheritances. A will may be kept anywhere: in an office, in a drawer,

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24. S. Shilo, Commentary to the Succession Law, 1965, Jerusalem: Nevo, 2002, p. 197.
25. The Inheritance Law, 5725-1965, s. 22.
26. Government Law Proposal 712 — The Monetary Law, 5771-2011, s. 713.
27. Law Proposal P/2647.

in a safe, etc. However, the advantage of depositing a will at the Registrar of Inheritances is the assurance that when the time comes, the existence of the will and its location will become known.

This is particularly important when considering the fact that in many cases in which wills are not deposited with the registrar, heirs were simply unaware of the existence of a will only to find one many years later buried in a box or among endless papers.

More and more people are choosing to deposit their will with the Registrar of Inheritances. Between the years 1999 and 2011, there has been an increase of over 100% in the number of wills so deposited.[28]

However, most Israelis do not deposit their wills in this way.

72. Doesn't depositing a will compromise its confidentiality?

No. Not only are the contents of a deposited will completely confidential, but also the very fact that a will has been deposited is kept confidential until after the testator has passed away.[29] The registrar communicates online with the Ministry of the Interior which issues death certificates. Thus, the registrar is made immediately aware of the death of a testator in real time.

73. Must a will be deposited personally with the registrar?

Only the testator himself can deposit his will. An attorney cannot deposit a will on behalf of a client.[30] There was a proposal to amend the law and enable attorneys to deposit wills on behalf of

28. According to the Ministry of Justice, in 1999, 1,486 wills were deposited, and in 2011, 3,077 wills were deposited. In 2017, 6,322 wills were deposited.
29. The Inheritance Regulations, 5758-1998, Reg. 5.
30. The Inheritance Law, 5725-1965, s. 21(a).

their clients, but unfortunately, legislation on this proposal never progressed, nor was it even incorporated into the proposed civil code. This would have particularly aided elderly and immobile testators who are unable to carry out the process of depositing a will.

WHAT DOES THE LAW SAY?

Deposit of a will

§21. (a) If a person made a handwritten will or a witnessed will, he may deposit it with the Registrar of Inheritances; deposit shall be by delivery of the will by the testator himself to a Registrar of Inheritances or to an authority authorized by regulations to receive wills in order to deliver them to the court.

(b) A will deposited and kept on deposit under this section until the testator's death shall be prima facie evidence that the person named in it as the testator made the will and that it was made not later than on the day of deposit.

(c) The provisions of this section shall not derogate from the testator's right to have a will deposited by him returned to him at any time.

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74. Can a will be deposited with a law firm rather than with the Registrar of Inheritances?

Regrettably, research has shown that even lawyers do not live forever, and law firms close or merge over time. On the other hand, the Israel Bar Association's Ethics Rules do require that law firms keep wills held by them indefinitely.[31] So, yes, law firms are quite

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31. Israel Bar Association Regulations 2 and 5 (Preservation of Archived Material in Law Firms), 5731-1971, as well as an opinion issued by the Israel Bar Association, Ethics 199/04, Edition 14, "Professional Ethics" 2005, determine that a lawyer must preserve a will indefinitely, unless the client instructs otherwise.

a safe place to deposit wills, and in fact, most testators deposit a will with lawyers to safeguard their privacy and sometimes to avoid potential conflict with their families. The lawyers guard the privacy of the will until the passing of the testator.

The whole idea, created by Hollywood, that portrays a dramatic "reading of the will" wherein eager heirs and potential heirs are informed of the testator's final bequests is not really far from the truth.

CHAPTER 4

The Validity of a Will

75. Who has the legal capacity to make a will?

There were times when entire groups of the population were not entitled to make a will, such as married women, prisoners, or bankrupts. In some countries, as recently as the twentieth century, the husband's consent was sometimes required for a married woman's will to be valid!

Today, there is simply one requirement: **legal capacity**.[1]

This means that anyone who has reached the age of majority, aged eighteen years and one day old, and has not been declared legally incompetent can make a will.

However, if someone of legal capacity makes a will at a time when he cannot possibly understand the nature of a will, for whatever reason, such a will is void.[2]

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1. D.C. (Beer Sheva) (F.A.) 110/04 John Doe vs. Jane Doe;
   S.C. (C.A.) 5185/93 Attorney General vs. Marom, I.L.R. 49(1) 318.
2. The Inheritance Law, 5725-1965, s. 26;
   S.C. (C.A.) 5185/93 Attorney General vs. Marom, I.L.R. 49(1) 318, 327;
   S.C. (C.A.) 1212/91 LIBI Fund vs. Beinstock, I.L.R. 48 (3), 705, 716;
   F.C. (Rishon Lezion) (F.F.) 48271-12-11 A.A. vs. A.M. — Decided March 18, 2018;
   F.C. (Haifa) (F.A.R) 66153-07-18 John Doe Vs. Jane Doe — Decided August 17, 2018;
   S.C. (F.A.R.) 4297/16 John Doe Vs. John Doe, Nevo.

WHAT DOES THE LAW SAY?

Capacity to make a will

§26. A will made by a minor or by a person declared legally incompetent, or while the testator was unable to understand the nature of a will, is void.

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76. Can a will that a person wrote as a minor become valid after he reaches the age of majority?

Such a will was void when it was made and **remains void *ab initio***. Even after coming of legal age and even if the terms of the will are accepted by the now-adult testator, the will is void.[3] The testator must make a new will as an adult.

77. What is the status of a will made under duress or coercion?

A will which is proven to have been made under duress or coercion is null and void. The testator's **free will** to bequeath his estate as he sees fit is the **foundation of inheritance law** in Israel, as in most countries.[4]

78. Can a will which was made under duress or coercion ever be rendered valid?

If a will was made under duress or coercion, but over a year had passed since the duress or coercion ceased, and during this period

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3. The Inheritance Law, 5725-1965, s. 26.
4. The Inheritance Law, 5725-1965, s. 30(a);
S.C. (C.A.) 1729/06 Joshua Adamski vs. Abraham Adamski, Nevo;
S.C. (C.A.) 851/79 Bendel vs. Bendel, 35(3) 101, 1981;
S.C. (C.A.) 724/87 Kalfa vs. Gold, 48(1) 22,31, 1993;
S.C. (C.A.) 5185/93 Attorney General vs. Marom, I.L.R. 49(1) 318, 327, 1995;
S.C. (C.A.) 7506/95 Shwartz vs. Beit Ulpena Beit Aharon Ve'Israel, I.L.R. 54(2) 215,223, 2000;
F.C. (Rishon Lezion) (F.F.) 48271-12-11 A.A. vs. A.M. — Decided March 18, 2018.

the testator had the opportunity to change his will but did not do so, then **the will becomes valid**.[5]

WHAT DOES THE LAW SAY?

A defective will is not revoked

§31. If a year has passed after the day when the duress, threats, undue influence, or trickery ceased to affect the testator or after the day on which the testator learned of the fraud or error, and if the testator was able to revoke the will but did not do so, that defect shall no longer be grounds for voiding the testamentary provision or for its correction.

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79. Are there any other circumstances that invalidate a will?

The inheritance law stipulates also that undue influence, fraud, or deceit render the provisions of a will void.[6]

80. What is the difference between deceit and undue influence?

The difference is that **undue influence** means exercising power over a vulnerable person and essentially forcing them to do the will of the person exercising such influence, thereby **eliminating the testator's free will**.

On the other hand, **deceit** is defined in the penal law as "causing a person to take a certain action by deceiving him."[7] With deceit, the testator is not forced into his actions but is rather led to them by distortion of the truth, and the false premise influences his decisions.

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5. The Inheritance Law, 5725-1965, s. 31.
6. The Inheritance Law, 5725-1965, s. 30.
7. The Penal Law, 5737-1977, s. 416;
   F.C. (Tel-Aviv) (F.F.) 6694-08-16 H.K. vs. A.K. — Decided May 09, 2018.

81. Am I allowed to influence my uncle to leave me part or all of his inheritance? Would such an attempt be construed as a reason to invalidate the will?

There is nothing wrong with asking a testator to be included in his will, providing that the circumstances do not meet the criteria of "undue influence." For example, a nephew can try to convince his uncle to include him in his will, but this legitimate lobbying cannot be overly aggressive or generally exceed the normative boundaries.

There is no clear definition in the law as to what is considered permitted influence and what crosses the line and becomes undue influence. However, usually a precondition to **undue influence** is when the influencer has a certain power over the testator which he uses to pressure the testator.

82. Who is required to lift the burden of proof of whether there was undue influence or not?

According to the law, **the basic presumption is that a will is valid**. If someone claims that the will is void due to undue influence, the burden is on the person making such a claim to prove it. If such a claimant cannot prove undue influence, the will is valid.[8]

83. Are there situations in which the burden of proof is reversed and placed on the party who claims the will is valid?

Despite the general presumption that a will is made with the testator's free will unless proven otherwise, there are unique circumstances in which the burden of proof is transferred to those who **claims the will is valid.**[9] For example, a terminally ill patient may leave his estate to a

8. S.C. (C.A.) 190/68 Sotizky vs. Klienbroth, I.L.R. 22 (2), 138.
9. S.C. (C.A.) 423/75 Ben-Nun vs. Richter, I.L.R. 31(1) 372. See also: D.C. (Tel Aviv) (F.A.R.) 27644-11-17 M.M.H. vs. T.M. — Decided March 26, 2018.

nurse caring for him in a hospice. Or in some cases of doctor-patient relationships, lawyer-client relationships, or sometimes even profound relationships with religious figures can bring about the reversal of the usual presumption of the burden of proof.

The Supreme Court has ruled that where there is a very charged relationship and physical or psychological dependence, the potential heir must prove not only that the testator understood the meaning of the will but also that it was the bequeathor's free and clear thought. It can be important to show that the testator received independent advice from a lawyer who was aware of all the details and circumstances of the case.[10]

84. Are there court decisions that illustrate how the burden of proof is reversed and placed on the side who claims the will is valid?

In a leading Supreme Court case which explains this legal principle, an elderly woman who was paralyzed was cared for by her nephew. She was completely dependent on him and bequeathed her entire estate to him. The other nieces and nephews contested the will, and the Supreme Court ruled that:

> *"one who contests a will, the burden is upon him to prove (undue) influence. But when the circumstances surrounding the case indicate* ***a dependency of the testator on another who inherits under such a will, a dependency which is so basic and broad,*** *then you can presume that such a testator is deprived of his free and independent will… In such a case, the burden of proof that there was no undue influence is placed on the shoulders of he who requests to probate the will."*[11]

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10. S.C. (C.A.) 1750/90 Aharonson vs. Aharonson, I.L.R. 46(1) 366, 341, Justice Bach's opinion.
11. S.C. (C.A.) 423/75 Ben-Nun vs. Richter, I.L.R. 31(1) 372;
S.C. (F.C.H) 1516/95 Marom vs. Attorney General, I.L.R. 52(2) 813, where the court

85. So how can "undue influence" be established?

In a well-known ruling, the Supreme Court established four categories which assist in identifying the presence of undue influence:

1. Dependence versus Independence: Was the testator physically and cognitively independent, and if so, to what extent?
2. Dependence combined with Assistance: When it becomes apparent that the testator was not independent and was in need of assistance from others, one must examine the relationship between the testator and the specific named heir to determine whether this relationship was based or even conditional upon the assistance provided by the potential heir.
3. Dependence on a particular named heir in the perspective of the testator's relationships with others: To what extent was the testator solely dependent upon the heir? Were there others who assisted the testator as well? Did he have regular contact with other friends, family members, or neighbors? These independent connections can reduce or even obviate the presumption of undue influence.
4. The circumstances in which the will was made: Was the heir at all involved in making the will, and to what extent? Although, it is possible that even without direct involvement in the drawing up of the will, undue influence could be proven.

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determined "tests" for identifying undue influence;
S.C. (C.A.R.) Goodman vs. Shem Yeshiva Beit Midrash Gavoha I.L.R. 49(2) 441;
S.C. (C.A.R.) Steiner vs. Mutual Assistance Enterprise of The Association of Israelis of Central European Origin I.L.R. 50(3) 338;
S.C. (F.A.R.) 7049/15 Doe vs. Roe, Nevo;
S.C. (F.C.H.) 707/76 Zarom vs. Goren, I.L.R. 32(3) 548, 552, 1978;
S.C. (C.A.) 5869/09 Hermon vs. Golob I.L.A 59(3) 1, 9;
S.C. (F.C.H.) 6349/08 John Doe vs. John Doe, Nevo, 2009.

86. What if there are claims that a will was forged?

The most crucial first step toward probating a will is proving that there is, in actual fact, a valid will.

When a claimant can bring reasonable evidence that the will was forged, the court will rule according to probability — as it does in every civil case. In just one example, those who contested the will showed that it was dated on Rosh Hashanah, and the testator was a religious man and would not have signed a will that day. In addition, a graphologist's examination determined that in all likelihood, the signature had been forged.[12] Together, these facts were the "preponderance of the evidence." This evidence tipped the balance of the court's decision in favor of those who contested the will.[13]

87. Can a beneficiary of a will take a part in drafting the will that benefits him? And if he does what are the implications?

The law states in Section 35 of the Law that: "A provision in a will which benefits **whoever drafted the will**, or was a witness for the execution of the will, or took any other part in making the will… is void."[14] Note that the court does not void the entire will — only the provision benefiting the participator in the drafting of the will.

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12. A similar case was heard before (Late) Judge Tova Sivan (of blessed memory) in the Family Court in the Tel Aviv District: F.C. (Tel Aviv) (E.F.) 5610/00 A.P. vs. Y.M. [Padaor (not published) 250 (2) 05] and in F.C. (Tel Aviv) (E.F.) 6292/00 The Estate of the Late R.M. vs. M.L., Nevo;
F.C. (Beer Sheva) (E.F.) 3697-03-15 B.Y. et al vs. the late N.F. et al — Decided April 09, 2018.
13. F.C. (Rishon Lezion) (E.F.) 3895/05 K. et al vs. M. et al, Nevo;
D.C. (Haifa) (VP) (8383/03 The Estate of the Late Agbaria vs. Agbaria.
14. The Inheritance Law, 5725-1965, s. 35;
F.C. (Tel Aviv) (F.F.) 108880/03 D.P. vs. Y.R., Judge Shochat's opinion, Nevo. F.C. (Tel Aviv) (E.F.) 6071/01 Jane Doe vs. Tel Aviv University, Judge Shochat's opinion, Nevo; *(continued on next page)*

88. At what point would a potential heir's involvement be deemed "taking part in making a will?"

The courts tend to try and limit the application of Section 35, which can lead to miscarriages of justice and the frustration of testators' wishes. Thus, judges interpret "taking part in making a will" in the narrowest of terms. The court will not easily deem the behavior of one heir or another as voiding the will or a specific provision in the will.

When does the court do so? One indicative example was a case in which a daughter called her lawyer and asked that he draw up a will for her mother, leaving her mother's entire estate to herself excluding all her siblings.

The daughter went over to her mother's home to make sure the mother spoke with the lawyer and asked to see a draft of the will before her mother signed it. She also drove the lawyer to her mother's house (since her mother was clearly unable to come to the lawyer), and although she waited outside, she spoke with the lawyer over the phone when he was inside the room with her mother in order to ensure no changes were being made to the content of the will.

The court determined that the daughter's actions were covered by the term in the act of "taking part in making a will" and thus provisions naming her as the sole heir were null and void. The other siblings inherited. She inherited nothing.

89. A lawyer drafted a will in which she was appointed as estate executor. An executor receives fees, and the question arose as to whether the lawyer was considered a beneficiary of the will because of the fees. If so, would she be disqualified from

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S.C. (C.A.) 5869/03 Hermon vs. Golob, I.L.R. 59(3) 1; F.C. (Tel Aviv) (C.R.) 109/07 Zev Zilberberg vs. The Administrator General, Nevo.

being appointed as executor because she was "taking part in making a will?"

The Supreme Court ruled that a lawyer who is appointed as an executor in a will is not considered to be a beneficiary or heir to the will, and therefore, such a provision in a will is valid.[15]

90. May a testator revoke a written will? If so, how?

Every person has the right to change or revoke their will at any time.

One of the ways of revoking a will is by destroying the existing will. The law determines that if a person destroys his own will, the presumption is that he intended to revoke it.[16] However, if the testator signed a few copies of the will, then all originals would have to be destroyed.

91. Can a will be revoked orally?

The criteria for making a will and validly revoking a will are the same. For example, a person may make a will orally on his deathbed. Therefore, similarly, a person may orally revoke a prior will **on his deathbed**, and such a revocation would be completely valid.[17]

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15. Justice Strassberg-Cohen in S.C. (C.A.) 576/78 Lashtzinsky vs. Soloveitchik, PD. 35(1), 686. In this decision, the Justice determined that "[Appointment as executor] is not a bequest according to s. 35 of the Inheritance Law, because the amount awarded is legal fees that the executor is entitled to for the services provided by him, and these fees and their rate are supervised by the court";
    S. Shilo, Commentary to The Succession Law, 1965, Jerusalem: Nevo, 2002, p. 310;
    S.C. (C.A.) 3671/06 Doe vs. Roe, Nevo;
    D.C. (Merkaz-Lod) (F.A.) 60984-12-16 Jane Doe vs. John Doe — Decided March 19, 2018.
16. The Inheritance Law, 5725-1965, s. 36;
    S.C. (F.C.R.) 7818/00 Aharon vs. Aharoni, I.L.R. 59(6) 653.
17. The Inheritance Law, 5725-1965, s. 36;
    S.C. (F.C.R.) 7818/00 Aharon vs. Aharoni, I.L.R. 59(6) 653.

In a different example, a testator may revoke a written and witnessed will by a written document signed by him before two witnesses declaring such revocation.

92. Does making a new will without explicitly revoking the previous one, effect the validity of the previous will?

A new will is viewed as revoking earlier ones, even if this is not explicitly stated, unless the new will's provisions do not contradict the previous will. For example, if a new will is specific to assets that were not stated in a previous will, the previous will may still be valid as far as it relates to those assets not mentioned in the new will.[18]

WHAT DOES THE LAW SAY?

Revocation by the testator

§36. (b) A new will — even though it does not include the express revocation of a previous will — is deemed to revoke the previous one to the extent that the provisions of the new will contradict the provisions of the previous will.

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93. What is the most recommended way of canceling a will?

To avoid doubts and endless lawsuits, a will should be canceled in a document, signed before two witnesses. This document can either be a new will, which will explicitly state that all previous wills are voided and revoked, or a clear expression of voiding all wills and instructing that the asset distribution be governed solely by the law, i.e., *intestate succession.*

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18. The Inheritance Law, 5725-1965, s. 36(b).

94. What is a mutual will?

A mutual will is a will made by a person at the same time that his or her spouse makes a will, with a "reliance interest" of each spouse on the other's will.

This means that each spouse knows what is written in the other's will and is drafting his or her own will based upon the contents and stipulations of the spouse's will. Such a will is permitted, **despite each party being involved in the making of the other's will, which usually obviates all or part of a will, as described above.** Mutual wills may be made in two separate documents executed at the same time or in one joint document.[19]

WHAT DOES THE LAW SAY?

Mutual wills

§8A. (a) Spouses may make wills with one spouse depending on the will of the other spouse; said wills may be made whether the beneficiary under each of the wills is the other spouse or a third party, either in two documents made at the same time or in one document.

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95. Can a mutual will be revoked?

The **freedom to bequeath** is a fundamental constitutional principal in Israeli law. A person may, at any point in time, express his wishes and later change his mind, and consequently, his will. This principle is true with regard to mutual wills as well. A mutual will can be unilaterally canceled by one of the parties **if both parties are still alive.**

However, since both parties have relied on each other's wills

19. The Inheritance Law, 5725-1965, s. 8A(a).

when drafting their own wills, one side may not revoke or change his will without first informing the other. Once such notice is given, ***both*** parties' wills are annulled.[20]

WHAT DOES THE LAW SAY?

§8A. (b) (1) When both spouses are alive — the testator who wants his will to be canceled shall give written notice of the cancellation of his will to the other testator; when said notice has been given, the mutual wills of both testators become void.

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96. My spouse has notified me that she intends to revoke our mutual will. If she does that, this would cancel my own side of the mutual will automatically. Can I prevent her from doing so? Is there something I could have done right at the outset when we were drawing up these wills to prevent this?

The procedure whereby a notice by one side annuls both wills is the default arrangement in the law.[21] It actually gives someone other than the testator the unprecedented power to annul that testator's very own will.

But this does not have to be so. The parties may create a different arrangement **within their mutual wills which overrides the law.**

For example, a husband may write in his will, that even if his wife gives notice of her wish to cancel the mutual will, he intends for his will to remain valid.

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20. The Inheritance Law, 5725-1965, s. 8A(b)(1);
S.C. (C.A.R.) 4282/03 Lerner vs. Pierre, Nevo.
S.C. 10090/17 (P.L.A.) *Plonit* vs. *Ploni,* Nevo.

21. The Inheritance Law, 5725-1965, s. 8A(b)1;
S.C. (F.A.R.) 10090/17 Jane Doe vs. John Doe — Decided January 25, 2018.

97. Can a mutual will be changed after one spouse dies?

If a surviving spouse wishes to change his mutual will **after** his partner's death, he must renounce his right to inherit his portion of the partner's estate, and he must do so **before the estate is distributed.**[22]

98. Who receives that part of the estate renounced by the surviving partner?

The testator's children or his siblings receive that part of the estate the surviving partner would have received had he not renounced.[23]

WHAT DOES THE LAW SAY?

§8A. (b)(2)(a) As long as the estate has not been distributed, the spouse who survived and wants to cancel his will shall renounce — to the benefit of the testator's children or siblings — every portion or every part of the estate that he is supposed to receive under the mutual will of the dead testator.

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99. Avner's wife passed away and her substantial estate was distributed among their heirs, and under the mutual will made by the spouses, her husband Avner received the bulk of the inheritance. Avner wants to cancel the mutual will. But the estate had already been distributed. How can he cancel the mutual will?

If the estate has already been distributed, the surviving spouse who wishes to change his will **must return everything he inherited** to the estate, and then he may cancel his will.[24]

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22. The Inheritance Law, 5725-1965, s. 8A(b)(2)(a).
23. The Inheritance Law, 5725-1965, s. 8A(b)(2)(a).
24. The Inheritance Law, 5725-1965, s. 8A(b)(2)(b).

WHAT DOES THE LAW SAY?

§8A. (b)(2)(b) After the estate has been distributed, the spouse who survived and wants to cancel his will shall restore to the estate all he has inherited under the mutual will, and if restoration in kind is impossible or unreasonable — he shall restore the value of the portion or part of the estate that he inherited.

100. Can my partner and I write in our mutual wills that they can never be changed even if we are both alive?

A complete restriction of one's right to change a mutual will when the spouses are still alive is null and void. The right to change one's will is a basic constitutional right. One is not allowed to block the possibilities allowed by law in this regard.[25]

Important Note: Section 8A was inserted by the Inheritance Law (Amendment No. 12) 5765-2005 (SH 5765, p. 714, August 1, 2005). Section 2 of the said Amendment provides that its provisions not apply to wills made before it was enacted, i.e., any will made before August 1, 2005.

25. The Inheritance Law, 5725-1965, s. 8A(c).

CHAPTER 5

The Contents of a Will

101. Do I have to write a will using very specific legal wording, or is it sufficient if my wishes are reasonably clear?

The testator's wishes must be clear from the content of the will. In order to express his wishes, the testator may use any relevant choice of words, including words such as "I give," I grant," "I bequeath," etc. The will may also include a waiver of a right ("I renounce my right to $10,000 that my brother owes me" or "My sister will not have to return the loan of $10,000 to my estate"). There is no legally mandated wording, as long as it is clear that the document expresses the testator's wishes for after his death. There is also no need to title a will with the words "Last Will and Testament" or the like. There is no need for any title.

102. What if the wording of the will does not indicate a clear wish to bequeath an asset?

Wording such as "I recommend" or "I suggest" do not express **a binding bequest**. Suggestions are not conditions; for example, a father may bequeath all his assets to his only daughter and suggest that she keep it separate from a joint bank account she has with her spouse. Such a suggestion is not binding.

103. Is there any limitation on the assets that I can bequeath in a will?

Any person may bequeath all or part of his estate. One may bequeath a specific asset or, say, the profits from a specific asset. For example, "I leave the hotel that I own to my son, but all the profits go to my daughter as long as she lives."

104. Can a will include instructions regarding burial methods or donating the deceased's body to science?

Provisions in a will relate to the testator's assets. One's body is not considered an asset and cannot be bequeathed to another. However, one may donate one's body to science in accordance with the Anatomy and Pathology Law, 5713-1953.[1] Such instructions would not typically be stated in a regular will; rather, they are carried out by contacting the institute to which one wishes to donate their body and signing the necessary forms provided by them.

105. Can parents instruct, in their will, who will be legal guardian of their minor children in case of the parents' death?

If parents of minor children die and have stipulated in a will who should be appointed the legal guardian for their children, the court will strive to act in accordance with the parents' wishes unless the court finds that doing so is against the best interests of the children.[2]

106. Can parents instruct the legal guardian, in their will, how to act in regard to their children?

The testators may provide instructions for the legal guardian, such as whether the children should receive a religious education or

1. The Anatomy and Pathology Law, 5713-1953, s. 2.
2. The Legal Capacity and Guardianship Law, 5722-1962, s. 64.

not. These instructions must be followed unless they contradict the children's best interests.

107. What does the term *consecutive heir* mean, and what is the implication of the term for the distribution of an estate?

A testator may bequeath his estate to a first heir and instruct that after the first heir's death, the estate will subsequently be bequeathed to another heir.[3] The second heir is called the *consecutive heir* or in Hebrew, *yoresh achar yoresh*.

108. Can I in my will name a *substituted heir*, someone who would inherit if my first preferred heir is unable or unwilling?

A testator may instruct that if the first heir cannot inherit, then their share would go to another "substituted" heir.[4] The most common case for a substitute is, obviously, when the first heir is no longer alive when the testator dies.[5] Usually in such a case, the deceased first heir's own heirs step into his shoes and inherit. However, when a testator in his will specifically names a different (substitute) heir, the assets are automatically bequeathed to the to the substitute rather than to the first heir's heirs. In Hebrew, a *substituted heir* is termed *yoresh bimkom yoresh.*

WHAT DOES THE LAW SAY?

Substituted heirs

§41. (a) The testator may bequeath to two persons so that the second shall inherit if the first did not; the second shall inherit if the first died before the testator [or] was found not to be qualified to inherit.

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3. The Inheritance Law, 5725-1965, s. 42(a);
   Shalom (C.F.) 22955-07-15 Black et al vs. Stewart et al — Decided July 07, 2018.
4. The Inheritance Law, 5725-1965, s. 41(a).
5. The Inheritance Law, 5725-1965, s. 41(a).

109. Can the testator instruct who will inherit his estate if the first heir renounces his inheritance?

In the same way in which a testator can name a substitute heir in case of the first heir's death, they may also name a substitute heir in place of any heir who renounces his inheritance. However, the renouncement has to be made in general terms for such an instruction in a will to take effect. If an heir renounces in favor of a specific person who is named in the Inheritance Law as being able to inherit in a case of renunciation, then the instruction in the will cannot take effect, and the renouncer's wishes then take priority over the testator's instruction.[6]

110. What if a person is named as a first heir but is disqualified from inheriting; for example, for the reason of hiding or forging a will?

If the first heir is disqualified from inheriting, the *substituted heir* mentioned in the will would take his place.[7]

111. I am named a first heir in my uncle's will. A successive heir is also named. Am I allowed to do as I please with the assets bequeathed to me, or do I have a duty to the successive heir to maintain the property or assets and bequeath the assets as I received them?

The first heir may treat whatever he inherited as completely his own. The successive heir only inherits whatever is left after the first heir passes away.[8] The courts have upheld this rule, even though it

6. The Inheritance Law, 5725-1965, s. 41(a).
7. The Inheritance Law, 5725-1965, s. 41(a).
8. The Inheritance Law, 5725-1965, s. 42;
S.C. (C.A.P.) 3130/05. The heirs of the late A.R. vs. The Administrator General as Estate executor for M.R., Nevo. *(continued on the next page)*

sometimes means that the testator's wishes won't be fulfilled completely, because little or nothing may be left for the successive heir.[9]

WHAT DOES THE LAW SAY?

§42. (b) The first may treat what he received as his own and the second shall only inherit what the first left; however, the first cannot curtail the rights of the second by means of a will.

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112. Is there a limit on the number of successive or substitute heirs that can be mentioned in a will?

There is no limitation to the number of substitute heirs that may be made in a will. However, it is only permitted to name successive heirs for two possible successors. A provision naming a third heir (and so on) is only valid if such heirs are actually alive when the will is made.[10]

One of the fundamental characteristics of inheritance is "Control of the Dead Hand" (*mortmain* or *mortua manus*, which means "hand of death," or in Hebrew: שלטון היד המתה). Some people want to control their heirs or the assets that they have garnered over long periods of time in their lives by making life as difficult as possible for their heirs, with all kinds of outré conditions. Legislators the world over seek to utilize inheritance law to avoid, as much a possible, long-lasting control by the deceased over the

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S.C. (C.A.P.) 3130/05 Heirs to the late A.R. vs. Administrator General acting as Executor for the Estate of the late M.R., Nevo;
S.C. (C.A.P.) 3130/05 Heirs to the late A.R. vs. Administrator General acting as Executor for the Estate of the late M.R., Nevo;
S.C. (F.A.R) 9085/16 Jane Doe vs. John Doe, Nevo;
F.C. (Rishon Lezion) (F.F.) 57626-11-11 A.Y.A. vs. G.A. — Decided September 06, 2018.

