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כסלו תשפ"ד



The Halakhic Will

by Rabbi Yona Reiss, Av Beth Din

Rabbi Yona Reiss is the Av Beth Din of the cRc Beth Din. Rabbi Reiss was appointed Av Beth Din in 2014, having previously led the Beth Din of America in New York. In addition to being a renowned maggid shiur and posek, Rabbi Reiss also earned his law degree from Yale Law School and worked for a number of years in corporate law. Under Rabbi Reiss's leadership, the Beth Din adjudicates monetary disputes in accordance with the nuances of Jewish law.

There is a familiar saying that states, "where there is a will, there is a way." Along these lines, it is common for people to prepare for the end of their respective lifetimes by preparing a secular last will and testament so that there can be a smooth disposition of their assets at the end of their lives. However, from a halakhic perspective, where there is such a will, there is often no way to enforce it, unless a "halakhic will" has been prepared. Accordingly, a more apt saying might be, "where there is a halakhic will, there is a way." What is a halakhic will? It is not actually a will per se, but it does indeed provide a way. Let's start with a little background.¹

According to the Torah,² when a man dies, the inheritance goes only to sons. If there are no sons, the inheritance goes to daughters. If there are no sons or is daughters, the inheritance goes to the person's father, or if there is no father, the inheritance passes to the brothers. If there are no brothers, the inheritance passes to the sisters. If there were no brothers or sisters, the inheritance passes to the previous generation, namely the father's father, and if he is deceased, then to the uncles, and if there are none, then to the aunts. This continues throughout all previous generations until heirs are located. In each case, if an heir died, but left children, the children would inherit (either the sons, or if there weren't any, then the daughters, as above).³

When there are multiple heirs, they split the

inheritance, except in the case of sons inheriting from their father,⁴ in which case a *bechor* – a first-born eldest son who satisfies all the relevant criteria according to Jewish law – receives a double portion.⁵ For example, if there were two sons, the estate would be split three ways; the eldest son would receive two portions while the younger son would receive one portion. If there are multiple heirs and one of the heirs died and left children, the children would split equally the parent's single portion, an arrangement which is described in legal parlance as "per stirpes." Although daughters do not inherit, they receive an allowance and a dowry from the estate.⁶

Husbands inherit their wives, either as a matter of Torah law or rabbinic law (it is a debate)⁷, but wives do not inherit their husbands. Rather, widows receive payment based on the ketubah between the husband and wife which obligates the husband's estate to pay a certain sum upon death or divorce. Until the widow chooses to collect the ketubah, she is entitled to be supported by the estate, but not to inherit any of the husband's assets.⁸

In both the case of the husband's inheritance of his wife and the first-born son's double portion from his father, the inheritance is only with respect to available assets in the testator's possession at the time of death (*muchzak*) as opposed to non-available assets that are owing (*ra'ui*) such as outstanding loan amounts.⁹

(continued...)

GLUTEN-FREE FLOUR

by Rabbi Dovid Cohen

Rabbi Dovid Cohen is the Administrative Rabbinical Coordinator of cRc Kosher. Rabbi Cohen leads the research and policy development efforts of the cRc and is the author of the *Kashrus Halacha* series. The cRc works to understand the permissibility of different foods, and how new products and technologies relate to the breadth of Jewish law.

For the kosher consumer, there are basically two types of gluten-free flour that are differentiated by whether they contain any of the five primary grains – wheat, rye, spelt, oats, and barley.

1: The first type contains none of those grains and is just made of corn, rice, tapioca, etc. In most cases, these flour blends require *hashgachah*, as they tend to have minor ingredients that are kosher sensitive.