9. Judge Varda Plaut in F.C. (Tel Aviv) F.F. 81521/00 Abramowitz vs. Zamir, Nevo.
10. The Inheritance Law, 5725-1965, ss. 41, 42.

assets they left behind and over the actions of his heirs. It is for this reason that the law limits the number of successive heirs that can be named in a will.

113. What happens when a provision in a will is based upon an error or misunderstanding by the testator?

If a court has no doubt what the testator's wishes would have been had the testator not erred, then the court may correct the provisions emanating from this erroneous misconception.

In one recent case, a grandmother's will denied any share of her inheritance to her grandson "because he did not serve in the army."

However, it turned out that the grandson **did** in fact serve in the army, but the grandmother had not been aware of this. The court corrected that provision, and to give expression to the testator's true wishes, allowed the grandson to inherit his grandmother's estate.[11]

WHAT DOES THE LAW SAY?

§30. (b) If a testamentary provision was made because of an error, and if it is possible to determine clearly what the testator would have prescribed in his will if not for the error, the court shall amend the terms of the will accordingly.

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114. What happens when a provision in a will is clearly based upon an error, but the court cannot be sure what the testator would have instructed if not for the misconception?

In such a case, the court will not correct the provision of the will; rather, it would simply void the provisions that were based upon the mistake.[12]

11. The Inheritance Law, 5725-1965, s. 30(b).
12. The Inheritance Law, 5725-1965, s. 30(b).

115. What if there is a mistake in a detail in a will, such as identification number of a person or of the street address of an asset?

If a will contains a clerical error or an error in the description of a person or asset, in a date, a calculation, or the like, and if it is possible to determine clearly the testator's true intention, the registrar or the court may correct the error.[13]

116. What is the status of a provision in a will which is simply incomprehensible?

The law determines that a provision in a will which is so unclear that it is impossible to understand the testator's intent is **void**. Sometimes, surrounding circumstances may help determine the testator's intent, and these may be used to assist the court, but when the court is facing a total lack of clarity, and the testator's presumed intention is unfathomable, that provision is void.[14]

117. What happens when it is unclear from the will which assets are left to whom?

If, for example, a testator bequeathed "my favorite paintings" to "my son," but it is unclear which paintings were the testator's favorite ones or they have several sons, such a provision is void. In such a case, the paintings would be sold and the proceeds divided among his heirs.[15]

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13. The Inheritance Law, 5725-1965, s. 32;
F.C. (Tel Aviv) (E.F.) 5572/97 Michael vs. Micha P.M. 5761(2) 465, Judge Hayut's opinion.
14. The Inheritance Law, 5725-1965, s. 54;
S.C. (C.A.) 239/89 Shoresh vs. Galili I.L.R. 46(1) 861.
S.C. (C.A.) 7631/12 Amster vs. Keren Kayamet Le'Israel, Nevo, 23-16;
F.C. (Tel-Aviv) (F.F.) 1665-08-17 John Doe Vs. Jane Doe - Decided January 21, 2018.
15. The Inheritance Law, 5725-1965, s. 33.

118. Who becomes the heir when a provision in a will is declared void?

The Supreme Court has ruled that when a provision granting a certain share to an heir is voided, their share is divided among all the heirs in the will pro rata to the testator's division of the other assets in that will.[16]

119. What provisions in a will might not be legally binding and enforceable?

The instructions of a will must pertain to the actual estate and the estate assets in order to be binding. While some testators may wish to include general advice or requests in their will (such as, "please treat each other with love and respect" or "please pray for me every week"), these instructions are so amorphous that they are not legally binding.

Here, too, the rule against "Control of the Dead Hand" plays a part and does not allow the deceased to control the lives of those who survive them.

120. Can a testator make a conditional bequest?

One may determine that an heir will inherit only upon the fulfillment of a certain condition or the passing of a certain period. For example, a testatrix instructed that her granddaughter will inherit her only once she married or when she reached the age of thirty. Both of these conditions are valid.

121. If a testator makes a conditional bequest, but the conditions are immoral, impossible, or simply outrageous, are these conditions valid?

A testator's right to set conditions is not unlimited. The courts do

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16. D.C. (Tel Aviv) E.F. 6095/89 Uri Cohen vs. Administrator General, D.R. 5750 (3) 116.

not allow a testator to try to control his heirs — the famed *manus mortis*.[17]

Sometimes, testators set conditions which are impossible to fulfill. In such a case, the court may void such conditions without voiding the entitlement to which the outré condition was attached.[18]

122. What if a condition set in a will is considered immoral?

An immoral condition may be voided by the court.

However, the determination of what is considered to be moral or immoral is often unclear.

In one case, the will stipulated that if the testator's son divorces his wife, then his children will inherit in his stead. After the son divorced, he challenged the condition in the will, claiming that it was immoral, since it required him to stay in an unhappy marriage. The Supreme Court ruled that the testator's wish to look after his grandchildren's interests by keeping their parents together was reasonable, and thus, the condition was not immoral. In this case, the court upheld the condition in the will.[19]

123. What if a condition set in a will is illegal?

An illegal condition in a will is invalid, and the will can be voided by the court.

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17. "The Dead Hand." Known in Latin as *manus mortis*, this is the concept of a testator wishing to control from the grave the lives of his heirs by placing sometimes outrageous stipulations as conditions of the will.
18. The Inheritance Law, 5725-1965, s. 38(a).
19. The Inheritance Law, 5725-1965, s. 38;
    S.C. (A.R.) 108/75 Greiber vs. Greiber, I.L.R. 29(2), 673.

There was a well-known case in the US from the previous century, in which a Virginia man, Senator Bacon, bequeathed a large area of land to the municipality, on the condition that it be used as a park for "Whites Only." In the 1960's, such a stipulation became illegal, and the park was thrown open to the general public. Senator Bacon's descendants then demanded that the property be returned to the family, since the condition was no longer fulfilled by the municipality. While the court agreed that the municipality cannot condone racial discrimination, the majority ruled that the terms of the trust were not fulfilled, and as such, the property was returned to Bacon's descendants.[20]

In Israel, such a condition in a will would most likely be deemed illegal due to the constitutional tenets of racial and religious equality, and the park would still remain in the city's ownership with the racially discriminative condition voided.[21]

WHAT DOES THE LAW SAY?

Voiding part of a will

§38. (a) If anything illegal, immoral, or impossible is prescribed in a will as a condition of entitlement…then the condition or obligation is void, and that does not void the entitlement to which the condition or obligation was attached. [*Our emphasis: HVK and SK*]

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20. 396 U.S. 435 90 S.Ct. 628 24 L.Ed.2d 634 E. S. EVANS et al., Petitioners, v. Guyton G. ABNEY et al. No. 60. Decided January 26, 1970. After the Court held that Baconsfield Park was unable to perform a segregationist function, the state court held that "Senator Bacon's intention to provide a park for whites only had become impossible to fulfill and that accordingly the trust had failed and the parkland and other trust property had reverted by operation of Georgia law to the heirs of the Senator." The Supreme Court of the United States affirmed the decision of the Supreme Court of Georgia.
21. The Inheritance Law, 5725-1965, s. 38(a).

124. Does the inclusion of a condition which is immoral, illegal, or impossible render the *entire* will invalid?

The court will only void that part of the will which it finds to be illegal, immoral, or impossible to fulfill, and it will uphold the remaining provisions.[22]

125. Yaakov makes a conditional will. In it, he states, "my shares in IBM will be sold and the money distributed to my grandchildren upon them reaching the age of eighteen." What is to be done with such an asset until such a condition is fulfilled?

If the condition hasn't yet been met at the time the will is probated, an **executor is appointed to maintain and manage the assets** until the condition is met or until the time stipulated in the will has passed.[23]

It should be noted that, sometimes, wills are unclear. Is it a condition when a testator says, "I leave my estate to my three older children and I request them to look after the needs of their youngest brother?" Is this a **request** to his children, or is it a pre-condition for them to inherit? In a recent 2018 case, the court found **that a condition had to be imperative** and that *a request* was a moral rather than a legal stipulation.[24]

126. Yaakov's oldest grandson Jeremiah wants to borrow money and, as security, place a lien or an attachment on the assets he is expected to inherit. He is only sixteen years old, so he has not yet reached the age stipulated in the condition. "I am only 24 months from inheriting, so surely I can do what I want?" Is he permitted to do so?

No lien or attachment may be placed on assets during the interim, since the condition may or may not ever be met. It is actuarially

22. The Inheritance Law, 5725-1965, s. 38 (a).
23. The Inheritance Law, 5725-1965, s. 43(b).
24. F.C. (Rishon Lezion) (E.F.) 40218-02-16 T. vs. A. et al, Nevo.

possible that the conditional heir will not meet the condition in the will, and thus, they would never obtain rights to such assets.[25]

127. Jeremiah is tragically killed in a motorcycle accident. He will now never meet the condition laid out by Yaakov in his will. What is the legal position?

If the condition is not and cannot be fulfilled, the conditional heir who has not met that condition will not be considered an heir at all (*ab initio*). This also means that his heirs will not be entitled to inherit his share in his place.

In such a case, the remaining heirs inherit whatever would have been bequeathed to the conditional heir.

128. What is the status of a conditional heir who is able to fulfill the condition that would grant him the right to inherit but refuses to do so?

If a conditional heir refuses to fulfill the condition, he is not considered a beneficiary of the will, and his share is distributed according to the residual instructions of the will.

If there are no relevant instructions in the will as to what happens if the condition is not met, that part of the estate will be distributed according to the rules of intestacy.[26]

129. Can a conditional heir who refuses to fulfill the condition set out by the testator in the will end up inheriting all or some of the share intended for him via the will, simply via the operation of the of intestacy rules instead?

Yes. One must examine the legal consequences of any decision.

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25. S. Shilo, Commentary to The Succession Law, 1965, Jerusalem: Nevo, 2002, p. 394. The Inheritance Law, 5725-1965, s. 38 (b).
26. The Inheritance Law, 5725-1965, s. 43(c).

For example, in one case, a widower had an only son. In his will, he devised his apartment in Israel to this son on the condition that the son move to Israel.

There is no reference in the will as to what the testator would have wanted if the son did not fulfill that condition.

So, if the son refuses to move to Israel, and in the absence of any other instruction, the apartment would be distributed according to the rules of intestacy and would thus be distributed to the only son despite his refusal to fulfill the clear conditions set out by his father.

130. Can a testator stipulate not only positive conditions but also negative conditions, in which case the heir would NOT be entitled to inherit?

For example, a father may bequeath his house to his daughter on the condition that she allows his elderly brother to live there for the rest of his life. If at any point the daughter no longer allows the uncle to live in the apartment, she would have to return her right to the house to the estate.[27]

WHAT DOES THE LAW SAY?

Inheritance subject to condition subsequent

§44. (a) The testator may prescribe that an heir shall be divested of his right when a condition is met or at a certain time. *(our emphasis HVK and SK)*

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131. Yerachmiel leaves the house he lives in solely to his favorite daughter, Chava. The rest of his estate he leaves to all his four children (which include Chava) in equal shares. Can a

27. The Inheritance Law, 5725-1965, s. 44(a).

testator leave a specific asset to one particular heir and the rest to be shared equally?

When a testator leaves a **specific asset** to one or more heirs, this asset is called a "portion" (in Hebrew: *manah*). The law states that if someone is bequeathed a portion from the estate, the portion is in **addition** to whatever share they receives from the remainder of the estate. [28]

So, if Yerachmiel's will leaves the entire estate to his four children equally but the house to Chava, she inherits the house *and* a quarter of the remainder of the estate.[29]

132. Can Chava (in the example given above in question 131) demand that the estate renovate that house? "It's really dilapidated," she complains to her siblings.

Furthermore, Chava's lawyers, looking through the real-estate documentation relating to the house, inform her that there is a lien on the property (which is soon to be hers, but at the moment is part of the undistributed estate). She demands that her brothers remove the lien placed on house at the expense of the estate. Can she do that?

No. Because the specific asset was bequeathed only to a certain heir, **the other heirs have no obligation or responsibility toward that asset**. Chava may not demand that the estate or the other heirs renovate it, pay off any debts, or remove any liens that had been previously incurred or placed upon it by the testator.[30,31] It is essentially bequeathed "as is."

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28. The Inheritance Law, 5725-1965, s. 47
29. The Inheritance Law, 5725-1965, s. 47.
30. The Inheritance Law, 5725-1965, s. 51(a).
31. The Inheritance Law, 5725-1965, s. 51(b).

133. When a will bequeaths a specific asset to an heir but that specific asset is no longer part of the estate when the testator dies (perhaps because it has been sold by the testator after he wrote the will), what are the rights and duties of the heirs?

If the specific asset no longer exists or no longer belongs to the testator at the time of his death, obviously the heir will not be able to inherit it.

134. In such a case, can the heir of a *portion* that no longer exists as part of the estate demand compensation from the estate to make up for his loss of the stated asset?

Such an heir is not entitled to any compensation from the estate for the now nonexistent portion.[32] The heir only inherits in the rest of the estate whatever share they were entitled to inherit according to the will.

WHAT DOES THE LAW SAY?

§51. (c) The person entitled does not have a right to compensation from the other heirs, if the asset was not among his assets when the testator died.

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135. Jonathan bequeathed in his will his rare Morgan Aero 8 A racing car to his grandson David. Jonathan, being a rare car aficionado, actually described the car in his will: forged-alloy wheels with gunmetal centers, finished in bright silver over a gray leather interior and a blue hood in 1930's style. He also devised his Bentley Continental GT (he noted that this was the car he had brought over from California when he made Aliya to Israel) to his granddaughter Rachel. The

32. The Inheritance Law, 5725-1965, s. 51(c).

rest of the estate was to be divided equally between his eight grandchildren.

However, after his death, it turned out that the Bentley was nowhere to be found. Looking through the deceased's papers, it became clear that the Bentley was sold to a French collector three years before Jonathan died.

Rachel's lawyers reread the will and found a clause stating that if a specific asset was no longer part of his estate at the time of the testator's death, then the named heir of that asset would be entitled to demand payment from the estate in lieu of the missing asset.

The other heirs rejected Rachel's claim that she should be compensated for the missing Bentley. They pointed out to clause 51 of the law [see the law quoted above] and said that such a provision in a will which contradicted the law is invalid. Is Rachel's claim doomed to failure?

No. The late Jonathan was is perfectly entitled to stipulate in his will compensation in place of an asset that is no longer a part of the estate at the time of the testator's death.[33] Rachel is compensated from the estate and after such compensation, the eight grandchildren divide the rest equally as per the will.

136. What if the testator names heirs but fails to specify how the estate is to be distributed between them?

A will may state, "I leave all my assets to my five children." The will fails to specify in what proportions the testator wishes to divide his assets among these heirs. In such a case, the law divides the estate in equal shares.[34]

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33. The Inheritance Law, 5725-1965, s. 53.
34. The Inheritance Law, 5725-1965, s. 48.

137. What if the testator bequeaths one asset from among a few similar assets without specifying which specific one is being bequeathed?

For example, if a testator bequeaths "one full set of silverware to my daughter Sarah," and as it turns out, the testator owned four such sets, some more valuable than others, which set would Sarah receive?

Both the Law of Contracts (General Part) 5733-1973 (the "Contracts Law") and the Inheritance Law provide for a situation in which a provision is unclear regarding the quality of an asset.

The Contracts Law determines that "an obligation to provide an asset or a service, whose type or quality were not specified, shall be fulfilled by providing a service or asset of medium quality or type."[35]

Similarly, under the Inheritance Law, in the case described above, the rule is that the provision is fulfilled by Sarah receiving a silverware set of medium value.[36]

138. What happens when an heir named in the will dies before the testator, and the testator did not determine who inherits in his place?

Similarly to *intestate succession*, if the heir had children, his children or these children's issue, on the condition that they are alive at the time of the testator's death, inherit in his place.[37]

139. What if the designated heir had no children?

If the heir died before the testator and had no children, the

35. The Contracts Law (General Part), 5733-1973, s. 45.
36. The Inheritance Law, 5725-1965, s. 52.
37. The Inheritance Law, 5725-1965, s. 49.

provision benefiting them is voided, and the estate is distributed as if they had never been an heir in the first place.[38]

140. Before WWII, Anna, who lived in Germany, wrote a will, leaving her estate to local Jewish charities, which she named. After she perished in the Holocaust, her family members claimed that since those charities no longer existed, they should inherit her estate. How would a court view these claims?

The court determined that Anna's **intent** was to give her estate to Jewish charities, and so even if those specific charities no longer exist, her wishes may be fulfilled by leaving her estate to similar causes.

The testator's **intentions** receive preference over the wording. The words are a tool to express the testator's wishes, and it is the testator's desire that must be fulfilled. Therefore, the court may — **with great caution** — deviate from the exact wording of the will in order to fulfill the testator's intentions.[39]

141. Can a testator's wishes ever be interpreted and understood completely differently from the wording of the will, even if the will seems clear?

For example, in one case, an elderly testator left a will in which he instructed, "I leave my entire estate to my dear grandson David." His family members claimed that this was **not his real intention.** They explained to the court that the will was made **before** his three other grandchildren were born, that he loved all his grandchildren dearly and equally, and that surely, he would have wanted all the grandchildren to inherit him equally. Can such a claim be accepted?

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38. The Inheritance Law, 5725-1965, s. 49.
39. F.C. (Tel Aviv) (E.F.) 2818/75 Attorney General vs. Hess, P.M. 5736(1) 316; S.C. (C.A.) 102/80 Fruchtenbaum vs. Magen David Adom in Israel, I.L.R. 36(4) 739.

The general rule is that if the words of the will are clear, they must be respected and implemented without turning to external evidence and circumstances.[40] David inherits alone.

142. A provision in the will can be understood in two different ways. If understood one way, the will would be invalid, and if understood the other way, it would be valid. How will the court interpret the ambiguous provision?

The court will always prefer the interpretation which renders the will valid over the interpretation which renders it invalid.[41]

143. Can a testator instruct in a will that another person will determine who his heirs will be?

The law dictates that the testator may not authorize another to choose his heirs for him. However, **if the testator defines a group of people** from whom an heir is to be chosen, he can appoint someone else to make such a choice. The group must be specific and defined.

In one case, the testator left her estate to "a good soldier" from the IDF and left it to the Chief of Staff to define the beneficiary. Because the criterion of "good soldier" was too broad and uncertain, the court decided that the provision was invalid.[42]

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40. The Inheritance Law, 5725-1965, s. 54(a);
S.C. (C.A.) 1900/96 Talamaccio vs. Administrator General I.L.R. 53(2) 817;
S.C. (C.A.) 490/99 Ettinger vs. Even Tov, Nevo.
41. The Inheritance Law, 5725-1965, s. 54(b);
S.C. (C.A.) 1900/96 Talmaccio vs. Administrator General I.L.A. 53(2), 817, 826;
S.C. (C.A.P.) 3130/05 Heirs of the late A.R. vs. Administrator General as Executor for the Estate of the late A.M. Nevo, 2006.
42. S.C. (F.C.H.) 1068/00 Lishitzky vs. Attorney General, Nevo.

144. Can a person give a gift with the express condition that the gift will come into effect only after the grantor's death?

The only way to grant any rights or assets **after one's death is via a will**. Granting a gift that will come into effect after death is not a valid gift.[43] The way to grant an asset to another person after death is only by means of a will.

145. If post-mortem gifts are invalid, how do various insurance policies, savings plans, and retirement plans operate, when they are meant to provide benefits, i.e., gifts from the giver to third parties? Clearly, such schemes are not wills, and they are in fact outside of the estate and do not need probate. On the other hand, these gifts or benefits only take effect after one's death. This concept seems to contradict the rule that gifts after death can only be made by means of a will.

Section 8(b) of the inheritance law stipulates that payments due to named beneficiaries following one's death emanating from an insurance contract; a pension or retirement plan; or a savings scheme, are not considered part of one's estate, and they are not part of the inheritance. **Therefore, they are not bound by the prohibition against post-mortem gifts.**[44] See also questions 2-4 above.

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43. S.C. (C.A.) 2215/00 Gury vs. Dangur, I.L.R. 56(3), 932;
S.C. (A.R.) 43/76 Ross vs. Kramerman I.L.R. 30(3) 297, 299-300;
F.C. (Rishon Lezion) (F.F.) 40218-02-16 K.T. vs. G.A. — Decided October 31, 2018

44. Until about a decade ago, this rule was enforced unequivocally; however, since then, the Supreme Court has ruled that a change in the beneficiaries may be made in a will. Opinions differ regarding whether or not the will must be submitted to the investment company or fund before the decedent's death. Furthermore, each company's bylaws and policies also play a role in this matter. For some recent rulings on this matter, see:
F.C. (Tel Aviv) (F.F.) 10421-06-12, Dr. Y. vs. the Estate of the Late Edna Haftman;
F.C. (Petach Tikva) (F.C.) 52341-03-11, A.T. vs. G.A.;

146. Can a common-law spouse be disinherited?

Spouses may disinherit each other, and in the same way, a common-law spouse can be disinherited in a will.[45] However, both legally married spouses and common-law spouses may have rights or have gained rights to some inalienable assets according to the laws regarding monetary relations between spouses and common-law partners. These rights cannot be obviated by a will. See also questions 40-42 above.

147. Common-law partners signed a financial agreement explicitly stating that one does not inherit the other. Is such a provision valid?

The **only way** to disinherit a legal heir is **via a will**. Common-law partners inherit each other by law unless a contrary will is made. A provision in a contract between the partners is not recognized as binding by the courts.[46]

H.C.J 2673/06 Aviva Shawa vs. National Labor Court;
D.C. (Jerusalem) (F.A.) 1030/06 Jane Doe. vs. Bank Hapoalim Ltd.

45. See the Inheritance Law s. 55 regarding the status of a common law spouse, and
S.C. (C.A.) 107/87 Sarah Alon vs. Frieda Mendelson, I.L.R. 43(1) 431, 433-434;
S.C. (C.A.) 682/74 Yakutiel vs. Bergman, I.L.R. 29(2) 757 (1975);
S.C. (C.A.) 6434/00 Danino vs. Mena, Nevo, 2002;
F.C. (Tel Aviv) (F.F.) 53455-01-14 S. et al vs. N. B. et al — Decided January 30, 2018.

46. The Inheritance Law, 5725-1965, s. 55;
S.C. (C.A.) 1717/98 Blau vs. Pozash, I.L.R. 54(4) 376, Justice Turkel;
F.C. (Haifa) (E.F.) 3711/03 Estate of the late Michael Itkis vs. Pinto, Judge Glubinsky, Nevo.
Regarding married spouses: Under certain circumstances, a provision of a will may be voided in face of an earlier provision in a prenuptial agreement, which was ratified by the court and given status of a judgment. See then-Judge Ayala Procaccia's ruling in the district court, D.C. (Jerusalem) E.F. 289/97 Achiram vs. Achiram, Nevo. This matter has not yet been decided by the Supreme Court.

CHAPTER 6

Proof of Death

148. Obviously, in order to inherit, one first has to prove that the bequeathor is dead. How does one legally prove to a court that a person is in fact no longer alive?

When a person dies, the most common legal proof is by way of the presentation of a death certificate, which is issued in Israel by the Ministry of the Interior.[1] The Ministry bases the issue of such a certificate upon a notice of death signed by a medical doctor who was present at the death, and if there was no doctor present, such a notice is given by whoever was present at the time or by the head of the institution in which the death occurred.[2]

149. How can death be proven in a case in which there is no death certificate; for example, for a person who is presumed dead, such as a soldier missing in action?

The Declaration of Deaths Law 5738-1978 states that in place of a death certificate, the court may give a **declaration of death** with regard to a person of whom no trace has been found for a period of

1. The Population Registry Law, 5725-1965, s. 30(b).
2. The Population Registry Law, 5725-1965, s. 7.

24 months, **provided** that there is a reasonable presumption that he is indeed dead as a result of a natural disaster, war, or accident. Such a person is termed a "casualty" (in Hebrew: *nispeh*).[3]

150. What about someone who just disappears, with no signs indicating as to whether they are dead or alive? Under what terms would they be considered dead by the Israeli courts?

When someone is missing, but there is no clear indication regarding their death, a **declaration of death may only be issued after seven years**, during which it is must be shown to the court's satisfaction that all reasonable efforts to locate him have been fruitless, **and there is a reasonable presumption** that he is dead. Such a person is termed "a missing person" (in Hebrew: *ne'edar*) and may be declared as dead by the court under the terms of the Declaration of Deaths Law.[4] Such a declaration serves in lieu of the death certificate.

151. What of people who died in the Holocaust?

Questions regarding the inheritance of victims who died in the Holocaust were very common particularly in the early years of the modern state of Israel. However, today, so many decades after the events, there can be important legal ramifications to formally establishing the death of a person in the Holocaust.

For example, in one case, an elderly Holocaust survivor died without children, and his nephew was the sole heir. The survivor's brothers and sisters, had they survived, would have had first claim to the inheritance. How may the nephew prove that these relatives actually died in the Holocaust?

3. The Declarations of Death Law, 5738-1978, s. 1.
4. The Declarations of Death Law, 5738-1978, s. 1.

Such questions are of the utmost importance in a country in which hundreds of thousands of survivors gathered, many of whom became heirs of their parents and brothers and sisters who had disappeared, never to return. What would be the formal procedure to be presented to the court to determine the death of such people?

The court has the jurisdiction declare the death of a person "whose last place of residence was in Asia, Europe, or Africa and who disappeared between the years 1939 and 1945 without a trace, in circumstances that **give rise to a presumption** that he or she died in the war or as a result of persecution based on race, religion, or nationality."[5]

152. What efforts must be made to locate unknown heirs?

In one case, an elderly lady had died, and her executor was faced with the task of distributing the estate. The deceased had immigrated to Israel in the 1980s, already quite elderly and without family, except for some nephews living in Haifa.

The executor and the nephews were all aware that in the prewar period, she had a family back in the Ukraine. However, in the days of the Iron Curtain, communications between the state of Israel and the then-hostile USSR was not simple. Yet, the estate might be distributed inequitably if there were other heirs — unreachable, living behind the iron curtain –but equally entitled to inherit. What was the court to do?

The nephews in Haifa had to demonstrate to the court that they had undertaken searches for other possible heirs with ***reasonable diligence*** (in Hebrew: *shkida svira*) and that they had a reasonable basis to believe that there were no other heirs. If the court is

5. The Declarations of Death Law, 5738-1978, s. 1. It's important to remember that the law requires reasonable diligence to prove that there is no other heir.

satisfied that they conducted a search with reasonable diligence, and no heirs were found, the nephews would inherit.

Reasonable diligence depends on the circumstances and may include paid notices in foreign newspapers and contacting foreign authorities and/or various communities in countries where heirs would most likely be found.[6]

153. Is proof of death always needed when filing a claim regarding a person's estate?

A death certificate or equivalent (e.g., declaratory judgments by a relevant court that death had indeed occurred) is mandatory.

154. What if the fact of a death is not proven but self-evident?

When the circumstances are such that it is self-evident that the death of a person is beyond question, such as in case of a missing person who would have been 125 years old if he were alive, a declaration of death may not be needed.[7]

155. If a few members of the same family die together, and it's impossible to determine who passed away first (for example, in a tragic car crash), is there any importance to the chronological order of the deaths?

The issue of two people who died at the same time (referred to in

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6. S.C. (C.A.) 9694/01 Attorney General, Estate Executor for the estate of the late Zev Ben Zvi Bergman vs. Josef Friedman, I.L.R. 58(2), 65;
   F.C. (Tel Aviv) E.F. 8050/01 The Estate of the Late Sophi Gemel vs. The Administrator General [Padaor, (not published) 49 (13) 05];
   D.C. (C.A.) (Tel Aviv) 2420/05 The Estate of the Late Gershon Deutsch vs. The Administrator General, Nevo;
   S.C. (F.A.R.) 11405/05 Attorney General vs. Jane Doe, Nevo.
7. F.C. (Haifa) (E.F.) 1092/98 Bichowsky vs. Attorney General, Takdin, District Court 99(1) 2950.

the Inheritance Law as "two people who died as one" or "concurrent deaths") has important consequences.[8]

Let's consider, for example, a married couple, who each had children from a prior marriage and who died together in a fatal car accident. The wife had many assets to her name, and the husband had very few. Neither party had made a will, so the inheritance would have to be decided by the default mechanism of the Inheritance Law.

If the court deemed that the wife died first, her husband would inherit half of her estate, leaving her own children only a half share in her estate.

Following on from the court's determination that the husband died second — most of his now-estate (the main component of which was the inheritance he automatically received under the Inheritance Act, from his deceased wife who might have died only seconds or minutes before) would pass on to the husband's heirs rather than to his deceased wife's own children, even though most of the fortune that transferred to him was their mother's. [9]

156. What if it is impossible to determine who died first?

In order to determine how each estate will be divided in this circumstance, the law differentiates between two kinds of heir: a *definite heir* and an *uncertain heir*.[10]

157. What is a definite heir?

A definite heir (in Hebrew: *yoresh vadai*) is defined in the Inheritance Law as any person who would have inherited whether the one or the other of the deceased person had died first.[11]

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8. The Inheritance Law, 5725-1965, s. 9.
9. S. Shilo, Commentary to The Succession Law, 1965, Jerusalem: Nevo, 2002, p. 108.
10. The Inheritance Law, 5725-1965, s. 9.
11. The Inheritance Law, 5725-1965, s. 9(b);
F.C. (Tel Aviv) (E.F.) 3500/02 and (E.F.) 3510/02 Weiss vs. Administrator General.

158. What is an uncertain heir?

An uncertain heir (in Hebrew: *yoresh-safek*) is defined as any person who may **or may not** be declared an heir of the estate, depending on the order of deaths of those who died at the same time.

For example, a father and son die in a car accident. It is impossible to ascertain whether the father or the son died first.

The father had a wife and two sisters. Regarding the father's estate, his wife is considered **a definite heir**, since she would be an heir of her husband's estate, regardless of who died first. However, the two sisters are **uncertain heirs**, because if it was determined that the father died first, his estate would pass to his son and wife, and not to his sisters.

159. How will the estates be distributed among the *definite heirs* and the *uncertain heirs*?

When it is an open question as to who died first, the presumption is that *definite heirs* receive priority over *uncertain heirs*.

160. What is the rule when all the heirs who died in a concurrent death are *uncertain heirs*?

Preference is given to the heir who is the spouse or relative of the deceased.[12]

It is important to mention that a "spouse" includes a common-law spouse. As stated above, in this volume, the courts have clearly recognized unmarried partners as legal heirs (including same-sex partners).[13]

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12. The Inheritance Law, 5725-1965, s. 9(a)(2).
13. D.C. (C.A.) (Nazareth) 3245/03 Estate of the late S.R. vs. Attorney General, Nevo.

CHAPTER 7

Claiming Support Payments from the Estate

161. Who is entitled to support payments from the estate?

There are four categories of persons entitled to support from the estate:

1. The decedent's spouse;
2. The decedent's minor children;
3. The decedent's children aged between 18 to 23 in certain circumstances which the court deems applicable; and
4. The decedent's parents.[1]

In addition, in some circumstances, the decedent's grandchildren may be eligible for support payments.[2]

Support payments are typically paid on a monthly or periodic basis; however, the court may determine that a lump sum payment be made. The length of time that the support from the estate continues varies depending on the circumstances.[3]

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1. The Inheritance Law, 5725-1965, s. 57(a).
2. The Inheritance Law, 5725-1965, s. 57(d).
3. The Inheritance Law, 5725-1965, s. 57.

162. Is a common-law spouse entitled to support payments from the estate?

Common-law spouses are entitled to support payments from each other's estates.[4] Support payments from the estate are considered **a debt** owed by the estate and are thus are deducted, like all debts, from whatever is contained in the estate. If the surviving partner can prove their need for support payments, these payments must be made or secured before any part of the estate is distributed.[5]

163. Are there any preconditions for receiving support payments from the estate?

The institution of support payments from an estate is based upon a social rationale: to provide support for those family members in whose absence the deceased have fallen into real need. The courts have determined that support payments from an estate will **only be awarded** to a person who cannot provide for his own basic needs, and support payments are strictly limited to essential needs only.[6]

164. Does the size of the estate influence the level of support payments?

The court takes the size of the estate into consideration. Naturally,

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4. The Inheritance Law, 5725-1965, s. 57(c).
5. Judge Shaul Shohat in F.C. (Tel Aviv) (E.F.) 6100/01 Estate of the late Avlesky Daniel vs. Estate of the late Avlesky Daniel, Nevo.
6. The Inheritance Law, 5725-1965, s. 59;
   F.C. (Tel Aviv) (E.F.) 6100/01 Estate of the late Avlesky Daniel vs. Estate of the late Avlesky Daniel, Nevo, ruling of Judge Shaul Shohat;
   S.C. (C.A.) 616/87 Engleman vs. Engelman, I.L.R. 47(1) 621.

the estate's ability to pay support depends largely upon the assets contained therein.[7]

165. Does the fact that the person entitled to support payments stands to inherit a substantial portion of the estate have any bearing on their request for support?

As explained above, the purpose of support payments is to provide support to **truly needy family** members. If the family member stands to inherit significantly from the estate, there may no longer be a need to pay them support from the estate.[8]

166. Can one lose the right to support payments due to their behavior toward the decedent?

According to the law, a wife who lost her right to support payments from her husband during marriage while he was alive (for example, if she committed adultery) is not entitled to such payments from his estate after his death.[9]

167. When is a grandchild entitled to support from the estate?

A decedent's grandchild who was orphaned before the decedent's death may demand support payments from the estate. In addition, a grandchild who had been dependent on the decedent immediately before his death would be entitled to support payments if his parents are unable to provide for him.[10]

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7. The Inheritance Law, 5725-1965, s. 59(1).
8. The Inheritance Law, 5725-1965, s. 59(2).
9. The Inheritance Law, 5725-1965, s. 57(b).
10. The Inheritance Law, 5725-1965, s. 57(d).

168. Can one demand support from the estate beyond basic needs?

The support payments may, under some circumstances, also include payments for higher education or vocational training.[11]

169. What if the heirs don't make the support payments ordered by the court?

The court may determine a monthly amount to be paid, but in some circumstances, may order the support to be **paid in one lump sum**. In addition, the court may take steps to guarantee that the payments are made, in particular if the heirs show themselves to be unreliable, by such means of a deposit, a closed investment, an attachment on estate property, or in any other way the court sees fit.[12]

170. In what circumstances may either party request an increase or decrease in support payments?

When circumstances change, in such a way that could not have been foreseen by the courts, either party may request an adjustment of the support payments. For example, if a child has a learning disability that was not previously known and now requires extra assistance, he may petition the court for more support from the estate.

On the other hand, in one case, the court rejected the heirs' petition that the support be decreased for a minor. The heirs demanded that the minor should work in order to support himself and thus lessen the support payments that the estate had to pay,

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11. The Inheritance Law, 5725-1965, s. 58.
12. The Inheritance Law, 5725-1965, s. 61.

but that would have impacted his education, which the court found unacceptable.[13]

171. Are the parties free to petition the court at any time to either decrease or increase the support payments?

Constant requests for amendments to support payments either by eager heirs or improvident dependents are frowned upon. Usually requests may not be filed before a year has passed since the court's last decision on the matter.[14]

172. Can an heir be required to pay support payments which exceed his inheritance?

An heir can only be forced to pay up to the amount he actually inherited.

173. What happens if there aren't enough assets in the estate to supply the needs of all those who are entitled to support?

Sometimes, the court will look beyond the scope of the estate to gifts that the decedent gave in the last two years of his life. If there aren't sufficient funds in the estate, the court may determine that any gifts that the decedent gave in the last two years of his life, without him having received suitable consideration or payment, can be considered part of the estate and thus used for support payments.[15]

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13. The Inheritance Law, 5725-1965, s. 62(a).
14. The Inheritance Law, 5725-1965, s. 62
15. The Inheritance Law, 5725-1965, s. 63(a);
S.C. (C.A.) 398/80 Shachar vs. Shor, I.L.R. 36(2) 281, 290;
F.C. (Haifa) (E.F.) 1010/99 Feivish vs. Estate of Feivish, Family 5760, 241.

174. But what if there are so many family members who are entitled to support, some in more need than others, and the estate cannot support them all?

The court may determine the priority and order of payments preferring those who are in the greater need, according to the circumstances.[16]

175. Can a testator, in a specific provision of his will, deny a particular family member's right to support payments?

A provision of a will which limits or denies the right to support payments has no validity and the court will not take it into consideration.[17]

176. Can one waive one's own right to support while the decedent is still alive?

An agreement in which a person waives his right to support from a future estate of someone who is still alive is invalid.[18]

177. Can the right to support payments be inherited or bequeathed?

The right to support payments from an estate is *in personam*, i.e., **a personal right** and does not pass to another by inheritance. A

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16. The Inheritance Law, 5725-1965, s. 64.
17. The Inheritance Law, 5725-1965, s. 65(b).
18. The Inheritance Law, 5725-1965, s. 65(a);
    F.C. (Tel Aviv) (E.F.) 7792/00 Parker vs. Estate of the Late Refael Pinchas, F.R. A 757.

beneficiary of support from an estate who bequeaths this right in a will of his own should be aware that such a provision is invalid.[19]

178. Can the support payments be placed under lien or attachment by a creditor or transferred to another?

The support payments may not be transferred, nor may they be placed under lien or attachment.[20]

19. The Inheritance Law, 5725-1965, s. 65(c).
20. The Inheritance Law, 5725-1965, s. 65(c).

CHAPTER 8

Probate Orders and Inheritance Orders

179. What is the difference between a probate order and an inheritance Order? Who is authorized to determine who are a person's rightful heirs, and what form does this determination take?

The Registrar of Inheritances makes a formal declaration determining the rights of the heirs. If **there is a will**, the registrar issues a **probate order** (in Hebrew: *zav kiyum zavaa*) in accordance with the terms of the will.

If the decedent died **without a valid will** (i.e., *intestate*) then the registrar issues an **inheritance order** (in Hebrew: *zav yerusha*).[1]

180. Why is there a need for me to apply for a court order if I have a will leaving everything to me anyway?

The Inheritance Law states that a person's estate is transferred to his heirs **immediately upon his death.**[2] Therefore, in theory, an

1. The Inheritance Law, 5725-1965, s. 66(a).
2. The Inheritance Law, 5725-1965, s. 1

heir under a will might expect to receive his share immediately. After all, the will explicitly states what he inherits. However, the law states that no rights are transferred to any heir unless a probate order or inheritance order verifying the validity of the will and the true identity of the heirs is issued by a court or the registrar. The whole point lies in the word probate, which comes from the Latin verb *probare*, meaning "to inspect" or "validate."

181. What does the probate order say?

The meaning of a **probate order** is that the will that is attached to such an order is **a valid will**. If there are any provisions within that will which have been annulled or voided, they will be mentioned in the probate order.[3]

182. What is NOT included in a probate order or an inheritance order?

If questions arise regarding the scope of the estate, i.e., which assets belong to and are included in the estate, the answers do not appear in the probate or inheritance orders. If there is any doubt as to whether a certain asset is part of the estate or not, the interested party must file a separate petition to the court (rather than the Registrar of Inheritances) in order to resolve such questions.[4]

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3. The Inheritance Law, 5725-1965, s. 69(b).
4. S.C. (C.A.) 12/83 Amram vs. Amram, I.L.R. 38(3) 556, 559;
S.C. (C.A.) 272/86 Hakari vs. Hakari, I.L.R. 42(2) 411, 414;
S.C. (C.A.) 566/71 Feig vs. Shpizkopf, I.L.R. 27(1) 355.
Concerning registration of inheritance orders, Y. Zilviger, "Registration of inheritance orders — only by consent of all heirs", Hapraklit, 42, 398.

183. Who can obtain information regarding cases that have been or are being processed by the Registrar of Inheritances?

The Registrar of Inheritances allows the general public to view information regarding the following matters:[5]

1. Requests filed with the Registrar of Inheritances and their status;
2. Orders issued by the Registrar of Inheritances;
3. The existence of requests for orders filed with the Registrar of Inheritances, with the Rabbinical Courts (Batei Din), and with the family courts; and
4. The Attorney General's responses to requests made to the registrar regarding estates.

184. What if the terms of a will relate to some assets of the deceased but make no mention at all of other assets or property that they accumulated during their lifetime?

A **probate order** is issued regarding the assets detailed in the will. Regarding the remaining assets not mentioned in the will, these are distributed **according to the rules of intestacy**, and to that end, the Registrar of Inheritances issues an inheritance order relating to those assets alone.[6]

WHAT DOES THE LAW SAY?

§66. (b) If the deceased bequeathed part of his assets by will, probate is granted for that part and an inheritance order is made for the rest.

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5. The Registrar of Inheritances' website: http://index.justice.gov.il/Units/ApotroposKlali/Departments/Registrar/Pages/default.aspx
6. The Inheritance Law, 5725-1965, s. 66(b).

185. How do I obtain a probate or inheritance order?

A request for either (or in some cases, both, see above question 184) should be filed with the Registrar of Inheritances. Notice of the request so filed is publicized in newspapers and in the Official Publications, and a period of time is set to enable any person to file an objection to the requested order. Anyone who is interested in filing an objection must do so in the time allotted by the Registrar of Inheritances (typically fourteen days)[7]

186. If an objection to the validity of the will is filed, is it up to the Registrar of Inheritances to make a determination as to the soundness of such objection?

A registrar is **not a judge** and if a dispute arises, the case is transferred to a judge in the Family Court. The Registrar of Inheritances does not have the authority to determine the validity of a will once an objection is filed.[8]

187. Do you need to submit the actual original will complete with original witness signatures of the testator and the witnesses? And what happens if you have only a copy?

A person's uncle died a couple of months back. Over the years, and indeed only a month before he died, he told his nephew that his will is in the top left-hand drawer of his desk. He actually gave the nephew a photocopy of the will.

After his death, the nephew came to his apartment, and astonishingly, his desk was empty. Upon quizzing the cleaning lady, she admitted that she threw the contents into the garbage. "A lot of

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7. The Inheritance Law, 5725-1965, s. 67.
8. The Inheritance Law, 5725-1965, s. 67A (a)(1)

old useless yellowing pages. No point keeping them, I just chucked them out…" She couldn't understand why the nephew was speechless.

However, before he died, the uncle gave the neighbor a photocopy for safe-keeping. Is this copy valid?

According to law, **the original will must be submitted**. However, if one can **prove** that the original will was destroyed (for example, in a flood or a fire or by an none-too-smart cleaning lady who was later hauled up to explain to the judge the circumstances of the disappearance of the original document), and if it can be proven that the testator clearly had intended that will to be valid (i.e., he did not intentionally destroy the original himself), the court may approve submission of a photocopy of the will. The court must be certain that the destruction of the will was not intentionally executed by the testator, since destroying a will is one of the ways in which it may be revoked.

188. Can a creditor of one of the heirs who owes him a debt initiate a probate or inheritance order with a view to thus getting paid by that recalcitrant heir from his portion of the inheritance?

The answer is not stated explicitly in the law and is unclear. The Supreme Court has ruled that the list of people entitled to initiate proceedings should include **any person who has an interest in the estate, even an indirect one**.[9] The courts have ruled in some cases in which a creditor believes that an heir is deliberately refraining from requesting a probate order to prevent creditors from

9. S.C. (C.A.) 110/89 Official Receiver as receiver for Bank of North America vs. Israel Gilboa, I.L.R. 46(3) 638.

collecting their debt, such a creditor may in some circumstance file a request to probate.

189. Can a creditor who has been allowed to file a request for probate then petition the court to appoint an executer who will presumably act to liquidate the assets?

Any party or person who has been recognized as an interested party may request that an executor be appointed.[10]

190. What is the status of a creditor of the estate as opposed to a creditor of an heir? May a creditor of the estate also initiate distribution of the estate?

A creditor of the estate may also be considered an interested party and request that a probate order or inheritance order be issued.

191. What if someone claims that a certain asset is not part of the estate? For example, if an asset is disputed by a third party who claims that it never belonged to the testator in the first place.

The Supreme Court has ruled that if a person initiates a claim **after** the decedent's death that certain assets held by the decedent did not belong to the decedent and are not part of the estate, then the burden of proof is on the shoulders of the person claiming as such. The courts will require strong evidence, since the decedent himself is unable to voice his opinion on the matter. Furthermore, legal action initiated after the deceased's death raise hard questions as to the good faith of the plaintiff in the absence of the deceased's testimony seemingly has the field uncontested. [11]

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10. The Inheritance Law, 5725-1965, s. 78(a).
11. S.C. (C.A.) 777/80 Shreiber vs. Stern, I.L.R. 38(2) 143, 146.

192. Can a probate or inheritance order be amended after it has already been issued?

Emendation and even revocation of probate and inheritance orders **are always possible**. However, emendation is no simple matter. The Registrar of Inheritances or the courts are authorized to amend or revoke an order, based on facts that were unavailable at the time the order was issued.[12] For example, if a later will was found, the order is amended accordingly.[13]

193. Can the Registrar of Inheritances refuse to amend the order even if new facts are brought before him?

The Registrar of Inheritances may choose to rule as non-admissible or reject the new facts brought before him if the petitioner could have presented these before the original order was given or within a reasonable time afterwards.[14] However, having rejected these facts, the registrar must then refer the matter to the court.

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12. S.C. (C.A.) 516/80 Lashinsky vs. Shapiro — Trustee for the Assets of the debtor Manfred Lashinsky, I.L.R. 36(4) 337, the comprehensive review of Justice Bach regarding judicial policy in determining when the court would be willing to accept new facts or claims in support of amending an inheritance order.
13. The Inheritance Law, 5725-1965, ss. 71, 72(a);
    Regarding the amendment, see
    S.C. (C.A.) 4440/91 Turner vs. Turner, I.L.R. 47(2), 436, 438;
    S.C. (C.A.) 562/78 Abassi vs. Al'abassi, I.L.R. 35(1), 290, 291;
    Regarding the length of the delay, see
    S.C. (C.A.) 762/85 Adler vs. Adler, Takdin, Supreme Court 88(2) 708;
    G. Tedeschi, "The Perceived Heir", Iyunei Mishpat 13(1), 9, 17.
14. The Inheritance Law, 5725-1965, s. 72(a);
    S.C. (C.A.) 6343/99 Yishayahu vs. Saad, Nevo;
    D.C. (Haifa) (C.R.) 28449/97 Haberman vs. Attorney General, Nevo, 1998; S.C. (C.A.) 601/88 Rodda vs. Schreiber, I.L.R. 47(2) 441, 459, 1993;
    F.C. (Jerusalem) (F.F.) 41649-11-17 A. G. vs. S.G.G. — Decided March 14, 2018.

194. A third party is acting in good faith and purchases an asset from an heir who has been given this asset through an inheritance order or probate. Later, new facts emerge, and this order is amended or revoked. Will the third-party purchaser have to return the asset to the estate?

The law protects innocent third parties who act in good faith and bought assets from the estate or from heirs in accordance with judicial orders.[15] As an example, a house is sold by an heir and is transferred to the purchaser's name. Later, it transpires that the seller was not the rightful heir at all, because a later will surfaced which devised the property to another. In such a case, the purchaser does not have to return the asset to the rightful heir, nor to compensate him.[16]

195. Can an order be amended a second time after new facts come to light?

There is no limit to the number of times an order can be amended if there are good and valid reasons for doing so; for example, if yet another will turns up. The fact that an order has already been amended and reissued has no bearing on the court's desire to search for a just outcome.[17]

196. Can the Rabbinical Court (Beit Din) issue probate or inheritance orders?

The Rabbinical Court (Beit Din) has the authority to issue inheritance-related orders as well as determine support payments;

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15. F.C. (Tel Aviv) (E.F.) 109521/03 D.A. vs. S.S., Nevo.
16. The Inheritance Law, 5725-1965, s. 73. See also S.C. (C.A.) 9583/00 Agbaria vs. Agbaria, Nevo. See also E.A.R. (Beersheba) 43027/ G.M. vs. Raymond Moses, see also: D.C. (Nazareth) (C.F.) 11616-04-12 the late Chaliliya et al vs. the late Chaliliya et al — Decided Jun 05, 2018
17. The Inheritance Law, 5725-1965, s. 72(a).

however, the prerequisite to this authority is that ***all* the parties involved agree to grant the Rabbinical Beit Din jurisdiction to deal with the issue**. Such agreement must be made in writing.[18]

197. Does turning to the Rabbinical Court (Beit Din) provide any sort of advantage or disadvantage?

A religious tribunal, when hearing an inheritance case, is authorized to determine the case according to its religious law.[19] Therefore, women could be at a disadvantage before a Rabbinical Court (Beit Din) (theoretically, daughters do not inherit under *halakhah*), so such an agreement must be considered very carefully.

198. Which civil court is authorized to hear disputes regarding inheritance?

A claim regarding an inheritance is required to be filed at the Family Court in the district of the decedent's last place of residence.[20] Unlike a religious tribunal, the Family Court has inherent jurisdiction and does not require any agreement by the parties to exercise jurisdiction.

199. What if there are third parties who are not family members involved in a dispute? Which court is authorized to hear then?

All claims filed by an estate, against an estate, or regarding an estate,

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18. The Inheritance Law, 5725-1965, s. 155(a);
S.C. (C.A.) 10835/04 Samoni vs. Slila, Nevo.
19. The Inheritance Law, 5725-1965, s. 155(c).
20. The Inheritance Regulations, 5758-1998, Reg. 10(a).

regardless of who the parties are, must filed with the Family Court, which is authorized to hear all inheritance-related cases, even if the parties are not family members.[21]

21. The Family Court Law, 5755-1995, s. 1(6)(5);
D.C. (Haifa) (C.F.) 665/04 Shoval vs. Shahaf, Nevo.

CHAPTER 9

Estate Administration, Implementation, and Distribution

200. How can the estate assets be preserved and maintained before an executor is appointed?

If no executor is appointed, the law determines that **any one of the heirs** or a party with an interest may request that the **court give orders enabling necessary action to be taken to preserve** and maintain the estate or assets and rights of the estate. In addition, the court may take such action on its own initiative.[1] For example, a person may bequeath certain properties in his will, and the court may, on its own initiative, appoint an individual to collect the rents and ensure that the properties are properly maintained.

1. The Inheritance Law, 5725-1965, s. 77;
F.C. (Beer Sheva) (E.F.) 38691-08-17 A. vs. M. (the deceased) et al, Nevo.

201. Who appoints the executor? May the heirs object to a specific person's appointment?

Executors are appointed by the court.

Any interested party may request that the court appoint an executor.

Anyone who wishes to object to a specific person being appointed executor may lodge his objection in writing, detailing the reasons for his opposition to such appointment and attaching any supporting documents.[2]

202. Is an executor appointed if some of the heirs object?

If the court is convinced that a particular individual is best suited for the executorship (for example, to preserve estate assets), it rules on the appointment with or without the consent of the heirs.[3]

When there is disagreement among the heirs regarding who should be appointed, the court may appoint two executors or even more. This is commonly done when there are several "camps" in a family, each pulling the estate or its management in different directions.

The court then appoints one executor for each camp. However, the **executors are not representatives of specific heirs**. They actually represent the court. They are "**officers of the court**" in legal terms. They must act together, and if there is a difference of opinion, they must turn to the court, request instructions, and act accordingly.[4]

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2. The Inheritance Regulations, 5758-1998, Reg. 19, 33.
3. The Inheritance Law, 5725-1965, s. 78(a).
4. The Inheritance Law, 5725-1965, s. 93, 93(1).

203. If all the heirs are in agreement regarding who should be appointed as executor, must the court approve their choice?

The courts tend to take the heirs' wishes into consideration. However, the court is **not obligated** to accept their wishes or suggestions on this matter. The court will appoint someone who is capable of bringing about the just and accurate distribution of the estate under law.[5]

204. A testator empresses a wish that the executor of his estate should be a specific person who is named in his will. Does this wish of the deceased bind the court?

The court generally aims to fulfill the testator's wishes in this regard, unless it sees specific reasons not to appoint that certain person.[6]

205. What happens if the intended executor refuses to accept the appointment?

The court only appoints a person as executor if he has expressly given his consent to such an appointment.[7]

206. If two executors are appointed, can one executor act on his own?

Generally, the executors must act together as one. However, in demonstrably urgent cases that cannot wait, either executor may act on his own.

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5. S.C. (C.A.) 206/70 Yeshivat Porat Yosef Israel vs. Humi, I.L.R. 25(1) 57, 59.
6. The Inheritance Law, 5725-1965, s. 81.
7. The Inheritance Law, 5725-1965, s. 80.

207. Must there always be an executor?

The courts are slow to appoint executors as these can, and often do, charge the estate a fee. So, when the court determines there is no real need for an executor; for example, when there are uncomplicated assets, when all the heirs get along, and when the heirs themselves may manage and distribute the estate, the court does not appoint an executor, even if the will instructs differently.

If there is a point of disagreement among the heirs, they may turn to the court for a ruling.[8] It is important to note that an appointment of an executor by the testator in a will does not take effect and the potential executor has no powers until such time that the court or the Registrar of Inheritances has formally so declared. It is certainly not sufficient for a person to be named as an executor in a will for him to start dealing with and perhaps disposing of the estate's assets.

208. What is the role of the executor?

The executor acts as a fiduciary, which this means that their role is primarily to protect the estate's funds. They are appointed by the court, not by whoever requested the appointment. As stated above, the executor's responsibility is solely toward the court and they are thus considered **an officer of the court**. The executor most certainly cannot represent any specific heir or "camp" in the family.[9]

209. What does an executor's role entail?

The executor must consolidate the estate assets, manage them, and work toward payment of all the estate's debts. Once all liabilities

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8. The Inheritance Law, 5725-1965, s. 122(a).
9. S.C. (C.A.) 206/70 Yeshivat Porat Yosef Israel vs. Humi, I.L.R. 25(1) 57, 59; S.C. (C.A.) 2390/92 Greenshpon vs. Shechter, I.L.R. 49(1) 843, 853; S.C. (C.A.) 153/77 Eluashwilly vs. Samuel, I.L.R. 32(1), 627, Nevo.

are paid off, the executor distributes the remainder of the estate in accordance with the probate or inheritance order.[10]

210. What authority does the executor have?

The executor has extensive authority, and no person may act with regard to the estate against their instructions. Because the estate no longer has a living owner, the court expects the executor to ensure the assets are properly and responsibly dealt with. The executor fills the shoes of the decedent.[11]

211. Is the executor's authority limited?

There are certain actions for which an executor must first **receive court approval**, including the sale of real estate or a business or indeed any action which is contingent upon registration in any registry which is maintained by law.[12] An executor who does not do so could face civil action, and in rarer cases, criminal charges.[13]

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10. The Inheritance Law, 5725-1965, s. 82;
F.C. (Nazarath) (F.F.) 3619-01-12 Z.S. vs. Adv. Yosef Albarak — Decided August 09, 2018.
11. F.C. (Tel Aviv) (E.F.) 5650/99 Estate of Bet-Sheva De-Rothschild vs. Bat-Dor Foundation, Tadkin, F.R. 99 (2) 69;
S.C. (C.A.P.) 5059/10 Alum Gold Ltd vs. Dor (10.8.10);
S.C. (C.A.P) 6590/10 Estate of the late Fu'ad Ashtaya et al vs. State of Israel;
Shalom (C.F.) (Tel-Aviv) 29956-05-18 Adv. Asaf Laor & Varda Chaklai, Temporary Executors for the Estate of the late Benyamin (*Fu'ad*) Ben-Eliezer vs. State of Israel — Decided October 09, 2018;
Shalom (Haifa) (C.F.) 35900-05-17 John Doe vs. Ophir David — Decided June 21, 2018.
12. The Inheritance Law, 5725-1965, s. 197.
13. S.C. (P.A.) 308/85 Pinchas Meirov vs. State of Israel, I.L.R. 41(3) 421, 443-444.

212. Is the court authorized to instruct the executor regarding actions which do not require court pre-approval?

The court may instruct the executor on **any** matter regarding the estate, including actions for which, by law, prior court approval is not necessarily required.[14]

213. What if the executor himself wishes to purchase assets from the estate?

This is permitted, but such an action must be pre-approved by the court. In such a case, the court will take a careful look at the reasonableness and fairness of the transaction.[15]

214. When is the executor ready to distribute the estate?

The estate is only distributed after all debts have been paid. Therefore, the estate cannot be distributed before the notice period has passed, notifying the public at large of the death of the testator by newspaper advertising. This allows creditors, if there are any, to file their claims. The court may allow the distribution of certain assets more speedily when there is no doubt that there are sufficient assets remaining in the estate to pay all debts.[16]

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14. The Inheritance Law, 5725-1965, s. 97(5).
15. Ministry of Justice — supervision of executors:
https://www.justice.gov.il/Units/ApotroposKlali/Departments/ApotroposKlali/Menahaley_izavon/Pages/SupervisingEstateManagers.aspx
16. The Inheritance Law, 5725-1965, s. 107;
Shalom (Nazareth) (C.F.) 31894-07-16 Elit (Mizrahi) Bakery Ltd vs. Ifaf Abu Shkara — Decided August 08, 2018;
Shalom (Tel Aviv) (C.F.S.P) 11854-04-12 Tel-Aviv-Jaffa Municipality vs. Moshe Moshiashvili, Nevo, 2015.

215. In what cases might the distribution of the estate, or of some of its assets, be postponed?

A will may contain a conditional bequest, such as, "my daughter will receive $100,000 when she gets married." In such a case, the necessary amount is held by the executor until the condition is fulfilled.[17] If a very long period of time passes by, and the daughter still hasn't married, the executor may turn to the court for further instructions.

216. Who benefits from the income of an asset prior to the distribution of the estate, and who bears the cost of maintaining the asset before distribution is effected?

All income (such as rent payments, interest, etc.) as well as money received from sale of an asset, during **the interim period** from the death of the decedent until the distribution of the estate, belong to the estate. The same is true for making good depreciation or damage as well as bills relating to estate assets. These are all paid from the estate funds.[18] This provision does not apply to a *portion*, i.e., a specific asset which is apportioned to a named heir or heirs (see above question 131 *seq.*).

217. Can the mode of distribution be determined by the heirs themselves, or must it be determined by the executor or the court?

Sometimes, a will won't specify which heir receives which part of the estate. For example, a mother leaves her entire estate to her four children equally, with no further specification. The estate includes apartments, a business, and bank accounts. The children may decide

17. The Inheritance Law, 5725-1965, s. 107(d).
18. The Inheritance Law, 5725-1965, s. 109(b).

that rather than dividing each asset into four shares, the assets are divided in such a way that each heir receives certain specific assets.