Since the five primary grains are not present:

- The **bracha** for food made with these flours is *shehakol* (unless more than 50% of the recipe is rice flour, in which case *mezonos* is recited)
- There is no need for **hafrashas challah** when making dough or bread out of these ingredients



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INSIDE:

Remembering
Rav Schwartz zt"l





Remembering Rav Schwartz zt"l

הגאון הרב גדלי' דוב בן אברהם שווארץ זצ"ל
נלב"ע כ"ד כסלו תשפ"א

by Rabbi A.M. Abramson, Menahel, Beth Din

Rabbi Alan Abramson serves as the Menahel of the cRc Beth Din, and worked alongside Rav Schwartz for 33 years as a shul rabbi, a cRc member, and in his formal cRc capacity.

It is apropos that the Yahrzeit of Rav Gedalia Dov Schwartz zt"l falls on the eve of Chanukah, a time that commemorates the fierce defense by the Chashmonaim for the Jewish faith. Rav Schwartz was a fierce defender of the *mesorah* even in a more secularized United States and well before the Orthodox renaissance of the last five decades.

Yet even with this strong bent toward the principles of Torah observance he treated every individual with total respect and dignity. He had the uncanny ability to view the wide picture and understand the crucial role that the Beth Din played in human events. Though he would say the Beth Din is a halachic enterprise, he would remind us that in reality it is a crucial social service agency for those who seek its counsel. Rav Schwartz would field questions from far and near and listened intently to the halachic question but understood innately the human drama. He had an especially keen ear for the chaplains around the world who faced a myriad of issues in the armed forces and at the hospitals.

As the Menahel of the Beth Din, I had the privilege to closely work with Rav Schwartz both in Chicago and many other cities on behalf of the cRc. To observe the breadth and depth of the Rav's Torah knowledge along with his gentle traits from Edmonton to Kansas City, Des Moines, Columbus, and Jerusalem was an emotional and spiritual experience almost impossible to describe. I recall also Rav Schwartz delivering a shiur at the Voloshin Yeshiva as part of a JUF mission, and to witness his emotions as he incorporated the *mesorah* of all his Rabbeim and the countless *teshuvos* that he knew *ba'al peh* (as if he personally corresponded with all these *gedolim* of the past) shook the listeners to the core.

And of course, our staff were treated with utmost respect as if they were his own family, which in essence we were. We watched how he treated both his late rebbetzin and his second zivug as if they were the queens of England.

The Chanukah experience of protecting the *mesorah* and publicizing the Or HaTorah was and is the spirit of Rav Schwartz's legacy. May we perpetuate his memory and Chanukah in this same light.

The Halakhic Will

(continued from cover...)

What if a man desires that his wife inherit his assets, or if a couple desires that after they pass away, both their sons and daughters should inherit equally, or that the first-born son should receive an inheritance equal to the other brothers? In all these instances, the Talmudic sources¹⁰ indicate that although a person is usually permitted to make conditions that are not necessarily consistent with the default rules of the Torah when it comes to monetary transactions,¹¹ inheritance is an exception to this rule. The Rambam explains¹² that this exception is because inheritance is not simply a monetary ordinance but is rather in the realm of ritual law which is not subject to adjustment. Thus, if a person devises a will that bequeaths his or her assets in a manner which is contrary to the Torah scheme of inheritance, the will would be null and void as a matter of Jewish law. Accordingly, secular wills that are not in accordance with Torah law would be unenforceable.¹³

Is there then no way to distribute one's assets upon death in a manner which is different from Torah law? There is a special rule that a person on his deathbed may reappportion his inheritance in unequal shares amongst his heirs, but this only pertains to reappportionment amongst those who would inherit anyway, and only applies to a person who is on his deathbed.¹⁴

However, a person can also donate gifts during his or her lifetime to individuals who would not otherwise be heirs (although a gift given after death would be void). The downside to this option is that once the gifts are given, the grantor no longer has access to these assets. If the assets are specifically identified, a gift can be given to take effect "one minute prior to death." However, if the asset is a percentage interest in the monetary value of the estate (as is often the case in wills), then most rabbinic authorities conclude that the uncertainty of the amount coupled with the uncertainty of the exact moment in which the gift would be vested (since nobody can predict when "one minute before death" will happen) creates a problem of "*breirah*" (retroactive designation) that is not a valid form of conveyance according to Torah law.¹⁵