The preferred arrangement would be for the heirs to reach an agreement regarding distribution.[19] The court gets involved only if there is no agreement. If the heirs cannot reach an agreement, the executor applies for instructions from the court.

218. Can the heirs make any agreement dividing the assets as they see fit?

The agreement must be between the heirs only. Such an agreement cannot include terms distributing estate assets to other people making these outsiders heirs to the estate. However, among the heirs themselves, they are free to divide the assets as they see fit.

219. What if there is no agreement among the heirs?

At first, the executor should offer the heirs a suggested distribution plan.[20] If there is no agreement on the plan, the executor brings it before the court and seeks approval and a court order.[21]

220. How does the court determine the distribution of the estate when there is no agreement among the heirs, but there are sufficiently specific instructions regarding the mode of distribution in the will?

If there were specific instructions in the will giving directions on how to distribute each asset, the instructions are followed as best

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19. The Inheritance Law, 5725-1965, s. 110(a);
F.C. (F.F.) 65963-12-14 N.A.R. vs. Estate of the late M.A.A. et al — Decided October 01, 2018.
20. The Inheritance Law, 5725-1965, s. 110(b).
21. The Inheritance Law, 5725-1965, s. 111(a), (b).

as possible, unless the court finds special reason to deviate from them.[22]

221. Are the estate assets distributed in kind, or are they sold and the proceeds distributed?

The court aims, to the greatest extent possible, to distribute in kind and avoid selling assets. If, for example, the relevant asset is money in a bank account, the money is divided among the heirs. Sometimes, however, certain assets cannot be divided, such as real property (in certain circumstances) or a business. In such cases, the court may order that the asset be sold and the proceeds be distributed among the heirs.

222. Can an heir claim entitlement or preference for one asset or another?

The court takes into account any specific benefit that an heir may gain from a certain asset.[23] For example, an heir who has been living in an apartment which is part of the estate may receive preference over the other heirs regarding that apartment. This does not derogate from the fact that the monetary value of this apartment is deducted from that heir's share in the estate.

223. Does the sentimental value of a particular asset play a role in the court's determination of how the assets will be distributed?

Indeed, the court may take sentimental value of a specific asset into consideration. For example, a son wanted a Hanukkah menorah to

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22. The Inheritance Law, 5725-1965, s. 111(c).
23. The Inheritance Law, 5725-1965, s. 112;
S.C. (C.A.) 314/79 Shlein vs. Adv. Barak, Executor for the Estate of the late Betty Sheingott, I.L.R. 35(3) 225, 235, Nevo.

which he was attached since childhood. Naturally, the menorah's monetary value was taken into consideration, and the other heirs were compensated accordingly.[24]

WHAT DOES THE LAW SAY?

§112. The assets of the estate are, as far as possible, distributed among the heirs in kind, taking into consideration the likely usefulness of a particular asset for a certain heir and the sentimental value of a particular asset for a certain heir.

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224. What is the court's judicial policy when an asset cannot be divided or when it would lose most of its value if divided, such as a manufacturing business or a hotel?

In such a case, the executor initially offers the particular property to the heirs, and an auction among the heirs takes place. The asset is then sold to the highest bidder.[25] If no heir wants to buy it, the property is sold to a third party, and the proceeds are distributed among the heirs.

225. What happens if additional assets are discovered after the estate has been distributed?

The newly discovered assets are distributed among the heirs. However, if knowledge of these assets from the start would have brought

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24. The Inheritance Law, 5725-1965, s. 112.
25. The Inheritance Law, 5725-1965, s. 113;
F.C. (Tel-Aviv) (F.F.) 44348-10-16 M. et al vs. M. — Decided January 07, 2018;
D.C. (Haifa) (F.A.) 54140-11-16 M. vs. M. — Decided January 25, 2018

about a different distribution of the rest of the estate, then the court may order a redistribution of the rest of the estate as well.[26]

226. What if the heirs agree to a certain distribution, which is based on a mistaken assessment of an asset's value?

If after the estate has been distributed, it becomes evident that the value of an asset was wrongly assessed by more than one sixth of its worth, then whichever heirs benefited by the mistaken assessment must transfer the excess monetary value to the other heirs.[27]

227. A *portion* is defined as a specific asset identified in the will that is bequeathed to a specific, named heir. Who is responsible for the expenses and debts relating to a specific *portion before the distribution of the estate* to the heirs? And before such distribution, who benefits from the fruits, income, and appreciation of that nominated portion?

All gains, appreciation, costs, and expenses incurred *before* the testator's death are part of the estate. However, from the moment of death and onwards, the heir who is named to receive a specific portion of the estate benefits from all fruit of the asset and is at the same time, responsible for all costs relating to it.[28] The asset is managed by the executor until its distribution to the heir, at which point the heir receives the assets as well as all accumulated net fruits and gains from it.

26. The Inheritance Law, 5725-1965, s. 119.
27. The Inheritance Law, 5725-1965, s. 120(a).
28. The Inheritance Law, 5725-1965, s. 51(d);
F.C. (Nazareth) (F.F.) 28132-08-10 C.S. vs. M.S. — Decided June 07, 2018.

228. Can an heir make transactions in his portion of the estate before it's been distributed?

An heir may transact or place an attachment on his rights in an estate before the assets are actually distributed by the executor.[29]

229. Can assets which one expects to inherit be sold while the future bequeathor is still alive? For example, can Debra, an only child who expects to inherit her mother's entire estate, sign a contract with Jack, committing to transfer to him all rights to her mother's apartment after her mother's death?

The law stipulates that "an agreement regarding a person's inheritance and any waiver of inheritance **while that person is still alive** — is null and void."[30] It would seem, therefore, that such a contract would be void.

However, the courts have differentiated between "an agreement regarding inheritance" and "an agreement regarding estate assets." Debra may not sign an agreement committing that "I agree that Jack will take my place as heir of my mother's estate." However, she may sign a contract which states, "after my mother's death, I will

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29. The Inheritance Law, 5725-1965, s. 7(a);
Shalom (Haifa) (C.F.) 21598-04-15 Yariv Peleg Ltd vs. Mira Rocca et al — Decided July 08, 2018;
S.C. (C.A.) 8068/01 Ayalon Insurance Company Ltd vs. Executor for the Estate of the late Chaya Opelgar, I.L.R. 59(2) 349.
30. The Inheritance Law, 5725-1965, s. 8(a);
S.C. (C.A.) 682/74 Yekutiel vs. Bergman, I.L.R. 29(2) 757;
S.C. (F.A.R.) 7468/11 John Doe vs. Jane Doe (Nevo, 3.7.12);
S.C. (F.A.R.) 8974/12 Jane Doe vs. John Doe (Nevo) — Decided January 26, 2014;
D.C. (Haifa) (F.A.) 31419-03-16 Doe vs. Roe — Decided March 21, 2018;
D.C. (Tel Aviv) (F.A.) 33617-05-16 Let the Animals Live Association vs. Adi K. — Decided June 10, 2018.

transfer any rights to her apartment **that I may inherit** to Jack."[31] Recent court decisions have reaffirmed this differentiation.[32]

230. What would happen if Debra's expectations are dashed, and she does not in fact inherit the apartment, which she has already committed to sell to Jack?

It all depends on the agreement with Jack. If the sale of the apartment was clearly **contingent** upon the heir actually inheriting the asset, then in such a case the heir may not be obligated toward the third party. If however, there was an outright unconditional sale in the agreement, such a contract would still be valid, but when Debra is unable to deliver, she would then be in breach of the agreement and would have to compensate Jack.

231. Does the sale of an apartment, for the purpose of distributing the proceeds among the heirs, incur tax?

In the past, when the only way to distribute the estate was by selling the apartment, the sale was not taxed.[33] However, today, following a change in the law, such a sale would be taxed, and this should be taken into consideration when one is planning distribution of his or her estate.[34] It should be noted that a reform of property taxes is taking place in Israel, and one should monitor any developments regarding taxation on inherited property closely.

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31. S.C. (C.A.) 6567/99 Sternstein vs. Fisher (not published), Nevo.
32. F.C. (Tel Aviv) (F.F.) 22592-06-15 G.M. vs. T.A. (Nevo);
    S.C. (F.A.R.) 8974/12 Jane Doe vs. John Doe (Nevo) — Decided January 26, 2014.
33. S.C. (C.A.) 499/85 Estate of the late Ahuva Adela Shpier Vs. Director of Property Appreciation Tax, Haifa, I.L.R. 44(3), 256.
34. Land Taxation Law (Appreciation and Sale), 5723-1963, s. 5(c).

232. Can an executor be sued for damages by the heirs?

The law states that an executor is liable for damages caused by his failure to fulfill his duties as executor (for example, losses caused by this failure to take adequate measures to protect estate assets).

However, the court may absolve the executor of any liability if he acted in good faith.[35]

233. How would an order for damages imposed on an executor be collected?

An executor may be required to provide a surety when they are appointed. However, oftentimes, a will may state that no guarantee or surety is required of the appointed executor.[36] In such a case, if damages were imposed on the executor, one would have to try and collect payment via the Execution of Judgments Authority (in Hebrew: *Hotza'a Lapoal*).

234. Is the executor entitled to payment for his position?

Executors are entitled to compensation for their work on behalf of the estate. This is true both for professionals who serve as executors (such as a lawyer or accountant) and for any person who is appointed by the court to this post.[37]

235. How is an executor's compensation determined?

The compensation is determined by the court and is no more than 3% of the value of the entire estate, but it may be less. The court will take the entire value of the estate; the types of assets; and the

35. The Inheritance Law, 5725-1965, s. 88.
36. The Inheritance Law, 5725-1965, s. 89(b).
37. The Inheritance Regulations, 5758-1998, Reg. 45(a)(a).

nature of the actions carried out by the executor and their breadth and complexity into consideration. The court will then determine the executor's compensation based upon all these factors.[38]

When an exceptional amount of effort was devoted, the court may award extra payment, but the sum total of the compensation is no more than 4% of the value of the estate.[39] VAT (value added tax) is added to the compensation. It is important to note that even if the testator, in his will, wished to award the executor further compensation beyond the 4%, the court does not approve payment beyond the ceiling determined in the regulations.[40]

236. How does the court supervise the executor?

The court may, at any time, of its own initiative or following a request by an interested party, instruct the executor in any matter relating to his office.[41] In addition, the executor must present the Administrator General (in Hebrew: *Ha'Apotropus Ha'Klali*) with a detailed report of all the estate assets and liabilities. This estate inventory is called a *parta* in Hebrew. In addition, the executor must balance the estate books and file a report, at least once annually, on the affairs of the estate. Sometimes, the Administrator General requires a report more often.

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38. The Inheritance Regulations, 5758-1998, Reg. 45(b)(a);
S.C. (C.A.) 153/77 Eluashwilly vs. Samuel, I.L.R. 32(1), 627, Nevo;
F.C. (Jerusalem) (E.F.) 13331/07 Simone Florence vs. Shaul Ezra, Nevo;
F.C. (Beer Sheba) (E.C.) 760-02 Executors of the Estate of the late C.M. vs. Administrator General South District — Decided February 06, 2018
39. The Inheritance Regulations, 5758-1998, Reg. 45(b)(b).
40. D.C. (Tel Aviv) (F.A.) 1043/04 Estate of the late H.N. vs Administrator General, Nevo.
41. The Inheritance Law, 5725-1965, s. 83;
Shalom (Tel-Aviv) (C.F.) 33781-07-15 Adv. Menashe Yehuda Moshe vs. Adv. Yosef Menachem — Decided August 30, 2018.

In any case, when the executor completes their duties, they must file a final report and fulfill all the Administrator General's requirements. Needless to say, the executor must open a bank account specifically in the name of the estate, and deposit into it all monies received by the estate. They are strictly forbidden from holding any estate money in his personal account.

The executor must also keep all receipts and documentation for every expense and income.[42] Within 30 days after the distribution of the estate, the executor must present the court with a final distribution report which will state what each heir received and the value of each asset at the time of distribution.[43]

237. Can an executor be removed from duty, and are they permitted to resign before their duties have been completed?

An executor may resign, but the resignation only takes effect after it has been approved by the court. Their duty of care toward the estate and the heirs does not cease upon a unilateral resignation. The executor must keep fulfilling their duties until such court approval is obtained by them. Otherwise, they may be liable for any losses that accrue as a result of any dereliction of his duties.[44]

In addition, if an executor is not fulfilling their duties satisfactorily, the court may remove them and appoint another executor in their place. The removed executor is still responsible for any damage caused by them until the point in time that they were relieved from their position.[45]

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42. The Inheritance Regulations, 5758-1998, Reg. 39(c), (d).
43. The Inheritance Law, 5725-1965, s. 118(a), (b).
44. The Inheritance Law, 5725-1965, s. 92(a)(c).
45. The Inheritance Law, 5725-1965, s. 92(b).

CHAPTER 10

Estate Debt and Creditors

238. How must the executor act with regard to debts owed to the decedent?

The executor must follow up on and pursue any claim which would have been filed by the decedent. The executor acts in place of the decedent and may demand the fulfillment of contracts, the repayment of loans, and so on, in the deceased's stead.[1]

239. How is an estate distributed if it has debts?

The estate cannot be distributed to the heirs before all debts have been paid and support payments have been made.[2]

240. How does the executor find out if there are any creditors of the estate?

The executor publishes notices in national newspapers, notifying

1. The Inheritance Law, 5725-1965, s. 98.
2. The Inheritance law, 5725-1965, s. 107(a) as well as S.C. (C.A.) 513/82 Reizman vs. Weshchin, I.L.R. 37(2), 813 Nevo;
D.C. (Tel- Aviv) (b.f.) 27225-06-15 Mizrahi vs. Administrator General Tel-Aviv — Decided January 24, 2018.
Reizman vs. Weshchin, I.L.R. 37(2), 813, Nevo.

possible creditors that they may file their claims against the estate notifying the executor. The timeframe allotted to creditors to place their claims must be at least three months from publication of the notice.[3]

241. What is the status of a *Ketubah* with regard to the estate? Is it a debt owed by the estate?

A *Ketubah* is a written commitment signed by a husband and given to his wife at their wedding. It is an integral part of a traditional Jewish marriage and outlines the rights and responsibilities of the husband to the wife. It includes a certain amount of money which is required to be paid to the wife upon termination of the marriage (either by the divorce or death of the husband).

According to law, the widow may indeed collect her *Ketubah* from the estate. However, to prevent her from benefiting twice, any amount which she receives as her *Ketubah* is deducted from her portion of the inheritance, if any.[4] In the past, wives did not inherit their husbands, and the *Ketubah* was meant to provide them with support for approximately one year. Today, widows commonly inherit a significant portion of their husbands' estate; therefore, if they were to collect their *Ketubah*, it makes sense for this amount to be deducted from their portion, unless the deceased's will explicitly states otherwise. In practice, today a widow would likely only collect her *Ketubah* if her husband excludes her from the inheritance.[5]

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3. The Inheritance Law, 5725-1965, s. 99(a).
4. F.C. (Tel Aviv) (F.F.) 22592-06-15 G.M. vs. T.A., Nevo.
5. The Inheritance Law, 5725-1965, s. 11(c);
   S.C. (C.A.) 293/72 Philosoph vs. "Taoz" Provident Fund for Employees Ltd., I.L.R. 27(2) 535.
   S.C (F.A.R.) 9692/02 Jane Doe vs. John Doe, Nevo, p. 10, Justice Edna Arbel's opinion, a review of the *Ketubah* in inheritance law. There is an opinion that a

242. What is the value of a *Ketubah*?

Often, the main part of the *Ketubah* is nominated in an extinct currency — the *zuz*, an ancient currency. The term *zuz* refers both to a Jewish coinage which was struck during the Bar Kochba revolt against the Roman Empire in 1332 CE and to non-Jewish silver coins which were used both before and after that period. For many years, no-one quite knew what the real value of the *Ketubah*, defined at 200 *zuz,* would actually be. While there is still uncertainty, Israeli courts have defined that the 200 *zuz* commonly mentioned in *ketubot* is equal to the maintenance and sustenance of the wife for a period of one year.[6] If, however, the sum in the *Ketubah* is stated in NIS or other modern currency, this amount is then linked to the relevant index of that currency until the time of payment.

243. What if the wife presses her demands for her *Ketubah* to be paid by the estate, but it transpires that after the payments of the deceased's debts, there is no money left to pay her?

This should not happen, because the wife does not have an inferior position vis-à-vis the other creditors. She takes her place as an ordinary creditor with an equal claim against the estate. Often, in these situations, creditors get a small proportion of what they are owed from the limited funds of an estate. The wife gets a pro rata share of that payout.[7]

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widow may only collect her *Ketubah* up to a maximum of half the value of the estate; however, there is no clear ruling on this matter yet.

6. F.C. (Tel Aviv) (E.F.) 12362/01 Dr. Osnat Wexler vs. The Estate of the late William Wexler, Nevo.
7. The Inheritance Law, 5725-1965, s. 104(a)(3).

244. What is the status of a *Ketubah* that carries an exorbitant sum?

The *Ketubah* is an estate debt, equal in priority to other debts. However, the *Ketubah's* priority is only equal to other debt, provided that the amount stated in the *Ketubah* is for a "reasonable sum."[8] Otherwise, the widow may be entitled to an inflated portion of the estate in comparison to other creditors.

245. What is considered to be a reasonable sum in a *Ketubah*?

In one case, a man left his wife a *Ketubah*, granting her $10 million. The court determined that such a *Ketubah* would not be honored and would be limited to a reasonable sum as determined by the court. Clearly, enabling *Ketubot* to be collected with exorbitant sums attached could allow a debtor to prevent creditors from collecting debt from his estate by simply passing all his assets to his wife in a *Ketubah*.[9]

246. A person is named by a will as an heir or is entitled by law to inherit funds from an estate. Eagle-eyed creditors, such as banks, keep a lookout for the mandatory notices in the newspapers regarding probate and inheritance and often rush to place liens on estate assets that would, once the estate is distributed, benefit their debtor.

In some cases, a debtor-heir beats them to it and renounces any right to inherit from the estate, thus putting the funds

8. The Inheritance Law, 5725-1965, s. 104(a)(3);
H.C.J 2621/00 Levi vs. Regional Beit Din in Jerusalem, I.L.R. 54(3) 809.
9. S.C. (C.A.) 293/72 Yitzchak Philosoph vs. "Taoz" Provident Fund for Employees Ltd. I.L.R. 27(2) 535, specifically Justice Kister.

beyond the reach of the creditors. Do the creditors have any recourse?

If the lien is placed before the heir renounces his rights, the attachment is valid and binding. If an heir is sufficiently quick to renounce his rights before an attachment is placed, creditors may have no recourse. An heir who renounces his rights is considered as if he was never an heir at all and the creditors cannot claim an asset which never belonged to the heir in the first place.

However, the Supreme Court has ruled that when debtors utilize their right to renounce inheritance **in bad faith, specifically for the purpose of creditor avoidance,** such renouncement may not be recognized.[10] "Bad faith" is not always simple to prove, and the creditors will have to initiate proceedings to get renouncement pronounced invalid, and they may not always succeed in doing so.

247. Will a creditor receive the full value of the attached assets?

Obviously, despite what some creditors think when they take an heir to court, a creditor only receives the value of assets that were owed to them by the specific heir who is the debtor. The creditor cannot realize more than the debtor's portion of the inheritance, even if such a portion does not cover the full debt.[11]

248. What if an executor receives no responses to his official mandatory notices to creditors placed in the newspapers, but he becomes aware through other channels of creditors who for some reason have not contacted him?

An executor must pay off **all** estate debts. Publishing a notice does not absolve him of the duty to pay off all debt, even if knowledge of

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10. S.C. (C.A.P.) 5103/95 Deshet vs. Eliyhau, I.L.R. 53(3) 97.
11. The Inheritance Law, 5725-1965, s. 7(c).

such debt emanates from a source other than the regular procedure of placing notices in the newspapers.[12]

249. Which estate assets will be used first to repay the estate's debts?

The executor first uses all liquid funds to repay the estate's debt.[13] If the liquid funds are insufficient, the executor sells other assets as well.

250. Do the heirs have right of first refusal, enabling them to purchase specific estate assets that are being sold to cover debt?

If assets must be sold to cover estate debt, the executor should allow the heirs a reasonable amount of time to purchase such assets at no less than market value.[14]

251. What if assets must be sold to cover debt, but a specific asset *(portion)* was bequeathed to a specific heir?

Portions are protected as far as is possible. As long as there are assets available in the estate, which were not specifically bequeathed or devised, i.e. assets that are **not** *portions*, those assets are initially utilized to repay debt.[15] All debt is therefore repaid from the general pool of estate assets, and specific assets, which the testator wished to grant to a specific heir, remain protected, unless all other funds are exhausted, at which point the specific assets are sold as well.[16]

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12. The Inheritance Law, 5725-1965, s. 99(c).
13. The Inheritance Law, 5725-1965, s. 100(a).
14. The Inheritance Law, 5725-1965, s. 100(b).
15. The Inheritance Law, 5725-1965, s. 100(c).
16. F.C. 6710/00 (E.F.) Ovadia Efrat vs. Estate of the late Kushukaru Bayla, Nevo.

252. Is there a scale of priorities governing the payment of estate debts?

First priority is given to expenses concerning the decedent's funeral, burial, and tombstone.[17] Such expenses are limited to what is common usual practice in the decedent's social circles, cultural background, and general circumstances.

The next priority is all expenses regarding the distribution of the decedent's estate, including obtaining a probate or inheritance order; executor costs; and ancillary costs. Only after these payments are made are the general debts of the estate paid, including the widow's *Ketubah*.[18]

253. How does the executor pay off debts, if he suspects there are insufficient funds in the estate to pay off creditors?

If it is suspected by the executor that the estate does not suffice for discharging all the estate's debts, the executor must inform the court, and they can only discharge debts which the court permits to be discharged, wholly, partially, or in installments, all as the court directs.[19]

254. Can an estate be declared bankrupt?

Certainly. If it becomes evident that the estate cannot repay all of its debt, the executor must file a request to have the estate declared as bankrupt.[20]

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17. The Inheritance Law, 5725-1965, s. 104(a)(1).
18. The Inheritance Law, 5725-1965, s. 104(a)(3).
19. The Inheritance Law, 5725-1965, s. 105(b).
20. The Inheritance Law, 5725-1965, s. 106;
    D.C. (Haifa) (B.F.) 64016-11-17 Estate of the late Fadul Maron vs. Administrator General Haifa District — Decided July 02, 2018.

255. What creditor priority is applied in the case of estate bankruptcy?

In the case of bankruptcy, the Bankruptcy Ordinance (new version) 5740-1980 becomes applicable.[21] Among other instructions, the ordinance has a list of creditor priority: reasonable costs of the decedent's funeral, burial, and will probation; costs of the execution of the bankrupt estate, including fees and costs of legal proceedings, salaries, and severance pay to the decedent's employees (up until a certain ceiling); mandatory deductions from salaries which haven't yet been transferred; municipal taxes; government taxes; and support payments (child support and alimony).

256. Can a creditor of the estate collect his debt from payments made to the surviving spouse from life insurance or a provident fund?

No. The spouse is protected as such payments from saving schemes and insurance are **not considered part of the estate**; therefore, a creditor would not be able to collect from such payments.[22]

257. Can debts be inherited?

Generally speaking, an heir is not liable for the estate's debts. The worst-case scenario for an heir would be that the total debt is greater than the total worth of the estate. In such a case, there

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21. The Bankruptcy Ordinance (New version), 5740-1980 (see sections 202-208, part B in chapter 7).
22. S.C. (C.A.) 293/72 Yitzchak Philosoph vs. "Taoz" Provident Fund for Employees Ltd. I.L.R. 27(2) 535.

would be nothing left for the heirs. However, the heirs are not ordinarily personally responsible for any debt that cannot be paid by the estate.[23]

258. What happens if the entire estate is fully distributed with the heirs turning a blind eye deliberately and knowingly to the fact that there are creditors who have not been paid?

When heirs distribute the estate assets **while knowingly ignoring unpaid debt**, they would each be liable to repay the debt, up until the full value of the estate(!). This means that they could each be liable to pay more than they actually received.[24]

WHAT DOES THE LAW SAY?

Liability up to the value of the whole estate

§128. (a) If the estate was distributed without notice having been given to the creditors and without the debts known at the time of distribution having been discharged, then each heir is liable for the undischarged debts up to the value of the whole estate at the time of distribution. *[Our emphasis: HVK and SK]*

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23. The Inheritance Law, 5725-1965, s. 126;
D.L.C (Jerusalem) (L.D.) 30615-10-14 PUTALI LAMINI vs. Aharon Adas (Nevo); Shalom (Haifa) (C.F.) 59395-12-15 Bank Yahav Ltd. vs. the late Rasolov et al — Decided May 27, 2018.
24. The Inheritance Law, 5725-1965, s. 128(a), 129;
D.C. (Merkaz-Lod) (C.F.) 28666-02-18 Aryeh Cohen vs. Yael Dalal

259. In what other cases might an heir be liable for the estate's debt?

As stated above, if an heir attempts to hide estate assets in order to avoid using them for debt repayment, they could be liable for all unpaid debt, up to a maximum of the value of all estate assets.[25]

25. The Inheritance Law, 5725-1965, s. 129(1).

CHAPTER 11

International Law

260. Does an Israeli Court have jurisdiction over the inheritance of a person who was a resident of another country at the time of his death but happened to pass away in Israel?

The Israeli court has jurisdiction over the inheritance of a person whose center of life — his domicile — is in Israel. The fact that someone happened to be in Israel when he or she passed away does not grant the Israeli court jurisdiction over the estate.[1]

261. What jurisdiction is there over a person who was living abroad at the time of his death but had assets in Israel?

If a decedent had assets in Israel, Israeli courts have jurisdiction over the Israeli part of the estate.[2] However, the law applied by the Family Court is not Israeli law. The decisions of the Israeli court would be governed by the local law ruling in **the decedent's place of domicile** at the time of his death.[3]

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1. The Inheritance Law, 5725-1965, s. 135, 136, 137;
   S.C. (C.A.) 2846/03 Alderman vs Erlich, I.L.R. 59(3) 529.
2. The Inheritance Law, 5725-1965, s. 136.
3. Subject to various caveats. See the Inheritance Law, 5725-1965, s. 137.

262. What if, in the above case, there is a direct contradiction between Israeli law and the foreign law?

It depends on the conflict between the two legal systems. For example, when it comes to legal capacity, the determining law is the testator's place of residence.[4] However, regarding the technical requirements of the will (such as signature, date, witnesses, etc.), the will is considered valid if it is valid under **any** of the following laws: Israeli law, the law of the country in which the will was executed, the law of the testator's place of residence, or the law in place of the testator's citizenship.[5]

263. What if the foreign law contradicts public policy in Israel, for example, because it discriminates based on religion, race, or gender?

In such a case, the Israeli court does not abide by the discriminatory provisions in the foreign law.[6]

WHAT DOES THE LAW SAY?

Foreign law that is not followed

§143. Notwithstanding any provision of this law, when foreign law applies, it shall not be followed to the extent that it discriminates on the grounds of race, religion, sex, or nationality or that it is contrary to public policy in Israel.

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4. The Inheritance Law, 5725-1965, s. 139.
5. The Inheritance Law, 5725-1965, s. 140.
6. The Inheritance Law, 5725-1965, s. 143;
   S.C. (C.A.) 8991/04 Bargut vs. Bargut Nazareth, Nevo;
   S.C. (F.A.R.) 594/04 Attorney General vs. John Doe, Nevo.

APPENDIX I

Glossary

A.R.	Appeal request
ADMINISTRATOR GENERAL (IN HEBREW: HA'APOTROPUS HA'KLALI)	A department of the Ministry of Justice, charged with supervising and representing the state in matters regarding estates, among other things. The Administrator General also serves as the Registrar of Inheritances.
B.F.	Bankruptcy file
C.A.	Civil appeal
C.A.P.	Civil appeal permission
C.F.	Civil file
C.R.	Civil request
CIVIL CODE (OR PROPOSED CIVIL CODE)	A term used to refer to Government Law Proposal 712 - The Monetary Law, 5771-2011, which is a result of ongoing efforts to unify Israeli law into one comprehensive civil code.
D.C.	District Court
D.L.C.	District Labor Court
D.R.	District rulings
D.R.C.	District Rabbinical Court

DEAD HAND (ALSO MORT-MAIN OR MORTUA MANUS)	One of the fundamental issues of inheritance law, which seeks to limit long-lasting control of a deceased over the assets they left behind and over the actions of their heirs.
DECEDENT, DECEASED	A person who has died.
DISTRIBUTION IN KIND	A term which, within the context of inheritance law, refers to the distribution and division of actual assets and real property among the heirs, rather than liquidating the assets and distributing the proceeds.
E.F.	Estate file
E.A.R.	Estate Affairs Registrar
F.A.	Family appeal
F.A.R.	Family appeal request
F.C.	Family Court
F.C.H.	Further civil hearing
F.F.	Family file
F.R.	Family rulings
HALAKHAH	Collective Jewish religious law
I.L.R.	Israel Law Reports
IN CAMERA	A term used to describe hearings that are not open to the public.
INTESTATE	Description of a person who died without having made a will.
INTESTATE SUCCESSION	Inheritance that occurs when one dies without having left a valid will (and, therefore, the heirs are determined according to the arrangement set forth in the law).
ISSUE	Offspring, including children, grandchildren, and so on.

JOHN DOE, JANE DOE, ROE	These names are used as "placeholder names," or false aliases for the purpose of keeping the identity of a party to legal proceedings hidden. It is commonly used in cases heard before family courts, which are routinely heard privately, in camera. In Hebrew, the commonly used placeholder names are *Ploni* and *Almoni*. When translating citations, we've chosen the US term of John Doe (for a male), Jane Doe (for a female), and Roe (an additional commonly used placeholder name). These names are not typically used in the UK; rather, initials are used to mask the identity of the parties involved.
KETUBAH	A *Ketubah* is a written commitment which is signed by a husband and given to his wife at their wedding. It is an integral part of a traditional Jewish marriage and outlines the rights and responsibilities of the husband to the wife. It includes a certain amount of money which is required to be paid to the wife upon termination of the marriage (either by divorce or death of the husband).
L.D.	Labor dispute
NEVO	An online legal resource database, which includes law, regulations, rulings of all tribunals, and academic literature. Website: www.nevo.co.il
NEVO	Nevo Publishing Ltd., a publisher of legal literature.
P.A.	Penal appeal
P.L.A.	Petition for leave to appeal
PARANTELE	Levels of kinship that determine who the inheritors are when there is no will. The first *parentele* includes the deceased's issue; the second includes their parents and siblings; and the third includes their grandparents, aunts, and uncles.

PORTION	Term used to describe a specific asset which is bequeathed or devised in a will to one or more named heirs. Different rules apply to a portion, as opposed to a share, which means a certain percentage of the general estate and not a specific item.
ROE	See John Doe
RULES OF INTESTACY	The order and priority of inheritance when one dies without having left a valid will.
S.C.	Supreme Court
TESTATE SUCCESSION	Inheritance according to the provisions of a will.
TESTATOR	One who makes a will.

APPENDIX II

Recent Report from the Registrar of Inheritances: Activity of the Registrar's Units

ACTIVITY OF THE REGISTRAR'S UNITS IN 2017

The year 2017 was characterized by a continued upward trend in the volume of activity, alongside streamlining the work of the units in the various districts, as can be seen from the information detailed below.

In November 2015, an amendment to the Succession Regulations came into effect requiring the online submission of an application for a succession order or an application for a probate order when the applicant is represented by an attorney.

In 2017, 41,535 applications were submitted to the Registrars in the various districts, compared to 2016, in which 42,503 applications were filed and for 2015, in which 39,846 applications were submitted. In a multi-year comparison, this is an increase of 4% within three years in the various applications submitted (39,910 different applications in 2014).

APPLICATIONS SUBMITTED TO THE UNITS IN THE VARIOUS DISTRICTS

2015

Jerusalem District	Tel-Aviv District	Haifa District	Be'er-Sheva District	Total Applications
4,152	20,641	10,480	4,573	39,846

2017

Jerusalem District	Tel-Aviv District	Haifa District	Be'er-Sheva District	Total Applications
4,228	21,815	10,950	4,542	41,535

In 2017, 46,704 orders and decisions were issued by the Registrar of Inheritances, compared to 2016, during which 36,487 orders and decisions were issued, and in 2015, 42,024 orders and decisions were issued.

This represents a 28% increase in the number of orders and decisions issued in comparison to 2016.

Year/Activity	Requests Submitted to the Registrars	Orders & Decisions issued by the Registrars
2017	**41,535**	**46,704**
2016	**42,503**	**36,487**
2015	39,846	42,024
2014	39,910	33,213
2013	34,809	35,031
2012	33,061	33,169
2011	32,539	30,786
2010	30,475	26,763

THE DISTRIBUTION OF ORDERS AND DECISIONS BY DISTRICT

Year/ District	Jerusalem	Tel-Aviv	Haifa	Be'er-Sheva	Total
2017	**4,467**	**25,566**	**12,108**	**4,563**	**46,704**
2016	**4,388**	**17,272**	**10,388**	**4,439**	**36,487**
2015	4,013	23,530	10,575	3,906	42,024
2014	3,946	16,573	9,067	3,627	33,213

During 2017, 37,086 succession orders and probate orders were issued by the Registrars, of which 19,320 were inheritance orders, 17,745 were probate orders and 21 were combined orders (inheritance and probate order).

The corresponding figure for 2016 was 28,272 succession orders and probate orders, and in 2015 there were 32,535 succession orders and probate orders. This is a 31% increase in the number of succession orders and probate orders issued in comparison to 2016.

SUCCESSION ORDERS AND PROBATE ORDERS ISSUED BY DISTRICT 2017

District/ Procedure	Jerusalem	Tel-Aviv	Haifa (Including Nazareth)	Be'er-Sheva	Total
Succession Order	1,766	10,049	5,326	2,179	19,320
Probate Order	1,433	10,127	4,562	1,623	17,745
Combined Orders	1	14	5	1	21
Total	3,200	17,798	8,670	3,333	37,086

SUCCESSION ORDERS AND PROBATE ORDERS ISSUED BY DISTRICT

ORDERS ISSUED IN THE YEARS 2010-2017 — BY TYPE

Procedure/ Year	Succession Order	Probate Order	Combined Orders	Total
2017	**19,320**	**17,745**	**21**	**37,086**
2016	**14,841**	**13,403**	**28**	**28,272**
2015	16,930	15,564	41	32,535
2014	13,822	12,296	42	26,160
2013	14,404	12,757	54	27,215
2012	13,819	12,126	45	25,990
2011	13,842	12,316	62	26,220
2010	11,784	10,396	51	22,231

ONLINE SUBMISSION OF APPLICATIONS FOR SUCCESSION ORDERS AND PROBATE ORDERS

The Administrator-General initiated the development of online forms in the Registrar of Inheritances, which allows submission of applications for succession orders and probate orders via the Internet.

The online application form for the Inheritance Order was inaugurated on February 27, 2014, and the online form for probate order was inaugurated on 9 November 2014.

As of June 7, 2015, a discount of 15% was given to applicants for online submission, and the fee was reduced by the Administrator-General and is part of the Inheritance Regulations (Fees of the Registrar of Inheritances), 5758-1998.

In the course of 2014, the Administrator-General initiated an amendment to the Inheritance Regulations, which stipulates the requirement to submit online applications for succession orders and probate orders when submitted by a representative lawyer. On November 5, 2015, said regulation took effect.

During 2015, the use of the online filing of requests for inheritance orders and probate orders was increased considerably.

Over the course of 2017, 27,913 online applications for succession or probate orders were filed with the Administrator-General, compared with 26,162 online applications submitted in 2016. This is a 6% increase in online requests compared to 2016.

The number of online requests for a succession order or probate order in 2017 accounts for about 67% of all requests for succession or probate orders during this period.

The distribution of the online applications submitted to the Registrar of Inheritances in the various districts was as follows:

District/Requests	**Jerusalem**	**Tel-Aviv**	**Haifa (Including Nazareth)**	**Be'er-Sheva**	**Total**
Online Applications in 2017	2,425	14,982	7,297	3,209	27,913
Online Applications in 2016	2,176	14,467	2,868	6,651	26,162
Online Applications in 2015	532	4,014	1,433	744	6,723
Online Applications in 2014	105	663	215	80	1,063

SUMMARY OF ACTIVITY REGARDING WILLS — BY TYPE AND DISTRICT 2017

District/ Procedure	Jerusalem	Tel-Aviv	Haifa (Including Nazareth)	Be'er-Sheva	Total
Depositing Wills	818	3,408	1,546	550	6,322
Submitting Wills	36	253	49	27	365
Returning Wills	148	812	267	107	1,334
Opening Wills	86	712	428	102	1,328
Total	1,088	5,185	2,290	768	9,349

VOLUME OF WILL-RELATED ACTIVITY 2010-2017

Year/ Activity	Will-Related Activity (all Districts)
2017	**9,349**
2016	**8,669**
2015	7,187
2014	6,447
2013	5,938
2012	5,696
2011	5,385
2010	5,040

APPENDIX III

Cited Laws, Regulations, and Law Proposals

Basic Law: Human Dignity and Liberty

Government Law Proposal 712 - The Monetary Law, 5771-2011

Israel Bar Association Regulations (Preservation of Archived Material in Law Firms), 5731-1971

Land Taxation Law (Appreciation and Sale), 5723-1963

Law Proposal P/1663/17, The Inheritance Law (Amendment — Inheritance of one born from a fertilized egg), 5767-2006.

Law Proposal P/1958, The Inheritance Law (Amendment — Broadening Definition of those Disqualified from Inheriting), 5764-2004

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APPENDIX IV

The Inheritance Law 5725-1965

Translation correct as of April 1, 2012

CHAPTER ONE: GENERAL PROVISIONS

Inheritance

1. Upon a person's death his estate passes to his heirs.

Heirs

2. The heirs inherit by Law or under a will; inheritance is by Law, except to the extent that it is under a will.

Qualified to inherit: individuals

3. (a) Anyone who was alive when the deceased died is qualified to inherit from him.
   (b) Anyone who was born within 300 days after the death of the deceased shall be treated like a person who was alive when the deceased died, unless it is proved that he was conceived thereafter.
   (c) For purposes of a child's right to inherit, it is immaterial whether or not his parents were married to each other at the time of his birth.

Qualified to inherit: bodies corporate

4. A body corporate is qualified to inherit, if — when the deceased died — it was qualified to acquire assets or if it became qualified to acquire assets within one year after probate was granted; the Court may extend this period by an additional year.

Not qualified to inherit

5. (a) The following are disqualified from inheriting from the testator:
   (1) a person convicted of having intentionally caused the testator's death or of having attempted to cause his death;
   (2) a person convicted of having concealed, destroyed or forged the testator's last will or of claiming under a forged will.

   (b) If a was person convicted of having attempted to cause the testator's death, and if the testator forgave him in writing or by making a will in his favor, then he again becomes qualified to inherit from the testator.

Renunciation by heir of rights in estate

6. (a) After the testator's death and as long as the estate has not been distributed, an heir may renounce all or some of his part of the estate, or all or some of a legacy to which he is entitled under a will, and that by written notice to the Registrar of Inheritances or to the Court, when the matter has been referred to it under section 67A.

   (b) If a person renounced his part of the estate, then — to the extent that he renounced it — he is deemed never to have been an heir; renunciation cannot be in favor of any other person, except in favor of the testator's spouse, children or sibling.

(c) Renunciation by a minor or by a person declared legally incompetent requires the Court's approval.

(d) A conditional renunciation is void.

(e) In this Law, "**Registrar of Inheritances**" — within its meaning in section 65A.

Other transactions with the rights of heirs

7. (a) After the testator's death and as long as the estate has not been distributed, an heir may, by written agreement, transfer or charge all or some of his part of the estate, and an heir's creditors may attach his part of the estate.

(b) An aforesaid transfer or charge by a minor or by a person who was declared legally incompetent requires the Court's approval.

(c) An aforesaid transfer, charge or attachment confers rights only to what is due to the heir upon distribution of the estate; it deprives the heir of the right to renounce his part in the estate.

(d) An heir's right to a particular asset from among the estate's assets cannot be transferred, charged or attached, as long as the estate has not been distributed.

Transactions in future inheritances

8. (a) An agreement about a person's estate and a waiver of his estate, made while that person was alive, is void.

(b) A gift made by a person with the intention that it be vested in the donee only upon the donor's death is not valid, unless it is made by a will under the provisions of this Law.

Mutual wills

8A. (a) Spouses may make wills with one spouse depending on the will of the other spouse; said wills may be made whether the beneficiary under each of the wills is the other spouse or a third party, either in two documents made at the same time or in one document (in this section: mutual wills).

(b) Cancellation of a mutual will shall not be of effect, except if one of the following applies to it:

(1) when both spouses are alive — the testator who wants his will to be canceled shall give written notice of the cancellation of his will to the other testator; when said notice has been given, the mutual wills of both testators become void;

(2) after the death of one of the testators –

(a) as long as the estate has not been distributed — the spouse who survived and wants to cancel his will shall renounce — to the benefit of the testator's children or siblings — every portion or every part of the estate that he is supposed to receive under the mutual will of the dead testator;

(b) after the estate has been distributed — the spouse who survived and wants to cancel his will shall restore to the estate all he has inherited under the mutual will, and if restoration in kind is impossible or unreasonable — he shall restore the value of the portion or part of the estate that he inherited.

(c) The provisions of subsection (b) shall apply if the wills do not include a different provision; however, a provision that absolutely denies the right to cancel the will while the two spouses are alive is void.

NOTE: Section 8A was inserted by the Inheritance Law (Amendment No. 12) 5765-2005 *(SH 5765, p. 714, August 1, 2005). Section 2 of the said Amendment provides that its provisions not apply to wills made before it was enacted — Tr.)*

Concurrent deaths

9. (a) If two or more persons died and it has not been established which of them died first, then the rights in the estate of each of them shall be in accordance with the following rules:
   (1) If one of the claimants is a certain heir and another an uncertain heir, the claimant who is a certain heir takes precedence;
   (2) if both claimants are uncertain heirs, the claimant who is the spouse or relative of the testator whose estate is being distributed takes precedence;
   (3) if there is no will, the estate shall be distributed between several claimants of the same order of precedence according to the rules of distribution which apply to inheritance by Law.

   (b) In this section, "**certain heir**" — one who would have inherited, whether the one or the other died first; "**uncertain heir**" — one who would have inherited only if a certain one of them died first.

CHAPTER TWO: INHERITANCE BY LAW

Members of family who inherit

10. Heirs by Law are the following:
   (1) whoever was the spouse of the deceased at the time of the death;
   (2) the children of the deceased and their offspring, his parents and their offspring, his grandparents and their offspring (in this Law: relatives of the deceased).

Their rights of inheritance shall be as said in this Chapter. ???

Spouse's right of inheritance

11. (a) The spouse of the deceased takes the movable property, including a passenger car, which commonly and under the circumstances belong to the common household, and takes from the remainder of the estate –
    (1) if the deceased is survived by children or their offspring or parents — one half;
    (2) if the deceased is survived by siblings or their offspring or grandparents — two thirds; however, if immediately before the death of the deceased his spouse had been married to him for three years or longer and at that time lived with him in a dwelling, all or part of which is a part of the estate, then the spouse shall take the deceased's entire part of the said dwelling and two thirds of the remainder of the inheritance.

    (b) If the deceased is not survived by any of the relatives enumerated in subsection (a), then the spouse shall inherit the entire inheritance.

    (c) Anything due to a spouse on grounds which arise out of the marital bond — including what the wife receives under the Ketubah (religious marriage contract — Tr.) shall be deducted from her part of the estate; this provision shall not apply to what is due to a spouse under the Spouses (Property Relations) Law 5733-1973, or under a property agreement within its meaning in that Law, and it shall not affect a spouse's right to receive from the estate anything the deceased received in consequence of the marriage in order to restore it upon its dissolution.

Order of priority among relatives of the deceased

12. The children of the deceased take precedence over his parents and his parents take precedence over his grandparents.

Parts of estate

13. The children of the deceased divide equally among themselves and so do the parents among themselves and the grandparents among themselves.

Alternates of heir

14. (a) If a child of the deceased died before him and left children, then the children inherit in his place, and in the same manner inherit the children of each of the relatives of the deceased who died before him; these provisions do not apply when the deceased is survived by a spouse and parents or grandparents, as said in section 11(a), or by any one of these.
(b) Children who inherit under subsection (a) shall divide equally whatever they inherit in this manner.

Disqualified heir and heir who renounced the inheritance

15. If a person was disqualified from inheriting, or if he renounced his part of the estate otherwise than in favor of the deceased's spouse, children or sibling, then his part shall be added to the other heirs in proportion to their parts.

Inheritance by virtue of adoption

16. (a) A legally adopted child inherits from his adopter, as if he were his child; the offspring of an adopted child also inherits from the adopter.
(b) An adopted child and his offspring do not inherit by Law from relatives of the adopter; the adopter inherits from the adopted child as if he were his parent, but the relatives of the adopter do not inherit by Law from the adopted child.
(c) An adopted child and his offspring inherit from the relatives of the adopted child, but the parents and grandparents of an adopted child and their offspring do not inherit from the adopted child.

Right of inheritance of the State

17. (a) If there is no heir under sections 10 to 16, then the State shall inherit by Law.

    (b) Whatever the State inherits under this section shall be used for purposes of education, science, health and social welfare; however, the Minister of Finance may make grants from the assets of the estate or he may pay — within the limit of the value of the estate's assets that came into the hands of the State, after payment of the estate's debts — either a one-time payment or in recurring payments —

    (1) to a person who immediately before the death of the deceased was dependent on the deceased;

    (2) to a person or body corporate on which the deceased was dependent immediately before his death;

    (3) to a relative of the deceased or of his spouse, who is not among his heirs by Law.

CHAPTER THREE: INHERITANCE BY WILL

Article One: Form of Will

Forms of will

18. A will is made in handwriting, before witnesses, before an authority or orally.

Handwritten will

19. A handwritten will shall in its entirety be written in the testator's hand, shall bear a date written by him and shall be signed by him.

Witnessed will

20. A witnessed will shall be in writing, shall state the date and shall be signed by the testator before two witnesses, after he declared before them that it is his will; the witnesses shall at that time attest by their signatures on the will that the testator declared and signed as aforesaid.

Deposit of will

21. (a) If a person made a handwritten will or a witnessed will, he may deposit it with a Registrar of Inheritances; deposit shall be by delivery of the will by the testator himself to a Registrar of Inheritances or to an authority authorized by regulations to receive wills in order to deliver them to the Court.

(b) A will deposited and kept on deposit under this section until the testator's death shall be prima facie evidence that the person named in it as the testator made the will and that it was made not later than on the day of deposit.

(c) The provisions of this section shall not derogate from the testator's right to have a will deposited by him returned to him at any time.

Will made before an authority

22. (a) A will made before an authority shall be made by the testator's oral statement before a judge, the Registrar of a Court, a Registrar of Inheritances or the member of a Religious Tribunal, within its meaning in section 155, or by the testator's personal presentation of the will's written provisions to a judge, Court Registrar, Registrar of Inheritances or the member of a Religious Tribunal.

(b) The provisions of the will, as written down by the judge, Registrar, Registrar of Inheritances or member of the

Religious Tribunal, or as presented to him, shall be read to the testator, he shall declare that it is his will and the judge or Registrar, Registrar of Inheritances or member of the Religious Tribunal shall attest on the will that it was read out and that the testator declared as aforesaid.

(c) If the will is written in a language that the testator does not understand, it shall be read to him in translation in a language that he does understand, and the translator shall so attest on the will.

(d) Instead of having the will or its translation read to him the testator may read it himself.

(e) A will made before an authority may be deposited with a Registrar of Inheritances.

(f) A will made before an authority shall be prima facie evidence that the person named in it as the testator made the will and that it was made on the day and at the place stated in it as the day and place of its making.

(g) For purposes of this section, a notary shall be treated like a judge.

Oral will

23\. (a) If a person is on his deathbed, or if — under circumstances that justify that — he believes that he faces death, he may make an oral will before two witnesses who understand his language.

(b) The testator's instructions, the date and the circumstances under which the will was made, shall be recorded in a memorandum signed by the two witnesses and deposited by them with a Registrar of Inheritances; the said record shall be made, signed and deposited as soon as possible after doing so becomes possible.

(c) An oral will becomes void one month after the circumstances that justified its making changed, if the testator is still alive.

Disqualified witnesses

24. Minors and persons declared legally incompetent are disqualified from being witnesses to the making of a will under this Article.

Probate of a will in spite of a fault or shortcoming in its form

25. (a) If a will has the basic elements and if the Court has no doubt that it reflects the testator's free and true wish, it may — by a reasoned decision — grant probate even if there is a fault in one of the particulars or one of the proceedings specified in sections 19, 20, 22 or 23 or in the qualifications of the witnesses, or because of the lack of one of the said particulars or proceedings.

(b) In this section, the "**basic elements**" are:

(1) in respect of a handwritten will, as said in section 19, that all of the will is written in the testator's handwriting;

(2) in respect of a will before witnesses, as said in section 20 — that the will is in writing and that the testator brought it before two witnesses;

(3) in respect of a will before an authority, as said in section 22 — that the will was spoken before the authority or was brought to the authority by the testator himself;

(4) in respect of an oral will, as said in section 23 — that the will was spoken by the testator himself before two witnesses who understand his language while he was severely ill, or at a time when he believed — under justifying circumstances — that he faced death.

Article Two: Validity of Will

Capacity to make will

26. A will made by a minor or by a person declared legally incompetent, or while the testator was unable to understand the nature of a will, is void.

Freedom of testation

27. (a) An undertaking to make, to change or to revoke a will — or to abstain from doing any of these things — is of no effect.
    (b) A testamentary provision that negates or restricts the testator's right to change or revoke the will is void.

Will is a personal act

28. (a) A will cannot be made by anyone, except the testator himself.
    (b) A testamentary provision that makes the validity of the will conditional on the volition of a person who is not the testator is void.

Delegation of choice and power of selection

29. The testator cannot delegate to another the selection of the person who will benefit from the estate or the determination of the proportionate part or the legacy that a person shall take; however, if the testator specified in the will persons from among whom a beneficiary is to be selected or assets from among which a legacy is to be selected, that selection may be made by the person designated for that purpose by the testator in his will; and if the testator did not designate, or if he designated and the selection was not made within a reasonable time the Court or a person appointed by the Court shall make the selection.

Duress, threats etc.

30. (a) A testamentary provision made under duress, threats, undue influence, trickery or fraud is void.
    (b) If a testamentary provision was made because of an error, and if it is possible to determine clearly what the testator would have prescribed in his will, if not for the error, the Court shall amend the terms of the will accordingly; if it is not possible to do so, the testamentary provision is void.

Defective will is not revoked

31. If a year has passed after the day when the duress, threats, undue influence or trickery ceased to affect the testator or after the day on which the testator learned of the fraud or error, and if the testator was able to revoke the will, but did not do so, that defect shall no longer be grounds for voiding the testamentary provision or for its correction.

Clerical errors, etc.

32. If a will contains a clerical error or an error in the description of a person or asset, in a date, a calculation or the like, and if it is possible to determine clearly the testator's true intention, the Registrar of Inheritances or the Court — when the matter is referred to it under section 67A — shall correct the error.

Uncertainty

33. A testamentary provision, from which it cannot be ascertained to whom the testator made the bequest or what he bequeathed, or which is not intelligible is void.

Illegality, etc.

34. A testamentary provision, the implementation of which is illegal, immoral or impossible is void.

Will in favor of witnesses, etc.

35. A testamentary provision — other than in an oral will — in favor of a person who prepared the will or witnessed it or otherwise participated in its preparation, and a testamentary provision in favor of the spouse of any of these is void.

Revocation by testator

36. (a) The testator may revoke his will, either by its express revocation in one of the forms of making a will, or by destroying the will; if a testator destroyed the will, it is presumed that he intended thereby to revoke it.
(b) A new will — even though it does not include the express revocation of a previous will — is deemed to revoke the previous one, to the extent that the provisions of the new will contradict the provisions of the previous will, unless the new will only contains additions to the provisions of the earlier will.

Applicability

37. For purposes of this Article, "**testamentary provision**" — the entire will, as well as part of it and by implication any of its conditions.

Voiding part of a will

38. (a) If anything illegal, immoral or impossible is prescribed in a will as a condition of entitlement or as an obligation under section 45, then the condition or obligation is void, and that does not void the entitlement to which the condition or obligation was attached.
(b) If a part, provision or condition of a will is voided otherwise than under the provisions of subsection (a), then that does not void its other parts, provisions or conditions, except to

the extent that they appear to the Court to be inseparably tied to what is void, or that the testator would not have wanted them to stand without it.

Need for probate

39. No rights shall be claimed under a will and it shall not be treated as a will, unless probate of it was granted under the provisions of Chapter Five.

Article Three: Testamentary Provisions

Subject matter of will

40. A person may leave, by will, to one or to several persons —
   (1) his entire estate or a proportional part of his entire estate; one of the assets of his estate or a benefit from his estate (in this Law: legacy).

Substituted heirs

41. (a) The testator may bequeath to two persons, so that the second shall inherit if the first did not; the second shall inherit if the first died before the testator, was found not qualified to inherit or renounced what is due to him not in favor of the testator's spouse, child or sibling.
   (b) When the second inherits, he is treated like an original beneficiary.
   (c) In this manner the testator may also bequeath to more than two persons.

Consecutive heirs

42. (a) The testator may bequeath to two persons, so that the second inherit after the first inherited; the second shall inherit when the first dies or when a condition set therefor in the

will is met or when such a time arrives, whichever is the earliest.

(b) The first may treat what he received as his own and the second shall only inherit what the first left; however, the first cannot curtail the rights of the second by means of a will.

(c) The second shall inherit if he is qualified to inherit from the testator when his right matures, even if he was not so qualified when the testator died; if the second dies before his right matures, is not qualified to inherit, or renounced what is due to him, the testamentary provision in his favor becomes void.

(d) A testamentary provision of this kind in favor of more than two persons is void, unless it is in favor of a person who was alive when the will was made.

Inheritance subject to condition precedent

43. (a) The testator may prescribe that an heir inherit when a condition has been met or at a certain time.

(b) If the condition was not met or the time had not arrived before the testator's death, the estate shall be administered by an Estate Administrator until the condition is met or the time arrives or until it becomes clear that the condition can no longer be met; the same applies when the testator bequeathed to a body corporate that is not yet qualified to inherit in accordance with section 4.

(c) If the testator did not prescribe who shall inherit when it becomes clear that the condition can no longer be met, the heirs under Law shall inherit.

Inheritance subject to condition subsequent

44. (a) The testator may prescribe that an heir shall be divested of his right when a condition is met or at a certain time.

(b) If the testator did not prescribe who shall inherit when the condition is met or the time arrives, the heirs under Law shall inherit as heirs after that heir, in accordance with the provisions of section 42.

Obligations of heir

45. The testator may prescribe that the heir shall be obligated to do or to refrain from doing something with whatever he received from the estate; compliance with that obligation can be demanded by anyone with an interest in the compliance and — if a public interest is involved — also by the Attorney General or his representative.

Inheritance by will and under Law

46. If the testator left a proportional part of his entire estate to one of his heirs under Law, that part shall be in place of what is due to that heir under Law and not in addition to it.

Legacy and part of estate

47. If the testator bequeathed a legacy to an heir under Law or to one entitled to a proportional share of the entire estate under the will, the legacy shall be in addition to the part of the estate and not in its place.

Undetermined shares

48. If the testator made a bequest to several persons, without determining their parts, they shall share equally.

Heir who died before testator

49. If a person entitled under a will died before the testator and if the testator did not designate another entitled person in his place, then — if offspring of that heir are alive at the time of the testator's death — they shall be entitled in accordance with

the rules of distribution that apply to inheritance under Law; in any other case, the testamentary provision in favor of that person becomes void.

Disqualified heir and heir who renounced

50. If a person entitled under a will is found to be disqualified from inheriting or if he renounced what is due to him not in favor of the testator's spouse, child or sibling, and if the testator did not prescribe another person who shall be entitled in his place, then the testamentary provision in his favor becomes void.

Legacy of a specific asset

51. (a) If the testator bequeathed a specific asset, then the person entitled shall inherit it as it was at the testator's death.
    (b) The person entitled does not have the right to demand that the other heirs discharge a charge with which the asset was encumbered by the testator.
    (c) The person entitled does not have a right to compensation from the other heirs, if — when the testator died — the asset was not among his assets.
    (d) The income and expenditure of the asset up to the testator's death are for the estate's account; from then on they are for the account of the person entitled, unless he becomes entitled to the asset at a later date.

Legacy of indeterminate asset

52. If the testator bequeathed an indeterminate asset, the person entitled is entitled to an asset of medium quality.

Subject to testamentary provisions

53. The provisions of sections 41 to 52, except for section 42(d), apply to the extent that there are no diffeFrent provisions in the will.

Interpretation of a will

54. (a) A will is interpreted according to the testator's presumed intention, as understood from the will, and — if it is not understood from it — as implied by the circumstances.
(b) If a will is liable to different interpretations, an interpretation that renders it effective shall prevail over one that renders it void.
(c) A will may be in terms of gifts, releases, acknowledgements or any other terms.

Quasi-will

55. If a man and a woman have live together as man and wife in a common household, but are not married to each other, and if one of them died and at the time of his death neither was married to another person, the survivor is treated as if the testator bequeathed to him what the survivor would have received by inheritance under Law, had they been married to each other, and that when there is no different explicit or implied provision in a will left by the testator.

CHAPTER FOUR: MAINTENANCE OUT OF THE ESTATE

Right to maintenance

56. If the deceased left a spouse, children or parents who are in need of support, they are entitled to maintenance out of the estate under the provisions of this Chapter, whether inheritance is under Law or under a will.

Duration of right to maintenance

57. (a) The right to maintenance is as follows:

(1) for the spouse of the deceased until remarriage; however, the Court may make a one-time grant to the widow of the deceased who remarries, if the Court finds it proper to do so under the circumstances of the case and taking the rights of the children of the deceased into account;

(2) for the children of the deceased — up to age eighteen; for an invalid child — as long as he is an invalid; for a mentally sick child — as long as he is mentally sick; for a retarded child, within its meaning in the Welfare (Treatment of Retarded Persons) Law 5729-1969;

(3) for an adult child of the deceased, for whom the Court deems it proper under the circumstances to prescribe maintenance — to age 23;

(4) for the parents of the deceased, who were dependent on him immediately before his death — as long as they live.

(b) If a spouse's right to maintenance from the deceased was denied before his death he is not entitled to maintenance from the estate.

(c) If a man and a woman live together as a family in a joint household, but are not married to each other, and if one of them dies and at the time of his death neither is married to another person, the survivor is entitled to maintenance from the estate as if they had been married to each other.

(d) For purposes of maintenance, "**child**" — includes a child born after the death of the deceased, a child born out of wedlock, an adopted child and also a grandchild of the deceased who was orphaned before the death of the deceased or who was dependent on the deceased immediately before his death and whose parents are unable to provide his maintenance.

Cost of vocational training

58. Maintenance out of the estate includes the cost of the entitled person's vocational training.

Determination of maintenance

59. In the determination of entitlement to maintenance and of its extent the Court shall also take into account:
    (1) the value of the estate;
    (2) what the person entitled to maintenance may receive from the estate as an heir under Law or as beneficiary under the will;
    (3) the standard of living of the deceased and that of the person entitled to maintenance, as they were immediately before the death of the deceased, and any change in the needs of the entitled person in consequence of the death of the deceased;
    (4) the property of the person entitled to maintenance;
    (5) the income of the person entitled to maintenance from any source whatsoever; however, in the case of the spouse of the deceased the Court shall not take into account income from his work or occupation, except to the extent that that income also served to support the family or the spouse immediately before the death of the deceased;
    (6) the maintenance the entitled person can receive under sections 2 or 3 of the Family Law Amendment (Maintenance) Law 5719-1959;
    (7) for the spouse of the deceased — what is due to him on grounds arising out of the marital bond, including what the wife receives under the Ketubah *(religious marriage contract — Tr.)*.

Application to determine maintenance

60. (a) An application for the determination of maintenance shall be submitted to the Court before the estate is distributed; however, the Court may entertain an application made within six months after the estate is distributed, if it concludes that the circumstances so justify.
(b) The Court may award maintenance retroactively from the date of the death of the deceased and it may also award temporary maintenance until it finishes to consider the application.
(c) Repealed

Ways of providing maintenance

61. (a) The Court shall prescribe that maintenance be provided in periodic allocations, but it may prescribe that it be paid all at once, or that part of it be provided in one way and part in the other, if it concludes that the circumstances so justify.
(b) The Court may prescribe the ways of providing maintenance, including –
(1) by whom and to whom maintenance shall be provided;
(2) securing the maintenance by way of deposit, investment, pension insurance, charge or in some other manner.
(c) The Court may make the provision of maintenance conditional, if it concludes that the circumstances so justify.
(d) If periodic allocations were prescribed, each party may at any time apply for a change in the way or conditions of providing them or for their replacement by a one-time payment.

Discovery of facts and change of circumstances

62. (a) If maintenance was prescribed, the person entitled to maintenance may apply for their increase and the heirs

may apply for their reduction or cancellation, and they may apply for the refund of part or of all of a one-time payment, all as the case may be, if facts have come to light that existed when maintenance was prescribed, but that were not known to the applicant at that time.

(b) If periodic allocations were prescribed, the person entitled to maintenance may apply for their increase, and the heirs may apply for their reduction or discontinuation, if the circumstances that prevailed when they were prescribed have changed, but no application under this subsection shall be made to the Court earlier than one year after its previous decision and the Court may refrain from taking into account a change of circumstances that the applicant could have foreseen at the time of the earlier proceedings.

(c) Under this section an heir is not to be made liable for the payment of maintenance beyond the value of what he received from the estate, and if he received assets of the estate in good faith — beyond the value of what remains in his possession; a person entitled to maintenance is not to be made liable for the refund of a one-time payment beyond the value of what he received, and if he received it in good faith — beyond the value of what remains in his possession.

Enlargement of estate for purposes of maintenance

63. (a) If an estate does not suffice to provide maintenance for all the entitled persons, the Court may consider as part of the estate whatever the deceased gave without suitable consideration within the two years before his death, exclusive of gifts and donations that are customary under the circumstances.

(b) The Court may obligate the recipient to reimburse the estate or to pay maintenance up to the value of what remained in his possession when the deceased died, and — if he did not receive it in good faith — up to the value of what he received.

(c) The recipient may deduct the consideration he gave or its value from what he has to refund or pay.

Order of preference among entitled persons

64. If the estate does not suffice to provide maintenance for all the persons entitled to it, the Court may apportion it among them according to the circumstances or it may award maintenance to those who appear to the Court to be most in need thereof.

Transactions with the right to maintenance

65. (a) An agreement on maintenance under this Chapter and a waiver thereof — if made while the deceased was alive — is void, and if made after his death it requires approval by the Court.

(b) A testamentary provision that denies or limits the right to maintenance under this Chapter is void.

(c) A right to maintenance under this Chapter cannot be transferred, charged or attached, and it does not pass by inheritance.

CHAPTER FIVE: INHERITANCE ORDER AND PROBATE

National Commissioner and Registrars of Inheritances

65A. (a) The Administrator General, within the meaning of that term in section 2 of the Administrator General Law 5738-1978, shall be the National Commissioner of Inheritances (hereafter: National Commissioner) and the Deputy Administrator General shall be the Deputy National Commissioner.

(b) Each of the Assistant Administrator Generals, who is qualified to be a Magistrates Court Judge, shall be a Registrar of Inheritances.

(c) In addition to the Registrars under subsection (b), the Minister of Justice may appoint a State employee whose superior is the Administrator General, to be a Registrar of Inheritances.

(d) The Minister of Justice shall, by notice in Reshumot, prescribe the areas of activity of the Registrars of Inheritances.

(e) The names of the Assistant Administrator Generals who are Registrars of Inheritances under the provisions of subsection (b) and the names of Registrars of Inheritances appointed under subsection (c) shall be published in Reshumot.

Declaration of the rights of heirs

66. (a) The Registrar of Inheritances may declare the rights of the heirs, on inheritance under Law — by an inheritance order, and on inheritance under a will — by an order that confirms the will (hereinafter: probate).

(b) If the deceased bequeathed part of his assets by will, probate shall be granted for that part and an inheritance order for the rest.

Submission of opposition

67. When application for an inheritance order or for probate has been made, the Registrar of Inheritances shall give public notice thereof and set a suitable interval of not less than 14 days for submitting opposition; any person with an interest in the matter may submit opposition to the Registrar of Inheritances within the time set and as long as the order has not been made.

Inheritance order or probate given by the Court

67A. (a) Notwithstanding the provisions of section 66(a), an application for an inheritance order or for probate submitted to the Registrar of Inheritances shall be referred to the Court in each of the following instances:

(1) opposition was submitted against the application;

(2) the State or one of its institutions is a party to the application;

(3) the Attorney General or his representative deemed it proper to initiate or to join a proceeding about the application;

(4) in the application the Administrator General represents a protected person, a minor or a missing person;

(5) the will in question is an oral will, within its meaning in section 23;

(6) the will that is the subject of the application includes a fault or a defect, within their meaning in section 25;

(7) the provisions of Chapter Seven apply to the estate;

(8) the Registrar of Inheritances deemed it proper to refer the application to the Court.

(b) An application, the hearing of which was referred to the Court under subsection (a), shall be treated like an action under section 1 of the Family Courts Law 5755-1995, and the Court may declare the heirs' entitlements as said in section 66.

(c) After the Court issued an inheritance order or grants probate under this section, a copy of the order shall be sent to the Registrar of Inheritances to be recorded according to section 73D.

Evidence

68. (a) The fact that a person died and the time of his death must be proved by a death certificate or by a declaration of death, except when the Court or the Registrar of Inheritances permitted them to be proved in a different manner, for special reasons which shall be recorded.
(b) A will — other than an oral will — must be proved by submission of the original; if it is proved that the original was destroyed in a manner or under circumstances that do not constitute revocation of the will, or that it is impossible to submit the original, the Court may permit the will to be proved by the submission of a copy or in some other way.

Contents of inheritance order and probate

69. (a) An inheritance order shall declare the names of the heirs and the proportionate part of each of them in the estate.
(b) Probate shall declare that the will is valid, except for those of its provisions that the Court held to be void.

Changes after death of the deceased

70. (a) If an heir died after the death of the deceased, but before the order was made, or if some other change occurred during that period, the order shall set out the particulars said in section 69 as they are on the day on which the order is made.
(b) If an Estate Administrator was appointed, that shall be stated in the inheritance order or the probate.

Effect of inheritance order or probate

71. An inheritance order or probate shall be valid against all persons, as long as it has not been amended or set aside.

Amending and setting aside an inheritance order or probate

72. (a) If a Registrar of Inheritances or a Court issued an inheritance order or granted probate, then either of them may — in respect of orders made by it and on application by a party with an interest in the matter — amend it or set it aside on the basis of facts or arguments that were not before them when the order was made; however, if the Registrar of Inheritances decided not take into account a fact or argument that the applicant could have raised before the order was made or that he could have brought thereafter, but did not bring at the first reasonable opportunity, he shall refer the application to the Court.

(b) If an inheritance order or probate was amended or set aside under the provisions of subsection (a), the Registrar of Inheritances shall publicize the matter and inform the heirs under Law or the beneficiaries under the will.

Protection of purchaser in good faith

73. If a person bought a right in good faith and for consideration in reliance on an inheritance order or on probate that was in effect at that time, or if a person discharged an obligation in good faith and in aforesaid reliance, his right shall not be voided and he shall not again be charged with the obligation, even if the order was subsequently amended or set aside.

Powers of National Commissioner and of his deputy

73A. (a) The National Commissioner shall prescribe the work procedures of the Registrars of Inheritances.

(b) The powers vested in the National Commissioner under this Law are also vested in the Deputy National Commissioner; the National Commissioner may give the Deputy National Commissioner directions on the exercise of his powers.

Independence

73B. (a) In the exercise of his functions under this Law the National Commissioner is subject to no authority, except the authority of the Law.

(b) A Registrar of Inheritances shall not serve as the Attorney General's representative in any matter that he handled in any legal proceeding under this Law.

Powers of investigation

73C. A Registrar of Inheritances shall have the powers of a commission of inquiry under sections 9 to 11 of the Commissions of Inquiry Law 5729-1968, to the extent necessary for the exercise of his office under this Law,

National Register

73D. The National Commissioner shall keep a National Register of inheritance orders and probates, of applications for inheritance orders and probate and of wills deposited under section 21; particulars of the Register and the ways of keeping it shall be prescribed in regulations.

Costs

74. The costs involved in proceedings under this Chapter, in a sum to be determined by the Court or by the Registrar of Inheritances, shall be borne by the estate, unless the Court or the Registrar of Inheritances ordered that all or some of them be borne by another party.

Delivery of will to the Registrar of Inheritances

75. (a) Any person, who has a will in his possession, must deliver the original or a certified copy thereof to a Registrar of Inheritances immediately after he learned of the death of the deceased.

(b) If a person violates the provisions of this section, he shall be liable to three months imprisonment or to a fine.

Notice of will

76. If a will or a memorandum about an oral will was deposited with a Registrar of Inheritances or if a will was delivered to him under section 75, and if no application for probate was made within 3 months after the testator's death or after the aforesaid delivery of the will, whichever was later, the Registrar of Inheritances shall so inform the beneficiaries under the will and make public notification thereof; particulars of the public notification shall be prescribed by regulations.

CHAPTER SIX: ADMINISTRATION AND DISTRIBUTION OF THE ESTATE

Article Three: Preservation of the Estate

Measures for preserving the estate

77. At any time after the death of the deceased and as long as no Estate Administrator was appointed, the Court may — on application by a party with an interest or at its own initiative — take steps it deems appropriate for the preservation of the estate or of rights therein, including a temporary bar on dealings with assets of the estate, an order to sell perishable assets included in the estate and the appointment of a temporary Estate Administrator.

Article Four: Estate Administrator

Appointment of Estate Administrator

78. (a) On application by a party with an interest in the matter, the Court may, by order, appoint an Estate Administrator.

(b) If the application is agreed on all the parties concerned, the application shall be submitted to the Registrar of Inheritances; if an application was submitted as aforesaid, the Registrar of Inheritances may, by order, appoint an Estate Administrator and for purposes of the appointment he shall have all the powers vested in the Court under section 89.

Who can be appointed

79. An individual, a body corporate or the Administrator General may be appointed Estate Administrator.

Consent

80. No one shall be appointed Estate Administrator, unless he has notified the Court or the Registrar of Inheritances, as the case may be, of his consent.

Directions by the deceased

81. If the deceased designated in his will a person to execute his will or to administer his estate, the Court or the Registrar of Inheritances, as the case may be, shall appoint that person Estate Administrator, unless he is unable or unwilling to accept the appointment or unless the Court or the Registrar of Inheritances is convinced — for reasons that shall be recorded — that there are special grounds for not appointing him.

Proceedings in Court

81A. When an Estate Administrator has been appointed under sections

Functions

82. Subject to the directions of the Court, the Estate Administrator shall gather the estate's assets, administer the estate, discharge the estate's debts, distribute the residue of the estate among

the heirs according to the inheritance order or the probated will and do anything else necessary to implement the inheritance order or the probated will.

Directions of Court

83. The Court may at any time — on application by a party with an interest or at its own initiative — give the Estate Administrator directions on matters that relate to the exercise of his office.

Inventory of the estate

84. (a) The Estate Administrator shall — as soon as possible and not later than sixty days after his appointment — submit to the Administrator General an inventory of the assets and liabilities of the estate, and he shall certify by affidavit that — to the best of his knowledge — the inventory is complete.

(b) If an inventory was submitted and additional assets or liabilities were subsequently discovered, the Estate Administrator shall — within 14 days after the day of discovery — submit a supplementary inventory and certify it as said in subsection (a).

(c) The Administrator General may extend the period for submitting an inventory or a supplementary inventory, if he concluded that there are grounds that justify doing so.

Valuation

85. The Court may direct –

(1) that, at a time set by it, the Estate Administrator submit to the Administrator General a valuation of the estate's assets, as of a date set by the Court;

(2) that the said valuation be prepared by an assessor or be another person designated by the Court.

Investment of money

85A. The Estate Administrator must hold or invest money of the estate, which is not needed for its day-to-day management, in whatever manner is necessary in order to preserve the capital and to assure income; the Minister of Justice may, by regulations, prescribe ways for the investment of estate funds that shall be binding upon the Estate Administrator.

Accounts, reports and information

86. The Estate Administrator must keep accounts on all matters that relate to the estate and he must submit reports to the Administrator General, as he shall direct at least once a year and when he winds up his position, and he must give the Court full information on its demand.

Examination of reports

87. The Minister of Justice may, with approval by the Knesset Constitution, Law and Justice Committee, make regulations on the manner in which the inventory and reports shall be examined by the Administrator General, and he may prescribe categories of reports that the Administrator General shall not have to examine, on conditions that shall be prescribed.

Liability

88. The Estate Administrator is liable for damage caused by him in consequence of a breach of his obligation as Estate Administrator; the Court may relieve him of all or some of his liability, if he acted in good faith and with the intent to perform his functions; the Estate Administrator does not incur liability if he acted in good faith under directions of the Court.

Collateral

89. (a) Before or after it appoints an Estate Administrator, the Court may require the Estate Administrator to give a charge on assets or some other collateral for the performance of his functions and obligations, and the Court may at any time require additional collateral or release all or some of the collateral that was provided.

(b) If the deceased directed in his will that the executor of his will or the administrator of his estate not be obligated to provide collateral, or if he named a person to execute his will or to administer his estate, but did not direct that that person provide collateral, the Court shall require the Estate Administrator to provide collateral only if — for reasons that shall be recorded — it is convinced that there are special grounds for doing so.

Realization of collateral

90. The collateral under section 89 shall be given to the credit of the Administrator General and he is authorized to represent entitled persons in anything that relates to its realization.

Remuneration

91. The Court may award the Estate Administrator remuneration according to rules prescribed by the Minister of Justice in regulations.

Termination of office

92. (a) An Estate Administrator may resign his office by written notice to the Court; the resignation shall only take effect if it is approved by the Court and from the day set therefor in the approval.

(b) The Court may, on application by a party with an interest in the matter or at its own initiative, dismiss an Estate Administrator if he did not exercise his functions properly or if the Court concluded that there are other grounds for his dismissal.

(c) The tenure of an Estate Administrator ends with the Court's certification that he completed his functions, and from the day set therefor in the certification.

Several Estate Administrators

93. If the Court or a Registrar of Inheritances appointed two or more Estate Administrators, the following provisions shall apply unless the Court directed otherwise:

(1) the Estate Administrators must act in agreement; in respect of a matter on which they disagree, they shall act as the Court decides;

(2) an act by one or several Estate Administrators requires the others' consent or the Court's approval, either in advance or retroactively;

(3) on a matter that must not be delayed each Estate Administrator may act of his own accord;

(4) each Estate Administrator is responsible for the act of his fellow administrators, unless he opposed it or did not know of it;

(5) if the place of one the Estate Administrators fell vacant, or if he temporarily or permanently ceased to act, the others must immediately inform the Court and they are bound and authorized to continue to function as long as the Court has not directed otherwise.

Protection of third parties

94. The act of an Estate Administrator that requires consent or approval under section 93(2) shall be valid even without such consent or confirmation, if it was performed in relation to a person who neither knew, nor should have known that it required consent or confirmation.

Directions of deceased

95. If the deceased in his will gave directions on one of the matters that under this Article are left to the Court's discretion, the Court shall act according to those directions, unless it is convinced — for reasons that shall be recorded — that there are special reasons for digressing from them.

Administrator General as Estate Administrator

96. If the Administrator General was appointed Estate Administrator, the provisions of sections 80 and 84 to 91 shall not apply.

Article Five: Administration of an Estate by the Estate Administrator

Powers of Estate Administrator

97. The Estate Administrator is competent to do everything necessary for the performance of his functions; he is not competent to do the following without the Court's approval in advance:
    (1) a transfer, encumberment, division or liquidation of an agricultural, industrial, manufacturing or commercial economic unit, or a of a dwelling;
    (2) a rental to which the Tenants' Protection Laws apply;
    (3) performance of an act, the validity of which depends on registration in a register kept under Law;
    (4) giving a guaranty;
    (5) any other act that the Court — in the appointment order or thereafter — made subject to aforesaid approval.

Gathering assets of estate

98. The Estate Administrator may demand that the assets of the estate be delivered to him and that debts owed to the deceased

be paid to him, and for this purpose he stands in the place of the deceased.

Call to creditors

99. (a) The Estate Administrator must call the creditors of the deceased to inform him of their claims in writing; this call shall be advertised publicly, and a period of at least three months after the day of publication shall be set for giving this information.

(b) The Court may relieve the Estate Administrator from the obligation to call on the creditors, if it concluded that — under the circumstances of the case — there is no justification for doing so.

(c) The provisions of this section shall not derogate from the Estate Administrator's obligation to discharge debts of the estate of which he learned in any manner whatsoever.

How the estate's debts are discharged

100. (a) For the discharge of the estate's debts the Estate Administrator shall, first of all, use the money in the estate.

(b) If discharging the debts requires realization of assets of the estate, the Estate Administrator shall first offer them to the heirs and give them reasonable time to acquire them at a price that is not less than the market price.

(c) If the deceased bequeathed a specific asset to a certain person, it shall not be realized as long as it is possible to discharge the estate's debts out of other assets of the estate.

(d) The Court may give the Estate Administrator directions that differ from the provisions of this section, and it may direct that the sale of the estate's assets be effected in the manner in which such assets are sold on execution or in some other manner, which it shall prescribe.

Secured debts

101. If any of the debts of the deceased were secured immediately before his death, the provisions of this Law shall not affect their collection out of the collateral.

Future and contingent debts

102. If the Court concludes that there are reasons for doing so, it may direct that any debt of the deceased that is not yet due for payment or is contingent be secured or discharged as it shall prescribe, even before the date of payment or before the contingency occurred.

Costs of estate administration

103. The costs of administering the estate, including the Estate Administrator's remuneration, shall be borne by the estate, unless the Court directs that all or some of them be borne by another party.

Order of priority of claims against estate

104. (a) The following amounts (in this Law: debts of the estate) shall be paid in the following order of preference:

(1) expenses connected to the funeral and burial of the deceased and to the erection of a tombstone, such as are customary under the circumstances;

(2) costs of the inheritance order, of probate and of administering the estate, to the extent that they fall upon the estate;

(3) debts that the deceased owed immediately before his death and that were not extinguished by his death (in this Law: debts of the deceased), including anything due to his wife under the ketubah, to the extent that the amount of the ketubah does not exceed a reasonable amount;

(4) whatever is due to the spouse of the deceased on

grounds that arise out of the marital bond, other than the ketubah said in paragraph (3), and anything due to a spouse under the Spouses (Property Relations) Law 5733-1973, or under a property agreement within its meaning in that Law.

(b) Debts of the estate, which are of equal preference, shall be discharged in proportion to their amounts.

(c) The preferential status of taxes and of other compulsory payments shall be according to the provisions of the Laws that deal with them.

(d) The debts of the estate have preference over maintenance out of the estate.

Ascertainment and discharge of debts

105. (a) If there is reason to assume that the estate will suffice to discharge all the estate's debts, the Estate Administrator may discharge some of them even before the rest have been finally ascertained.

(b) If it is suspected that the estate will not suffice to discharge all the estate's debts, the Estate Administrator shall only discharge debts which the Court permitted to be discharged, whether in whole, in part or in installments, all as the Court directed.

(c) For purposes of this section, "**the debts of the estate**" also means maintenance out of the estate.

Bankruptcy of an estate

106. If it has become clear that the estate does not suffice to discharge all the estate's debts, the Estate Administrator must apply for an order to administer the estate in bankruptcy under the bankruptcy laws, unless the Court ordered that the estate be wound up in some other manner.

Article Six: Distribution of Estate by Estate Administrator

Time of distribution

107. (a) After all the estate's debts and all maintenance out of the estate have been paid, the residue of the estate shall be distributed among the heirs.

(b) The residue of the estate shall not be distributed before the period prescribed in the notice to creditors has passed, and it shall not be distributed as long as the rights contingent upon the birth of a person under section 3(b) have not been determined.

(c) The Court may, if it concluded that the estate makes that possible, permit part of the estate to be distributed even before the estate's debts and maintenance out of the estate were paid and before the end of the periods said in subsection (b).

(d) If the deceased directed in his will that the estate be distributed at a later date, the directions in the will shall be followed, unless the Court ordered that the distribution date be changed.

Lodgings and maintenance during transition period

108. (a) If a person resided with the deceased in his dwelling immediately before his death — whether the deceased owned or rented the dwelling –he is entitled to continue to reside there for three months or, if he is an heir, for six months after the death of the deceased, and during that period he may use the common household implements to the extent that he used them before the death of the deceased.

(b) If a person resided with the deceased before his death and was at that time supported by him, he is entitled to receive support out of the estate for one month after the death of the deceased.

(c) The entitlements under this section shall not impose an obligation toward the estate on anyone or reduce any heir's share of the estate; they also shall not add to or derogate from the provisions of the Tenants' Protection Laws, or derogate from the provisions of section 115.

Subject of distribution

109. (a) The assets of the estate shall be distributed among the heirs according to their value at the time of the distribution.

(b) Any appreciation of the assets, their income and whatever replaced the assets between the death of the deceased and the distribution of the estate belongs to the estate, and the same holds for depreciation of the assets and for payments imposed on them.

(c) If, after the debts of the estate were discharged and after provision was made for maintenance, the estate does not suffice to satisfy all legacies, the legacies shall be reduced in proportion to their value at the death of the deceased, unless there is a different provision on this matter in the will.

Distribution by agreement

110. (a) The assets of the estate shall be distributed among the heirs by agreement between them or under a Court order.

(b) The Estate Administrator shall propose a scheme of distribution to the heirs and he shall endeavor to secure their consent.

(c) If an heir is absent and not lawfully represented, approval by the Court shall take the place of his consent.

(d) If the assets of the estate are distributed by agreement among the heirs, the provisions of sections 112 to 117 shall not apply.

Distribution under Court order

111. (a) If there is no agreement between the heirs, the assets of the estate shall be distributed between them under a Court order.

(b) The Estate Administrator shall bring a plan for distribution of the assets before the Court.

(c) If the deceased directed in his will how the assets of the estate are to be distributed among the heirs, the Court shall follow the directions of the will, unless it is convinced — for reasons that shall be recorded — that there are special reasons for digressing from them; if there are no such directions in the will of the deceased, the Court shall act according to the rules in sections 112 to 117.

Distribution in kind

112. The assets of the estate shall, as far as possible, be distributed among the heirs in kind, taking into consideration the likely usefulness of a particular asset for a certain heir and the sentimental value of a particular asset for a certain heir.

Asset that cannot be divided

113. (a) If an asset cannot be divided and if an asset would lose a substantial part of its value by being divided — including an agricultural, industrial, manufacturing or commercial unit, exclusive of farms to which section 114 applies — it shall be given to the heir who offers the highest price, on condition that that is not less than the market price; the amount offered by that heir shall be credited against the

amount due to him out of the estate and if it exceeds the amount so due, the heir shall pay the excess amount.

(b) If no heir agreed to purchase an asset said in subsection (a), the asset shall be sold and the proceeds distributed.

(c) The Court may order that the sale be in the manner in which such assets are sold on execution, or in another manner that it shall prescribe, and it may prescribe conditions for the payment under subsection (a) and conditions for the payment of sale proceeds under subsection (b).

Farm

114. (a) If a farm is a unit, the division of which would impair its viability as a farm capable of supporting an agricultural family, it shall be given to the heir who is ready and able to maintain it and he shall compensate the other heirs to the extent that the farm's value exceeds the amount due to him from the estate.

(b) If there is no agreement among the heirs on who among them is willing and able to maintain the farm, on what assets constitute the farm, on what the farm's value is for accounting among the heirs and on the form, payment dates and collateral for compensation of the other heirs, the Court shall decide the matter according to the circumstances.

(c) If there are two or more heirs, including the spouse of the deceased, who are ready and able to maintain the farm, the spouse of the deceased takes precedence over other heirs.

(d) If an heir was employed on the farm during the life of the deceased or if he invested in it and did not receive the consideration that any other person would have received, that shall be taken into account in determining the aforesaid compensation.

Residential dwelling

115. (a) If the deceased owned a dwelling and lived in it immediately before his death, his spouse, children and parents who at that time lived there with the deceased may continue to live there as tenants of the heirs, to whose share the dwelling falls; the rent, duration and conditions of the tenancy shall be set by agreement between those who remain in the dwelling and those heirs, and if there is no agreement those matters shall be set by the Court.

(b) The Court may prescribe on application by the said heirs 190—

(1) that only those continue to live in the dwelling who have no other dwelling to live in;

(2) that those who remain in the dwelling shall continue to live only in part of the dwelling, on condition that that part includes a kitchen and sanitary facilities, if there are such.

(c) The provisions of subsections (a) and (b) shall also apply to a dwelling that the deceased leased for a period of more than 25 years, in which he lived immediately before his death, and the lease of which did not lapse upon his death, and that notwithstanding any provision on this matter in the lease contract.

(d) If the rental rights to dwelling, which the deceased rented for a shorter period and in which he lived immediately before his death, do not lapse at his death according to the contract and if they are not tenancy rights under the Tenant Protection Laws, they shall be transferred to his spouse, children and parents who lived in that dwelling with the deceased immediately before his death.

Distribution by lot

116. Assets that cannot be dealt with according to sections 112 to 115 shall be distributed among the heirs by lot.

Adjustment of rights among heirs

117. (a) If the provisions of this article confer on one of the heirs a right, that implies that it also applies to other heirs, if they agreed to exercise that right jointly.

(b) If several heirs wish to exercise the same right independently of each other, the Court shall decide between them.

(c) One asset shall not be given jointly to several heirs without their consent.

Distribution statement

118. (a) Within thirty days after the distribution of the estate the Estate Administrator shall submit to the Court a statement of particulars of the distribution of the estate, and he shall certify by affidavit that the statement is complete.

(b) The statement shall specify the assets that each heir received from the estate and it shall include a valuation of those assets at the time of distribution, unless the heirs waived the valuation.

Additional distribution

119. If an estate was distributed and additional assets are discovered thereafter, they also shall be distributed according to the provisions of this Article; however, anything distributed shall be redistributed only with the consent of those concerned or to the extent that the Court concludes that the previous distribution would have been made differently, if the additional assets had then been known.

Amendment of distribution

120. (a) If an estate was distributed, either by agreement among the heirs or by Court order, and if thereafter facts come to light that show that the valuation of any asset of the estate was in error by more than one sixth, or if the inheritance order or probate under which distribution was made was amended or set aside, then those who received more than their share must restore the difference to those who received less than their share; however, any person who received anything from the estate in good faith shall not be required to restore more than what remains in his possession.

(b) If there is no agreement between the parties, the Court shall decide according to the circumstances whether restitution shall be in kind or in cash.

Article Seven: Administration and Distribution of Estate by the Heirs

General provision

121. (a) If an Estate Administrator was appointed, the heirs may deal with the estate only with permission from the Estate Administrator or from the Court.

(b) If no Estate Administrator was appointed, the estate shall be administered and distributed by the heirs according to the provisions of this Article.

Several heirs

122. (a) In administering the estate the heirs must act in concert; on a matter on which they disagree they shall act as the Court decides.

(b) An act by one or by several of the heirs requires the consent of the others or approval by the Court, either in advance or retroactively; in an action by an heir or against another heir, the approval may be given by the Court that hears the action.

(c) In a situation where postponement is impossible each of the heirs may act of his own accord.

Call to creditors

123. (a) The heirs may call the creditors of the deceased to inform them of their claims in writing; this call shall be advertised publicly, and a period of at least three months after the day of publication shall be set for giving this information.

(b) The provisions of this section shall not derogate from the heirs' obligation to discharge debts of the estate of which they learned in any manner whatsoever.

Discharge of debts

124. The provisions of sections 100 to 106 shall apply, mutatis mutandis, to the discharge of the debts of the estate by the heirs.

Distribution of estate

125. The provisions of sections 107 to 120 shall apply, mutatis mutandis, to the distribution of the estate among the heirs; submission of the statement said in section 118 is optional for any or all of the heirs.

Article Eight: Liability of Heirs for the Estate's Debts

Liability of the estate's assets

126. Until the estate is distributed the heirs are liable for the estate debts only through the estate's assets.

Liability up to amount received

127. (a) If the estate was distributed after creditors were given notice under section 99 or under section 123 and after the debts known at the time of the distribution were discharged, no heir shall be liable for undischarged debts, unless it is proved that he knew of them at the time of the distribution and then only up to the value of what he received from the estate.

(b) The statement of distribution under section 118 or section 125 shall be prima facie evidence for what each heir received from the estate, and if it included a valuation, then also for its value.

Liability up to the value of the whole estate

128. (a) If the estate was distributed without notice having been given to the creditors and without the debts known at the time of distribution having been discharged, then each heir is liable for the undischarged debts up to the value of the whole estate at the time of distribution; however, if he proved that he did not know of a certain debt at the time of distribution he shall be liable for it only up to the value of what he received from the estate.

(b) The heir shall bear the burden of proving the value of the estate or of what he received from the estate.

Liability in special cases

129. Notwithstanding any provision of sections 127 and 128 —

(1) if an heir concealed any of the estate's assets and thereby prevented the discharge of debts he is liable for all the debts that have not been discharged, up to the value of the whole estate at the time of the distribution;

(2) if an heir concealed the existence of a debt or otherwise

prevented its discharge he is liable for that debt up to the value of the whole estate at the time of the distribution.

Transfer and charge of part of estate

130. (a) If an heir transferred or encumbered his part of the estate before its distribution, as said in section 7, that shall not derogate from his liability for the estate's debts.

(b) The transferee is liable as that heir's guarantor for debts of the estate that were not discharged before its distribution, up to the value of what he received from the estate, and the encumberor up to the value of what he received in realizing the encumbrance.

Liability of a person entitled to a legacy

131. (a) Notwithstanding the provisions of sections 127 to 130, a person entitled to a legacy is liable for debts of the estate that were not discharged before its distribution only up to the value of what he received from the estate, and a creditor may not recover from him as long as he can recover from an heir who was not entitled to a legacy.

(b) A person entitled to a legacy is not liable for the legacies of other entitled persons.

Liability for all or some of a debt

132. (a) A creditor, for whose debt an heir is liable under the provisions of this article, may claim his entire debt from him, as far as it does not exceed the extent of heir's liability, on condition that he gave notice of his claim within the period prescribed by the call under section 99 or 123, if such a call was made.

(b) If a creditor did not give notice of his claim within the period prescribed by the call under section 99 or section 123 and if he has no justification for his failure to do so, he may claim from any heir only a part of his claim in proportion to that heir's part of the whole estate and that within two years after the end of that period.

Relief from liability

133. Any person liable for debts of an estate under provisions of this article may be relieved of all or some of that liability by the Court, if he acted in good faith in relation to the estate's debts and if what he received from the estate is small, or if there is some other special reason that justifies such relief.

Dividing the burden of debts among the heirs

134. (a) The heirs among themselves bear the burden of the estate's debts in proportion to their parts thereof, unless the deceased in his will prescribed a different distribution of the burden of debts, on condition that no heir bear the estate's debts in an amount that exceeds his liability to the creditors.

(b) An heir who paid a creditor more than is due from him according to the division between himself and the other heirs may demand from the others that they refund the difference, to the extent that they paid less than is due from them.

CHAPTER SEVEN: PRIVATE INTERNATIONAL LAW

Definition

135. In this Chapter, a person's "**place of residence**" is the place where his life is centered; the place of residence of a minor, of a legally incompetent and of a protected person is presumed to be at the place of residence of his representative, within the meaning of that term in the Legal Competence and Guardianship Law 5722-1962, as long as it has not been proved that his life is centered in another place.

Authority of Israel Courts

136. The Courts of Israel are authorized to deal with the estate of any person whose place of residence was in Israel on the day of his death, or who left assets in Israel.

Choice of Law

137. The Law applicable to an inheritance shall be the Law of the place of residence of the deceased at the time of his death, subject to the provisions of sections 138 to 140.

Law applicable to certain assets

138. The Law of the place where assets are located shall apply to assets that are inherited only according to that Law.

Capacity to make will

139. The Law of the testator's place of residence when he made the will shall apply to the testator's qualification to make a will.

Form of will

140. (a) A will is valid in form, if it is valid according to Israel Law, according to the Law of the place where it was made, according to the Law of the testator's place of residence when he made the will or when he died, or — as far as the will relates to real estate — also according to the Law of the place where that is located.

(b) For purposes of applying foreign Law under this section, the qualifications required of the testator or of witnesses to the will shall be deemed matters of form.

Classification of terms

141. For purposes of determining the authority and the Law under sections 136 to 140, each term shall have the meaning that it has in Israel Law.

Renvoi under foreign Law

142. Notwithstanding any provision of this Law, when the Law of a particular state applies and that Law refers to a foreign Law, that reference shall be disregarded and the domestic Law of that state shall apply; however, if the Law of that state refers to Israel Law, the reference shall be followed and domestic Israel Law shall apply.

Foreign Law that is not followed

143. Notwithstanding any provision of this Law, when foreign Law applies it shall not be followed to the extent that it discriminates on the grounds of race, religion, sex or nationality or that it is contrary to public policy in Israel.

Limit to applicability of foreign Law

144. Notwithstanding any provision of this Law, if foreign Law confers rights of inheritance under Law on a person who is not related to the deceased by blood or marriage, as an in-law or by adoption, then that Law shall be followed only to the extent that that foreign Law recognizes aforesaid rights of inheritance conferred by Israel Law.

CHAPTER EIGHT: MISCELLANEOUS PROVISIONS

Sole heir

145. If a deceased has only one heir, the provisions of this Law that relate to a part of the estate shall apply to the whole estate and the provisions of this Law on the distribution of the estate shall apply to the merger of the estate's assets with the assets of the sole heir.

Inheritance in special cases

146. If at the time of his death a man was married to more than one woman, whatever is due to the spouse on inheritance under Law shall be shared equally by his widows.

Amounts payable under insurance, etc.

147. Amounts payable in consequence of a person's death under insurance contracts, because of his membership in a pension fund or benefit fund or on similar grounds are not part of the estate, unless it was stipulated that they should accrue to the estate.

Saving of family Law

148. This Law shall not affect financial relations between husband and wife or rights that arise from the marital bond; however, this Law alone shall apply to rights of inheritance and rights of maintenance out of the estate.

Repeal of "miri"

149. For purposes of inheritance, the special Laws that relate to land of the "miri" category are not in effect.

Prevalence of this Law

150. In matters of inheritance, Article 46 of the Palestine Order in Council 1922-47 shall not apply.

Jurisdiction of Courts

151. The Court that has jurisdiction under this Law is the Family Court.

Appeal against a decision by a Registrar of Inheritances

151A. If a person deems himself injured by the decision of a Registrar of Inheritances, he may appeal against it before the Court that has jurisdiction under section 151, where the appeal shall be heard by a single judge.

152. Repealed

Parties to proceedings

153. On any matter assigned to the Court under this Law, any party with an interest in it may apply to it and the Attorney General or his representative may, if he believes that the matter is in the public interest, initiate any legal proceeding under this Law, including appeals, and they may appear and plead in all such proceedings.

Guardianship in matters of inheritance

154. If the Court believes that an heir or a person entitled to maintenance out of the estate is incapable of protecting his rights in the estate, whether in person or by a representative, the Court may — on application by a person with an interest in the matter or at its own initiative — appoint a guardian to protect his rights in the estate.

Jurisdiction of Religious Tribunals

155. (a) Notwithstanding the provisions of sections 66(a) and 151, the Religious Tribunal that had jurisdiction in matters of the deceased's personal status is competent to make an inheritance order, to grant probate and to prescribe entitlement to maintenance out of the estate, if all the parties concerned under this Law gave their written consent thereto.

(a1) If the Tribunal made an inheritance order or granted probate under this section, a copy of the order shall be transmitted to the Registrar of Inheritances for registration under section 73D.

(b) If the parties concerned with a matter under this Law include a minor, a legally incompetent or a missing person who has no guardian, the Religious Tribunal may appoint a guardian for him for the purpose of consenting to the jurisdiction of the Religious Tribunal and in order to represent him before it.

(c) If a matter was brought before a Religious Tribunal according to subsection (a), the Religious Tribunal may — notwithstanding the provisions of section 148 — act according to the religious Law under which it acts; however, if a minor or a person declared legally incompetent is among the parties, his rights of inheritance — under Law or under a will — and his rights to maintenance out of the estate shall not be less than what they would be under this Law.

(d) In a matter brought before a Religious Tribunal under subsection (a), the Religious Tribunal is also competent to appoint an Estate Administrator and to distribute the estate's assets, and Articles One to Five of Chapter Six — except sections 105 and 106 — shall apply, and every reference in those articles to "the Court" shall be deemed a reference to the "Religious Tribunal".

(e) Subsection (a) shall not derogate from section 4 of the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law 5713-1953.

(f) In this section, "**Religious Tribunal**" — a Rabbinical Tribunal, a Sharia Tribunal, the Tribunal of a Christian community or a Druze Tribunal.

Repeals

156. (a) The following are repealed:

(1) articles 877 to 880, 1570, 1571, 1594 (second paragraph), 1595 to 1605 of the Mejelle;

(2) the Succession Ordinance;
(3) section 4 of the Equal Rights for Women Law 5711-1951.
(b) In the Palestine Order in Council 1922-47 –
(1) in article 51(1), delete "succession, wills and estates.";
(2) in article 54(1), delete the words "confirmation of wills.".

Transitional provisions

157. If a person died before this Law went into effect, the Law in effect immediately before this Law went into effect shall apply to his estate.

Earlier wills

158. (a) If a will was made before this Law went into effect and if the testator died after it went into effect –
(1) it is valid in respect of form and content if it was valid immediately before this Law went into effect or under the provisions of this Law;
(2) it shall not be invalidated for anything that does not constitute grounds for invalidating a will under this Law.
(b) If a person made a will before this Law went into effect, he may revoke it according to the provisions of this Law after it went into effect.

Pending proceedings

159. Proceedings on matters of inheritance that were initiated before this Law went into effect, shall continue as if this Law were not in effect.

Implementation and regulations

160. (a) The Minister of Justice is charged with the implementation of this Law and he may make regulations on any

matter that relates to its implementation, and also on the following:

(1) making a will before an authority abroad, and depositing a will abroad;

(2) the central registration of wills made before an authority and of deposited wills;

(3) the service of a personal notice on persons with an interest, in addition to the public notice; the service of a personal notice or giving public notice in cases additional to those specified in this Law; the form of public notices and the manner of their publication in Israel and abroad;

(4) accounts that must be kept by Estate Administrators;

(5) law procedure;

(6) times in law procedure, including times for purposes of applications made to a Religious Tribunal;

(7) fees, remuneration and costs.

(b) Regulations under paragraphs (6) and (7) of subsection (a) require approval by the Knesset Constitution, Law and Justice Committee.

Effect

161. This Law shall go into effect nine months after the date of its publication in Reshumot. *(The Law was published on February 10, 1965; Amendment No. 7, published on June 22, 1998, is in effect from September 1, 1998 — Tr.)*

APPENDIX V

Inheritance Regulations 5758-1998

Translation correct as of April 1, 2012

By my powers under sections 73D, 76, 91 and 160 of the Inheritance Law 5725-1965, of section 26 of the Family Courts Law 5755-1995, of section 108 of the Courts Law (Consolidated Version) 5744-1984, and with approval by the Knesset Constitution, Law and Justice Committee on the matter of times in law procedure, I make these regulations:

CHAPTER ONE: INTERPRETATION AND APPLICABILITY

Definitions

1. In these regulations –
   "**Registrar's area of activity**" — within its meaning in section 65A of the Law;
   "**Court**" — the Family Court;
   "**Religious Tribunal**" — within its meaning in section 155(1) of the Law;
   "**the Law**" — the Inheritance Law 5725-1965;
   "**protected person**", "**minor**" — within their meaning in the Legal Competence and Guardianship Law 5722-1962;
   "**form**" — a form in the Schedule;

"**heir**" — including a beneficiary under a will, as the case may be;

"**Family Courts Law**" — the Family Courts Law 5755-1995,

"**National Commissioner**" — the National Commissioner of Inheritances, within its meaning in section 65A of the Law;

"**National Register**" — within its meaning in section 73D of the Law;

"**missing person**" — a person whose identity or location are not known or a person who is abroad and — because of conditions in that place, over which he has no control — cannot attend to his affairs;

"**Registrar of Inheritances**" — within its meaning in section 65A of the Law;

"**Civil Law Procedure Regulations**" — the Civil Law Procedure Regulations 5744-1984.

Applicability of the regulations

2. (a) Applications and actions under the Law (hereafter: matters of inheritance) shall be submitted and hearings on them shall be held under these regulations.

   (b) Notwithstanding the provisions of subregulation (a), Part Three "A" of the Civil Law Procedure Regulations shall apply to matters of inheritance conducted before a Court, to the extent that they do not contradict these Regulations.

CHAPTER TWO: NATIONAL REGISTER

National Commissioner

3. (a) The National Commissioner shall perform according to the tasks and with the powers vested in him by the Law and by these Regulations for the operation of the National Register..

(b) These are the powers and the tasks of the National Commissioner:
  (1) to establish Inheritance Offices and Registrars in all areas of their activity;
  (2) to prescribe working procedures for Registrar of Inheritances, including procedures for the transfer of files from one Registrar to another;
  (3) to provide guidelines for the Deputy National Commissioner on the use of his powers;
  (4) to prescribe procedures — in consultation with the Director of Courts — for the transfer of files and documents to and from Courts;
  (5) to regulate any other matter required for the performance of the National Commissioner's tasks under the Law.

Particulars of National Register

4. (a) The National Register shall include computerized information of wills deposited under section 21 of the Law, of memoranda deposited under section 23(b) of the Law, of wills delivered under section 75 of the Law, of applications for inheritance orders and probate that were submitted, and also of inheritance orders, probate orders and orders for the appointment of Estate Administrators that were made by Courts, Religious Tribunals or Registrar of Inheritances.

(b) In the National Register shall be stated –
  (1) in respect of the deposit of wills and memoranda — the particulars prescribed in regulation 6;
  (2) in respect of the delivery of wills — the particulars prescribed in regulation 8;
  (3) in respect of applications for probate or inheritance orders — these particulars:

(a) the name and ID number or passport number of the deceased (hereafter: ID particulars), his place of residence at the time of his death and the date of his death;
(b) the applicant's ID particulars, address and interest in the application;
(c) if there is a representative — his name and address;
(d) the Registrar of Inheritances or Tribunal to which the application is submitted; the date on which the application is submitted;
(e) if the application was referred to the Court under section 67A of the Law — the date of referral and the Court to which it was referred;

(4) in respect of inheritance orders, probate or orders to appoint Estate Administrators — the following particulars:
(a) the ID particulars of the deceased;
(b) the ID particulars of the Estate Administrator;
(c) date when the order was made and by whom.

Confidentiality, examination and investigation

5. (a) The wills and memoranda about oral wills deposited with an Registrar of Inheritances and all files and records related to them — including the National Register — shall be kept confidential and no information about them shall be disclosed as long as the testator is alive.
(b) After a person's death a party with an interest in the matter may obtain National Register particulars that pertain to the deceased.
(c) When a testator whose will was deposited or delivered has died, an person with an interest in the matter may submit an application to the Registrar of Inheritances to

view the will; in the said application the interest that the applicant has in the viewing shall be stated; if the Registrar concludes that the applicant does have an interest in the matter, he may permit him to view all or part of the will, as the Registrar shall determine, and he may order that a photocopy of the part approved for viewing be delivered to the applicant; aforesaid viewing shall be in the presence of an employee of the Registrar's Office.

CHAPTER THREE: DEPOSITING, MAKING, AND DELIVERING A WILL

Depositing a will

6. (a) A person who desires to deposit his will with an Registrar of Inheritances shall submit to him a written application to that effect.
   (b) The applicant shall be summoned to appear before the Registrar of Inheritances, to be interrogated on his ID particulars and to deliver the will in a closed envelope, sealed with sealing wax and with the Registrar of Inheritances's seal.
   (c) On the envelope shall be stated the depositor's ID particulars and address, the date of deposit, before whom the will was made, as far as that is known, and the Registrar of Inheritances and the depositor shall sign on it.
   (d) The fact of the deposit shall be entered in the National Register and the depositor shall be given certification that the will was deposited.
   (e) The provisions of this regulation shall apply, mutatis mutandis as the case may be, to the deposit of a memorandum said in section 23(b) of the Law, on condition that the

names and addresses of the witnesses also be stated on the envelope.

(f) Whoever deposited his will with an Registrar of Inheritances may have it returned to him upon his written application; the Registrar of Inheritances shall investigate the applicant's ID particulars, shall deliver his will to him against his signature in certification of receiving of the will, and shall so inform the National Register; the matter of the deposit shall be erased from the National Register.

Making a will before an authority

7. (a) A person who wants to make a will before a Court, a Court Registrar, the member of a Religious Tribunal or an Registrar of Inheritances (hereafter: authority) shall submit a written application to that effect to the authority, specifying in the application whether the provisions of the will shall be oral or written.

(b) The will shall be made before a judge, a Court Registrar, an Registrar of Inheritances or the member of a Religious Tribunal, and the provisions of the will, as submitted to or recorded by the authority (hereafter: text of will) shall be delivered to the testator.

(c) The application file shall be a separate file, which shall include the protocol of the hearing that specifies the manner in which the will was made, including the testator's declaration that the will was made of his free will; the text of the will shall not be attached to the file.

Delivery of the will

8. A person who must deliver a will under section 75 of the Law shall submit the document in his possession to the Registrar of

Inheritances, stating his ID particulars and address, as well as the testator's name, and he shall receive certification of the delivery; the fact of the delivery shall be recorded in the National Register; the said document shall be kept in the manner in which deposited wills are kept.

Notification that there is a will

9. (a) If a will or a memorandum about an oral will is in the National Register, and if the Registrar of Inheritances learns that the testator has died and the conditions said in section 76 of the Law have been met, the Registrar of Inheritances shall open the envelope, read its contents and notify the beneficiaries under it by registered mail, and if a notification sent to a beneficiary was returned by the post, the Registrar shall give notice of the will in Reshumot.

(b) The Registrar of Inheritances shall draw up a protocol about opening and reading the will and attach to it a copy of the notification to the beneficiaries, of the certification of its delivery and a copy of the notice in Reshumot, if such was published.

CHAPTER FOUR: BRINGING ACTION BEFORE A COURT

Place of jurisdiction

10. (a) An action on matters of inheritance shall be brought before the Court, within whose jurisdiction the place of residence of the deceased was at his death; if the place of residence of the deceased was not in Israel, the action shall be brought before the Court within the jurisdiction of which assets of the estate are located.

(a1) if the place of residence of the deceased at his death was in an area, within its meaning in the Emergency Regulations (Judea, Samariah and Gaza Region — Adjudication of Offenses and Legal Aid) 5728-1967 (hereafter: the area), the action shall be brought before the Court, the area of whose jurisdiction is nearest to the place where the deceased resided when he died.

(b) An action on matters of an inheritance that was transferred from an Registrar of Inheritances under section 67A of the Law, as well as an appeal against the decision of an Registrar of Inheritances shall be submitted to the Court competent under the provisions of subregulation (a).

(c) A new additional action on matters of inheritance shall be brought as said in section 6(d) of the Family Courts Law 5755-1995; if the Court sees that another Court heard a previous action on matters of inheritance — whether that proceeding was concluded or is still pending –it shall transfer the action to that Court, which shall continue to hear it from the stage reached by the Court that transferred it, unless it concluded — for special reasons that shall be recorded — that, in order to clarify the action it must hear it as if it had been brought before it initially.

(d) Notwithstanding the provisions of subregulations (a), (b) and (c), the Court may order the hearing to be transferred to another Court, if all or most of the parties live outside the jurisdiction.

Opening an estate file

11. (a) Actions on matters of inheritance shall be joined into a single family file, which shall be called an estate file and shall include a main file and subsidiary files.

(b) In a new additional action on matters of inheritance, the person who brings the action shall state the number of the main file in the Court, in which the previous action was heard.

(c) A first action shall be given the number of a main file, and each additional claim shall be given the number of a subsidiary file of the main file; applications for interim relief shall be added to the main file or the subsidiary file, within the framework of which they were submitted, as the case may be; the provisions of this subregulation shall not apply to an application for the making of a will under regulation 7.

Relief for various claims

12. An action of those specified below shall be brought as a separate claim, irrespective of the number of matters in it:

(1) an action for the making of a will;
(2) an action for the grant of an inheritance order or probate and opposition;
(3) an action for a declaration of death;
(4) an action to prove that a person died and the time of his death;
(5) an action to prove a will;
(6) an action for maintenance or for housing from the estate and from the heirs;
(7) an action for the appointment of an Estate Administrator and opposition to the appointment;
(8) an action for the amendment of an inheritance order or of probate and opposition;
(9) an appeal against the decision of an Registrar of Inheritances;
(10) any other action on matters of inheritance, including an action, the grounds for which are conflicts in connection with an inheritance, no matter who the parties may be.

CHAPTER FIVE: INHERITANCE ORDER AND PROBATE

Article Eight Submission of Application to the Registrar of Inheritances

Competent Registrar of Inheritances

13. (a) An application for an inheritance order or for probate shall be submitted to the Registrar of Inheritances in whose area of activity the place of residence of the deceased was at his death; if the place of residence of the deceased was not in Israel, the application shall be brought before the Registrar of Inheritances within whose area of activity assets of the estate are located.

(a1) If the place of residence of the deceased at his death was in an area, the action shall be brought before the Court, the area of whose jurisdiction is nearest to the place where the deceased resided when he died.

(b) If assets of the estate are located in areas of activity of different Registrar of Inheritances and if the application in respect of a certain estate was submitted to one of them, then the others shall no longer be competent for purposes of that estate.

(c) Notwithstanding the provisions of subregulations (a) and (b), the National Commissioner may order — on application by a party to the application — that it be transferred to a Registrar in another area of activity, if all or most of the applicants live outside the area of activity of the competent Registrar of Inheritances, or for other special reasons that shall be recorded.

Submission of application

14. (a) An application for an inheritance order or for probate or

an application for both together shall be submitted in two copies, drawn up according to Forms 1 or 2; the particulars included in the application shall be certified by an affidavit of the applicant or of another person, if facts are included in the application that are not of the applicant's personal knowledge; if any one of the heirs is a minor, a protected person or a missing person, the applicant shall state that at the beginning and in the body of the application, according to the Form.

(b) An application for an inheritance order or for probate shall not be accepted, unless all the following hold true:

(1) all the particulars required on the form prescribed in subregulation (a) were duly filled in and all the documents required under these regulations were attached to the Form;

(2) a lawfully certified death certificate or declaration of death was attached to attest the death of the deceased and of any other person, whose death and time of death must be proven, or a petition to prove the fact of the death and time of death of the deceased or of any other aforesaid person otherwise than by a death certificate or declaration of death under section 68(a) of the Law or a decision made by the Court on an aforesaid application was attached.

(3) if the application is for probate, the original will, an application to permit proof of the will under section 68(b) of the Law or a decision made by a Court on an aforesaid application was attached; if the will was deposited or delivered to an Registrar of Inheritances, the applicant shall so state in his application and shall attach a copy of it;

(4) if certification was attached of the dispatch by registered mail of notices to the beneficiaries under Law specified in the application for the inheritance order, or to the beneficiaries under the will, as the case may be, or an affidavit by the applicant or by another person, as said in subregulation (a), that he personally delivered the notification to the heirs or beneficiaries or to some of them, and a copy of the notification, drawn up in accordance with Form 3 or Form 3A, as the case may be, was also attached;

(5) if the applicant is represented by an advocate — a power of attorney must be attached to the application;

(6) that the set fee has been paid, and the costs of publication said in regulation 17 also have been paid;

(7) that there is no record in the National Register of the submission of an earlier application to an Registrar of Inheritances or to a Religious Tribunal, for an inheritance order or for probate in respect of the same estate.

(c) If an applicant wishes to receive the share of an heir who died after the death of the deceased, he shall attach a lawfully certified inheritance order or probate order in respect of that heir to his application

Affidavits as evidence

15. (a) An application to prove the fact that a person has died and the time of his death shall be submitted to a Registrar or to the Court to which the matter was transferred it under section 67A of the Law, and it shall be accompanied by affidavits by the applicant or by another person, in which the circumstances and the time of the death shall be specified, as well as the special reasons why a death certificate or death declaration was not presented.

(b) While examining the application, the Registrar of Inheritances or the Court, as the case may be, may investigate the facts stated in the affidavits and they may summon the persons who made the affidavits and interrogate them.

Statement of renunciation

16. (a) A person who renounced his share in an estate shall submit a notice of renunciation to the Registrar of Inheritances or to the Court, if the matter was transferred to it under section 67A of the Law,

(b) In the notice of renunciation shall be specified the identifying particulars of the renouncer, the degree of renunciation, and if he renounced in favor of the spouse of the deceased, his child or sibling, he shall clearly specify in whose favor he renounces; the statement of renunciation shall be by affidavit.

(c) If the renouncer is a minor or legally incompetent, that fact shall be stated in the notice of renunciation and application for approval of the notice of renunciation shall be submitted to the Court.

Publication

17. Notice that an application for an inheritance order or for probate was submitted shall be published in one daily newspaper and also in Reshumot; the notice in the daily newspaper shall include an invitation to submit a writ of opposition within a period of two weeks after the day of publication in the daily newspaper or within a longer period, as the Registrar of Inheritances shall prescribe; the applicant shall bear the costs of the publication.

Examination of Register

18. (a) When an application for an inheritance order or for probate has been submitted, the Registrar of Inheritances shall check in the National Register whether a will was delivered

or deposited or if a memorandum of an oral will was delivered or deposited.

(b) If the Registrar of Inheritances finds that there is a will in respect of the same estate, as said in subregulation (a), and that it is not the subject of the application, then he shall send to the beneficiaries under it by registered mail notice about its existence and about the submission of the application; the notice shall state that the beneficiaries are entitled to submit writs of opposition to the application within 14 days after the notice was served.

Opposition to an application

19. (a) A person who wishes to submit opposition to an application shall submit a writ of opposition to the Registrar of Inheritances in a number of copies sufficient for the Court and for the parties, and in it he shall specify the subject of his opposition and its reasons, and he shall attach to it all the documents on which it is based; the facts argued in the writ of opposition shall be supported by affidavit; to the writ of opposition shall be attached a receipt for payment of the set fee, a power of attorney, if the opponent is represented by an advocate, and also a Form for the opening of proceedings under regulation 7A of the Civil Law Procedure Regulations.

(b) If an Registrar of Inheritances set a time for the submission of opposition, he may — at his discretion — extend it from time to time, even if the time originally set has passed.

Article Nine: Transfer of the Application to the Court

Transfer of the application file

20. If the Registrar concluded that one of the conditions prescribed in section 67A of the Law has been met, he shall transfer the file with all its attachments to the competent Court,

and he shall attach to it the particulars of the National Register connected to the matter.

Law procedure on application

21. (a) The person who submits an application to a Registrar shall be listed as the plaintiff and the hearing in Court shall proceed as specified below in this regulation:
    (1) if opposition to the application was submitted, or if the Attorney General or his representative deemed it proper to initiate proceedings on respect of the application, the Attorney General shall be listed as the defendant in the action;
    (2) if there is no defendant in the action, the Court shall study the application that was transferred to it, and it may summon the persons concerned in the matter to the hearing and clarify the facts that require proof, even if it was not requested to do so.
(b) Notice of the date of the hearing shall be served by registered mail on the plaintiff, the defendant and the Estate Administrator, if one was appointed earlier; if opposition was submitted, the writ of opposition shall be attached to the notices to the plaintiff and to the Estate Administrator.

Registrar's notification of the existence of a will

22. If an application for an inheritance order or for probate was transferred to the Court, and if thereafter a will was delivered to the Registrar of Inheritances, the Registrar shall send notice of the existence of the will by registered mail to the beneficiaries under it; in the notice shall be stated that — within 14 days after the notice was served — the beneficiaries may submit writs of opposition to the application to the Court to

which the application was transferred; a copy of the notice and certification of its delivery shall be sent to the Court.

Article Ten: Grant of Inheritance Order and Probate

Grant of order in the absence of opposition

23. (a) If no opposition was submitted within the time set in regulation 17 or within the time set in regulation 18(b), whichever is later, if none of the other conditions specified in section 67A(a) of the Law holds true, and if the Registrar of Inheritances decided to grant the requested order, the order shall be drawn up according to regulation 24 and the Registrar shall certify it by his signature.

(b) If the Court decided to grant an inheritance order or probate, and if no opposition was submitted within the time set in regulation 22, then the order shall be drawn up as said in regulation 24 and the Court shall certify it by his signature.

Formulation of order

24. (a) An inheritance order shall be drawn up according to Form 4 and probate according to Form 5.

(a1) If an Estate Administrator is appointed when or before the inheritance order or probate is given, that fact shall be stated in the order.

(b) Probate shall declare the validity of the will, a certified copy of which is attached to it; if the Court canceled or amended any of the provisions of the will, it shall state so in the order; this provision shall also apply to an Registrar of Inheritances in respect of any will that he amended.

(c) If the deceased willed part of his assets, the Registrar of Inheritances or the Court may include an inheritance order and probate in a single order according to Form 6, and the provisions of sub regulation (b) shall apply.

(d) If the deceased fell, within the meaning thereof in the Fallen Soldiers' Families (Pensions and Rehabilitation) Law 5710-1950, the inheritance order or probate shall state "fell" instead of "died".

Partial order

25. The Registrar of Inheritances or the Court may grant an inheritance order or probate for part of the estate, whenever it appears to them that granting the order will not affect rights that have not yet been clarified.

Probate of a defective will

26. (a) If the Court granted probate of a will written by hand, even though it lacked a signature or date, or if it allowed probate in spite of a defect in the testator's or the witnesses' signatures or in the date of the will or in the procedures specified in sections 20 to 23 of the Law or in the qualification of the witnesses, or if it amended the will under sections 30 to 32 of the Law or voided any of its provisions, that fact shall be stated in its decision and the reasons for it shall be explained.

(b) If the Registrar of Inheritances amended a will under section 32 of the Law, that fact shall be stated in his decision and the reasons for it shall be explained.

Amendment or cancellation of order

27. (a) A person who applies for the amendment or cancellation of an inheritance order or of probate shall submit a written application to the Court or to the Registrar of Inheritances that made the order; the addresses of all the heirs shall be stated in the application; the facts included in the application shall be supported by the applicant's affidavit and by

that of another person, if the application includes facts that are not personally known to the applicant; certification of the payment of the prescribed fee shall be attached to the application.

(b) The Court or the Registrar of Inheritances, as the case may be, shall send a copy of the application by registered mail to every person listed in the order as an heir, and they shall summon him to respond to the application within 14 days after the summons was served.

(b1) If an application was submitted to amend or to cancel an inheritance order issued or probate granted by the Registrar of Inheritances, he may order the stay of implementation of any decision made by him in connection with the estate.

(c) The application shall be heard by the Court or by the Registrar of Inheritances, as the case may be, but if the application was submitted to the Registrar of Inheritances and he concluded that one of the conditions prescribed in section 67A(a) of the Law holds true, or if he decided not to deal with the application under section 72 of the Law, he shall transfer the application to be heard by the Court; the Court may refrain from considering a fact or argument that the applicant could have presented to it before the order was granted, or that he could have presented thereafter, but did not do so at the first reasonable opportunity.

(d) When the application has been transferred to the Court, the applicant shall be deemed the plaintiff and the heir the defendant in the action.

(e) When the Court or the Registrar of Inheritances decided to amend or cancel the order, they shall issue an amended order and shall send notice thereof to each of the parties; notice to amend an order or to cancel it shall be sent to the National Register.

CHAPTER SIX:
MAINTENANCE OUT OF THE ESTATE

Action for maintenance out of the estate

28. (a) An action for maintenance out of the estate, its change or cancellation, including an interim application to set temporary maintenance, shall be to submitted the Court in writing.

(b) In the action shall be stated the applicant's entitlement to maintenance out of the estate and the particulars said in section 59 of the Law shall be spelled out in it as far as possible, and also particulars of the plaintiff's income in the 12 months that preceded submission of the claim; an affidavit shall be attached to the action in support of the facts on which it is based and all the documents that support the action shall be attached.

Summons and statement of defense

29. If a claim for maintenance out of the estate was submitted, the claim shall be served on all heirs under the inheritance order or to the Estate Administrator, if one was appointed, together with a summons according to Form 7, to submit a statement of defense within 15 days; to the statement of defense shall be attached a report on the assets and income of the estate, drawn up as an affidavit, together with the documents that support it.

Enlargement of estate for purpose of maintenance

30. If a Court finds that it is necessary to consider the enlargement of an estate for the purpose of maintenance, as said in section 63 of the Law, then any person liable to be injured by the decision shall be summoned to the hearing and shall be added as defendant.

CHAPTER SEVEN: ADMINISTRATION OF ESTATE

Application to appoint administrator

31. (a) An application for the appointment of an Estate Administrator — including a temporary Estate Administrator — shall be submitted to the Registrar of Inheritances by an interested party, if all parties concerned agreed to the application; however, an application to appoint an Estate Administrator under section 81 of the Law does not require the agreement of the parties concerned; if there is no aforesaid agreement, or if an application for an inheritance order or for probate was submitted to the Registrar of Inheritances and transferred to the Court, the application shall be submitted to the Court by an interested party.

(b) The application shall be submitted in two copies, drawn up according to Form 8; the facts specified in it shall be supported by affidavit and all the documents required under these Regulations shall be attached..

(c) An application for the administration of an estate shall not be accepted, unless the amount set for this purpose in regulation 1 of the Administrator General Regulations (Payment) 5738-1978 has been paid to the Administrator General.

Contents of the application

32. (a) In his application the applicant shall specify the reasons, because of which an administrator should be appointed for the estate, as well as the name and address of the proposed administrator, if one is proposed.

(b) If the applicant knows that the deceased designated an executor or Estate Administrator in his will, that fact shall also be stated and application for probate shall be accompanied by an application for his appointment as Estate Administrator; if the applicant opposes his appointment, he shall state that in the application for probate, specifying the reasons for his opposition.

Opposition to an application

33. Regulation 19 shall apply, mutatis mutandis as the case may be, to an application to the Court or to the Registrar of Inheritances for the appointment of an Estate Administrator.

Consent of Estate Administrator

34. A person who is to be appointed Estate Administrator shall submit his consent to the appointment or deliver it orally to the Court or to the Registrar of Inheritances, as the case may be.

Collateral

35. If the Court or the Registrar of Inheritances, as the case may be, decided to obligate the administrator to provide collateral, collateral shall be provided according to Form 9.

Deposit of money

36. The Court or the Registrar of Inheritances, as the case may be, may order the applicant to deposit a sum of money with the Court to cover the Estate Administrator's remuneration and expenses.

Appointment of Estate Administrator

37. (a) If the Court or the Registrar of Inheritances concluded that it is necessary to appoint an Estate Administrator or a temporary Estate Administrator (hereafter: Estate Administrator), they shall appoint an Estate Administrator

by an order drawn up according to Form 10; if the term of the appointment is not stated in the order, the term of an Estate Administrator's appointment shall be two years and that of a temporary Estate Administrator six months.

(b) Repealed

(c) The Court may, upon the Estate Administrator's application and for special reasons that shall be recorded, extend the periods said in subregulation (a).

(d) If the Court or Registrar of Inheritances restricted or extended the administrator's responsibilities or if they designated acts that require their approval, that shall be stated in the order; if the appointment is for a temporary Estate Administrator, his powers and responsibilities shall be prescribed in the order.

(e) The Court's Secretariat or the Registrar of Inheritances's Secretariat shall deliver to the Administrator General a copy of every appointment order under this regulation and also of every order for its extension.

(f) If a Religious Tribunal appointed an Estate Administrator, the Secretariat of the Tribunal shall deliver a copy of the appointment order to the Administrator General.

Inventory of assets

38. The Estate Administrator shall deliver to the Administrator General an inventory, as said in section 84 of the Law, drawn up according to Form 11 and supported by affidavit; the Administrator General may order a copy of the inventory to be delivered to the heirs or to some of them.

Stating the Administrator's position and obligations

39. (a) An Estate Administrator shall state in every document, legal proceeding or act performed by virtue of his position

that he acts as administrator of a certain person's estate, and if he is a temporary administrator, that fact shall be stated.

(b) When the Estate Administrator learns that the estate includes real estate or other assets in respect of which registers for the registration of ownership are kept under any enactment, he shall see to it that a remark about the Estate Administrator's appointment be entered in them; the person in charge of the said registration shall enter the required remark when the appointment order is submitted to him.

(c) The Estate Administrator shall open a bank account in the name of the estate and he shall deposit in it as soon as possible after its receipt any money received by him by virtue of his responsibility, and he shall not keep the estate's funds in his private account.

(d) The Estate Administrator shall make certain of proper documentation for every expense and income, except for small amounts for which customarily no receipts are given.

Application for instructions from the Court

40. (a) An Estate Administrator's application for instructions on any matter that relates to the exercise of his responsibility shall be submitted to the Court in writing, together with an affidavit.

(a1) If the Registrar of Inheritances appointed an Estate Administrator, the Estate Administrator or an interested party shall also attach the order that appointed the Estate Administrator to his first application to the Court, and the Court Secretariat shall open an estate file, in which the order and every application to the Court connected to the estate shall be filed.

(b) In every instance in which the estate includes property or rights of a minor, of a protected person or of an absent person, that fact shall be stated prominently in the opening sentence of the application.

(c) To every application for instructions about assets shall be attached the documents that evidence the rights that exist in their respect or their certified copies, but the Court may exempt from submission of the said documents if it holds that they are not required for the issue of instructions.

(d) When an estate manager applies for the approval of an act, as required by section 97 of the Law, or for approval of the sale of one of the estate's assets or of its distribution to any of the heirs all the heirs shall be respondents, but the Court may, under special circumstances, exempt from the obligation to serve the application on a certain respondent; if an heir's consent is attached to the application, it is not necessary to serve it on him and to summon him to the hearing, unless the Court so ordered.

(e) When application is made for instructions, otherwise than under subregulation (d), the Court may order some or all of the heirs to be joined as respondents to the application.

(f) As said in section 83 of the Law, the Court may issue instructions to the Estate Administrator even when no application was submitted in the manner said in this regulation.

Submission of reports

41. (a) Reports by the Estate Administrator shall be submitted to the Administrator General according to Form 12 and they shall be supported by affidavits.

(b) The Administrator General may order that copies of the reports be served on some or all of the heirs.

Enforcement of payment

42. If an Estate Administrator is responsible for any damage caused in consequence of a violation of his obligations as Estate Administrator, and if the Court did not release him from part or all of that responsibility, the Court may order his assets to be attached, to be sold and the proceeds of the sale to be used to pay any amount owed by the Estate Administrator or to cover any loss that he caused, and it shall pay the balance to the Estate Administrator.
43. Repealed
44. Repealed

Respondents to applications

45. (a) If an Estate Administrator was appointed, he shall be served a copy of every application that will be submitted under these Regulations and he shall be treated like a respondent.
(b) If no Estate Administrator was appointed, a copy of every application shall be served — as far as possible — to the heirs and the parties concerned and they shall be treated like respondents; however, the Court may exempt from service on respondents or on some of them, if it deems it right to do so.

CHAPTER SEVEN(A): AWARD OF ESTATE ADMINISTRATOR'S REMUNERATION AND RELEASE FROM HIS POSITION

Application to set the Estate Administrator's remuneration and to release him from his position

45A. (a) When an Estate Administrator has fulfilled his functions in the administration of the estate, as said in section 82 of the Law, he shall submit an application that his remuneration be set and for certification that he concluded his responsibilities as Estate Administrator.

(b) In the application the Estate Administrator shall, inter alia, specify the value of the estate's assets according to regulation 45G, the activities he carried out in the administration of the estate, the amount of remuneration he requests and the manner of its calculation.

(c) The Court shall not consider an application under subregulation (a) before it received notification from the Administrator General that he examined the inventory and the final reports, or that he decided not to examine them, unless 75 days have passed since the final reports were submitted to the Administrator General.

(d) The provisions of regulation 40(d) shall also apply to an application under this Chapter.

Setting the remuneration

45B. (a) The Court shall set the Estate Administrator's remuneration for the performance of his responsibilities as Estate Administrator and the activities within his authority, which shall not exceed 3% of the value of the estate; the remuneration shall be set in consideration of — inter alia — the total value of the estate's assets, the type of assets in the estate, the type and extent of activities carried out by the Estate Administrator, also taking into account the type of activities performed by a previous Estate Administrator, if any, and the remuneration awarded him.

(b) If administering the estate included exceptional activity or if special efforts were required for the performance of the Estate Administrator's ordinary activity, the Court may increase his remuneration, on condition that the remuneration that will be determined not be greater than 4% of the value of the estate.

(c) Value added tax shall be added to the remuneration set by the Court under these regulations.

What is included in the Estate Administrator's remuneration

45C. (a) An Estate Administrator's remuneration includes pay for all the ordinary activities that were part of administering the estate, including the submission of applications for the appointment of an Estate Administrator, for instructions, for the award of remuneration and for certification that he concluded his work, and it does not include pay for the submission of applications for an inheritance order and for probate.

(b) An Estate Administrator's remuneration includes the refund of all ordinary current expenses connected with the administration of the estate; the administrator may deduct from the estate other expenses that he incurred in connection with the estate, as the Court may approve, and he may apply to the Court for advance approval of a special expenditure that he is about to incur.

(c) The Court may decide that the Estate Administrator receive separate pay for professional services that he provided within the scope of his profession in connection with the estate, and it may also allow him to deduct from the estate expenses for professional services that he obtained in connection with the estate and that are not included in subregulations (a) and (b).

(d) Pay awarded or permitted to be deducted under sub regulation (c) shall not exceed the existing or recommended minimum scale in the profession of the provider of the professional service, unless the Court so approved in advance.

When is pay awarded

45D. (a) The Court shall set the Estate Administrator's remuneration when the administration of the estate has been concluded.

(b) If the administration of an estate takes a long time or requires the investment of a great deal of work, the Court may set the Estate Administrator — on account of the total remuneration — partial remuneration, which shall not exceed 2% of the value of the estate assets according to the inventory and the addition to the inventory, if one was submitted.

Several Estate Administrators

45E. (a) The remuneration that the Court will set for administering the estate shall not be affected by the fact that the estate has several administrators.

(b) If an estate has several administrators, the remuneration shall be divided between them by agreement between them or as the Court shall prescribe.

Estate Administrator replaces predecessor

45F. If the Court appointed an Estate Administrator in place of a previous temporary or permanent Estate Administrator, or after the end of the term of office of the previous Estate Administrator and after his remuneration was awarded, the total remuneration of the Estate Administrators shall not exceed the remuneration said in regulation 45B(b).

Value of the estate

45G. (a) For the determination of the value of the estate, estate assets are all the assets that were in the estate when the deceased died or were added to it thereafter according to the inventory and the addition to the inventory, if one was submitted.

(b) For the purpose of setting an Estate Administrator's remuneration, the value of the assets of the estate shall be determined as follows:
   (1) monetary assets — the value on the day of the death of the deceased, with the addition of linkage differentials at the rate of increase of the Consumer Price Index (hereafter: the index) last published before the day on which the application for the award of remuneration was submitted, compared to the index last published before the day on which the deceased died;
   (2) other assets — their value on the day of their realization or distribution to heirs without realization, as the case may be, with the addition of linkage differentials at the rate of increase of the index last published before the day on which the application for the award of remuneration was submitted, compared to the index last published before the day of realization or of distribution to the heir without realization, as the case may be.

CHAPTER EIGHT: APPEAL AGAINST A DECISION BY THE REGISTRAR OF INHERITANCES

Time for submission of appeal

46. The time for submitting appeals against decisions of the Registrar of Inheritances is 15 days after the service of the decision; the appeal shall be submitted to the competent Court.

Stay of implementation

47. The Registrar of Inheritances who made a decision may order the implementation of his decision to be stayed until the

decision of the appeal or during a shorter period, if an application to that effect was submitted to him at any time after the decision and before hearing the appeal was concluded or until the last date for its submission, all as of the latest date; if the application was submitted after the hearing on the decision, the Registrar shall hear it even if no prior notice of it was given.

CHAPTER NINE: SUBMITTING APPLICATION FOR INHERITANCE ORDER OR PROBATE TO RELIGIOUS TRIBUNAL

Submitting an application to a Religious Tribunal

48. (a) Regulations 10(a), 14, 16, 17, 19, 24, 25, 27, 28, 29 and 30 apply, mutatis mutandis as the case may be, to an application to a Religious Tribunal for an inheritance order or probate; however, notwithstanding the provisions of regulation 14, an application for an inheritance order shall be accepted by a Religious Tribunal also if Part 4 of Form 1 has not been filled out.

(b) In addition to the provisions of subregulation (a), an application shall not be accepted by a Religious Tribunal, unless the following are attached to it:

(1) the consent of all parties concerned, by affidavit, to the Religious Tribunal's jurisdiction;

(2) the decision of an Registrar of Inheritances or of a Court, as the case may be, under section 68(a) of the Law, on proof — otherwise than by a death certificate or a death declaration — that a person has died or on the time of his death;

(3) the decision of a Court under section 68(a) to permit

proof of the will by submitting a copy or in some other manner.

(c) When a Tribunal has accepted an application for an inheritance order or probate, it shall send notice of its acceptance to the National Register, stating all the particulars required under regulation 4(b); the National Commissioner shall send the Religious Tribunal all particulars of the National Register that relate to that estate.

Registrar's notification of existence of will

49. If an application for an inheritance order or for probate was submitted to a Religious Tribunal, and if thereafter a will was delivered to the Registrar of Inheritances, the Registrar shall send notice of the existence of the will by registered mail to the beneficiaries under it; in the notice shall be stated that — within 14 days after the notice was served — the beneficiaries may submit writs of opposition to the Tribunal, to which the application was transferred; a copy of the notice and certification of its delivery shall be sent to the Religious Tribunal.

Grant of order

50. (a) If opposition to an application for an inheritance order or for probate was submitted, and if it does not include consent to the Religious Tribunal's jurisdiction, the Tribunal shall quash the application.

(b) If no opposition was submitted within the time set in regulation 17 or 49, whichever is later, the Tribunal may grant the requested order.

Estate Administrator appointed by Religious Tribunal

51. The provisions of Chapter Seven shall apply, mutatis mutandis, also to an administrator appointed by a Religious Tribunal.

CHAPTER TEN: MISCELLANEOUS

Service by mail

52. If a document was sent by a Court, Tribunal or Registrar of Inheritances by registered mail to an address listed in the Population Registry, or to the address of a party to an application or to an action or of his representative, which appears in a document submitted to the Court, the Tribunal or the Registrar of Inheritances, as the case may be that document shall be treated like a document lawfully served on the addressee on the tenth day after its dispatch.

Investigation of facts

53. When a Court, Tribunal or Registrar of Inheritances, as the case may be, examines an application for an inheritance order or for probate, they may investigate the facts stated in the affidavits and they may summon the persons who made the affidavits and interrogate them.

Service on Attorney General

54. (a) A copy of every application or action for an inheritance order, for probate, to prove a will, to prove a person's death and the time of his death, to appoint an Estate Administrator, for instructions for the Estate Administrator, to set the remuneration and expenses of the Estate Administrator and to certify that he has concluded his work, including the setting of interim remuneration, as well as for any amendment or cancellation of an inheritance order or probate that is submitted to a Court, Religious Tribunal or Registrar of Inheritances, shall be served on the representative of the Attorney General in the Custodian General's

Office in the area of activity of the competent Registrar of Inheritances.

(b) If the Attorney General or his representative gave notice — within 45 days after the day on which a copy of the application or of the action was served on him — that he wishes to appear or to present arguments on the matter, the Court or the Religious Tribunal shall set a date for the hearing and it shall summon the Attorney General or his representative to the hearing.

(c) If the Attorney General or his representative finds that more time is required because further investigation or examination of the application or action is needed before he can determine his stand, he shall so inform the Court, the Religious Tribunal or the Registrar of Inheritances, as the case may be, in writing before the end of the period said in sub regulation (b), and the Court, the Religious Tribunal or the Registrar of Inheritances, as the case may be, may extend the time prescribed in sub regulation (b) for special reasons that shall be recorded.

Translation

54A. If a document submitted to the Registrar of Inheritances or to the Court is written in a foreign language, other than English, a Hebrew or Arabic translation certified by a notary shall be attached to it; however, the Registrar or the Court may require a translation to be attached also to a document written in English.

Inaction

54B. If an Registrar of Inheritances cannot hold hearings on an application submitted to him because of inaction by the applicants, he may give notice to the applicants to appear and explain why the application should not be quashed; if no reason that satisfies the Registrar was given, the application shall be quashed.

Effect

55. These Regulations shall be in effect from September 1, 1998.

Transitional Provisions

56. (a) An action on matters of inheritance, which was brought before a District Court before these Regulations went into effect, shall be heard by the Court before which it was brought; an additional action on matters of inheritance in respect of the same estate shall — even after these Regulations went into effect — be brought before the District Court where the first action was brought; in this subregulation, "action" — other than an application for an inheritance order or for probate.

(b) If an action on matters of a certain estate was brought before a District Court, and if thereafter an action on the same estate was brought before another District Court, the other District Court shall transfer the file to the District Court before which the first action was brought.

(c) Regulations 15, 16, 17, 18, 19, 23, 24, 25, 26, 27, 53 and 54 and Chapters Six and Seven shall apply to actions under this regulation.

(d) The provisions of the Civil Law Procedure Regulations shall apply to hearings of actions under this regulation, if they do not contradict this regulation.

APPENDIX VII

Assets of Persons Who Died in the Holocaust

Regulations (Inheritance Matters) 5769-2008

Translation correct as of April 1, 2012

By virtue of my authority under sections 22(b) and 79(b)(5) of the Assets of Holocaust Victims Law (Restitution to Heirs and Dedication to Aid and Commemoration) 5766-2006 (hereafter: the Law), and under section 27(i) of the Succession Ordinance I make these Regulations:

Interpretation

1. (a) In these regulations –

"**applicant**" — a person who submitted an application to the Company to receive an asset of a person who died in the Holocaust;

"**missing person**" — a person whose identity or location is not known.

(b) The other terms in these regulations shall have the meaning that they have in the Law or in the Inheritance Law

5725-1965 (hereafter: the Inheritance Law) or in the Inheritance Regulations 5758-1998, as the case may be.

Applicability of the regulations under the Inheritance Law

2. The regulations made under the Inheritance Law shall apply, mutatis mutandis, to an inheritance order or to probate about assets of a person who died in the Holocaust, if there is no different provision in these regulations.

Exemption from the presentation of an order

3. (a) For the purposes of a hearing an application under section 22 of the Law and for a decision on the application the Company may exempt the applicant from presenting an inheritance order or probate, if all these conditions have been met:
   (1) the asset of the person who died in the Holocaust (hereafter: the asset) is not a real estate asset;
   (2) based on an investigation that the company conducted under section 21 of the Law, on the information that it gathered under Article One in Chapter Four of the Law and on the applicant's affidavit, it is satisfied that the applicant is the owner of all or part of the rights to the asset; the applicant's affidavit shall include these particulars:
      (a) all the particulars that the applicant knows about the composition of the family, such as are needed for an inheritance order or for the grant of probate;
      (b) a declaration that the applicant does not know of the existence of any inheritance order or probate or of the existence of a will, even if it was not carried out, that relate to the estate of the person who died in the Holocaust or to the estate of any of the heirs

of the person who died in the Holocaust, except for the ones that the applicant presented to the Company;

(3) the Company does not know of any other person who disputes the applicant's right to inherit the inheritance of the person the Company is convinced died in the Holocaust and who was the original owner of the rights to the asset;

(4) one of the following conditions applies:

(a) the value of the entire asset does not exceed NS 50,000;

(b) the value of the shares of the asset of all the applicants does not exceed NS 50,000, provided the value of the entire asset does not exceed NS 100,000;

(c) an inheritance order or probate was granted in Israel in respect of the inheritance of the person who died in the Holocaust and — in order to prove his right to inherit from that person (hereafter: the deceased) under the said inheritance order or probate — the applicant presented an inheritance order or probate that was granted abroad and by virtue of which the applicant is the heir of the deceased (hereafter: foreign order), on condition that the Law under which the foreign order was granted is identical with the Law that would have applied, had the inheritance order or probate been granted in Israel

(b) Notwithstanding the provisions of sub regulation (a), it is permissible for the Company not to exempt an applicant from presenting an inheritance order or probate, if it deems it right to act thus because of special reasons that it shall specify in its decision; the Company may also, at its discretion, require additional evidence from the applicant, so that it will be convinced that he is the heir of the holder of the rights to the asset.

(c) If among the heirs there is an heir who is a missing person and if the Company is satisfied that the conditions in sub regulation 4(b) have been met in his respect, the Company may divide the rights to the asset among the known heirs, as if he had not been one of the heirs ab initio, provided that the value of the entire asset does not exceed NS 50,000; if the company is not satisfied that the said conditions have been met, the Company shall make its decision only in respect of the share of the known heirs.

Inheritance order in respect of a missing heir

4. (a) If an application for an inheritance order or for probate was submitted to the Registrar in respect of assets of a person who died in the Holocaust, and if it was found that one of the heirs by Law or by the will is a missing person, the Registrar shall transmit the application to the competent Family Court (hereafter: the Court).

(b) If among the heirs by Law or by the will is an heir who is a missing person, the missing person shall be deemed not to have been among the heirs ab initio only in respect of the assets of the person who died in the Holocaust, if all these conditions have been met:

(1) it is not known that the missing person was alive after January 1, 1955;

(2) the time under section 20 of the Law for submitting

applications in respect of the said asset of the person who died in the Holocaust has passed;

(3) the applicant attached to his application an affidavit, in which he specified the data banks that he examined and all the information he has in connection with the missing person, and he also attached a notice from the Company that — after it tried under section 17 of the Law to locate holders of rights to the asset — it does not know that the missing person was alive after the date said in paragraph (1); in its notice the Company shall specify the data banks that it checked and all the information it has in connection with the missing person.

(c) The provisions of this regulation shall not derogate from the authority of the Court under any statute to deem the missing person not to have been among the heirs ab initio.

Formulating an inheritance order or probate

5. An inheritance order or probate in respect of the assets of a person who died in the Holocaust shall be drawn up according to the forms in the Schedule.

APPENDIX VIII

Useful Addresses, Resources, and Links

LINKS

- **The Registrar of Inheritances, for checking status of applications for orders:**
  https://inheritance.justice.gov.il/RashamYerusha/#/home
- **The Ministry of Justice — The Registrar of Inheritances**
  https://www.justice.gov.il/Units/ApotroposKlali/Departments/Registrar/Pages/default.aspx
- **The Ministry of Justice — The Inspector for Executors**
  https://www.justice.gov.il/Units/ApotroposKlali/Departments/ApotroposKlali/Menahaley_izavon/Pages/SupervisingEstateManagers.aspx
- **The Family Affairs Court**
  https://www.gov.il/he/departments/guides/family_courts_guide
- **Melabev (non-profit association)**
  https://www.melabev.org.il/
- **Lilach (non-profit association)**
  http://www.lilach.org.il/

- **Association of Law Service of the Elderly**
  http://elderlaw.org.il/
- **Amit, Mutual assistance for the elderly in Jerusalem:**
  Telephone 02 625 1692.
- **Yad Riva, free legal aid for the elderly:**
  Telephone 02 563 8129 http://www.yadriva.org/
- **B'Zchut, for the rights of persons with disabilities, etc.**
  Telephone 02 652 1218.

FREE LEGAL AID

- **Schar Mitzvah, the Israel Bar Association:**
  Telephone 1700505500
- **Ministry of Justice Legal Aid:**
  Telephone 02 621 1333
- **Citizens Advice Bureau**
  Telephone 1800506060
- **Yadid, free legal aid**
  Telephone 1700500313

APPENDIX IX

List of Questions in This Book

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221. Will the estate assets be distributed in kind, or will they be sold and the proceeds distributed?

CHAPTER 10

238. How must the executor act with regard to debts owed to the decedent?

239. How is an estate distributed if there are debts?

240. How does the executor find out if there are any creditors of the estate?

241. What is the status of a *Ketubah* with regard to the estate? Is it a debt owing to the estate?

242. What is the value of a *Ketubah*?

243. What if the wife insists that her *Ketubah* is paid by the estate, but there is no money left after payment of the estate debts?

244. What is the status of a *Ketubah* that carries an exorbitant sum?

245. What is considered to be a reasonable sum in a *Ketubah*?

246. Can creditors recover debts from an heir who renounces his inheritance, and can they place attachments on the inheritance before he does so?

247. Will a creditor receive the full value of the attached assets?

248. Does publishing a notice absolve an executor from liability to pay debts to creditors who have not seen the notice?

249. Which estate assets will be used first to repay the estate's debts?

250. Do the heirs have right of first refusal enabling them to purchase specific estate assets that are being sold to cover debt?

251. What if assets must be sold to cover debt, but a specific asset was bequeathed to a specific heir?

252. Must estate debts be paid in any particular order?

253. How are estate debts paid in the absence of sufficient funds?

254. Can an estate be declared bankrupt?

255. What creditor priority is applied in case of estate bankruptcy?

256. Can a creditor of the estate collect his debt from payments made to the surviving spouse from life insurance or a provident fund?

257. Can debts be inherited?

258. What happens if the entire estate is fully distributed with the heirs turning a blind eye deliberately and knowingly to the fact that there are creditors who have not been paid?

259. In what other cases might an heir be liable for the estate's debt?

CHAPTER 11

260. Does an Israeli court have jurisdiction over the estate of a foreign resident who died in Israel?

261. Does the court have jurisdiction over a foreign resident who owned assets in Israel?

262. What happens when there is conflict of laws between the jurisdictions?

263. What happens when the foreign law is contrary to public policy in Israel?