Accordingly, earlier rabbinic authorities devised a solution to these obstacles by creating the forerunner to what is currently described as the "halakhic will" in the form of a "*shtar chatzi zachar*" which literally means a "half male contract."¹⁶ The mechanism of this document is that the testator obligates himself during his lifetime to grant a huge monetary gift in a quantifiable sum greater than his anticipated total assets (such as a gift of ten million dollars for somebody who does not expect to have an estate worth more than five million dollars) to his daughter or daughters which shall take effect one minute before death, and pledges all of his assets as security for this debt. However, the testator stipulates that if his sons (who are his Torah heirs; the same would be true of brothers or nephews if they are the heirs) will give half-portions of the estate to each of their sisters upon the testator's death, then the gift will become null and void. This device avoids *breirah* problems because the huge sum of money is quantifiable in nature (and the only uncertainty is the time that the obligation will vest, which is a minor component of the transaction)¹⁷ and a person has the right according to Jewish law to obligate himself to pay a vast sum that is greater than his current or foreseeable assets even without receiving any consideration in return.¹⁸

Later authorities expanded this idea to allow a "*shtar zachar shalem*"¹⁹ pursuant to which the sons (or other heirs) are required to grant equal portions of the testator's estate to their sisters if they wish to nullify the debt obligation. This *shtar* or document of indebtedness is typically called a halakhic will because it enables the secular last will and testament to

become enforceable as a matter of Jewish law through the volitional compliance of the heirs with the terms of this otherwise unenforceable document since they would otherwise lose their inheritance entirely. The same mechanism can be utilized by a husband who seeks to have his wife receive all his assets, except in this case there is no need for a trigger mechanism to incentivize the heirs to comply with the terms of the last will and testament, since the husband can simply stipulate that he is granting his wife a gift of ten million dollars (assuming the estate is worth less) to be effective one minute prior to death and that all of his assets shall be pledged towards satisfaction of this debt.²⁰

However, there is one important caveat to this solution, namely that while a person could technically give away all his or her assets as a gift prior to death and thus circumvent the Torah laws of inheritance, the Talmud rules that it is improper to do so.²¹ To avoid this impropriety, it is necessary to exclude a certain amount of the estate that will in fact be distributed to the Torah heirs solely in accordance with Jewish law. According to some authorities, this can be accomplished by designating one's *seforim* solely for the Torah heirs, so that only the sons and not the daughters would receive all the *seforim* of the estate, and the first-born eldest son would receive a double portion.²² Alternatively, a significant sum of money (usually assessed to be \$1,000 or more) can be set aside for this purpose.²³ This carve-out amount should ideally be reflected both in the actual last will and testament document and in the "halakhic will" document.²⁴ Even in the case of a husband granting all his assets to his wife, such a carve-out clause would be necessary.

With respect to a wife who executes a will, two special considerations need to be addressed as well. First, to the degree that she wishes to gift her assets to anyone other than her husband, her husband needs to sign a form that he agrees to any such disposition because otherwise he is considered a "first purchaser" who takes precedence over anyone else.²⁵ Secondly, even if the wife wishes to bequeath all of her assets to her husband, her other heirs (e.g., sons) would take precedence with respect to non-available assets (such as loan monies owed to her), and therefore she would still need a halakhic will to

gift those assets to her husband instead because the husband would not otherwise be entitled to that portion of her estate (and in such a case, she should also set aside a meaningful amount to be inherited by her heirs from those non-available assets).

Although it is discouraged to steer assets away from the rightful heirs altogether, the halacha does endorse bequeathing a certain amount of money upon death to charity. Based on a Talmudic passage,²⁶ some authorities recommend that the amount be as much as 50% of a person's estate,²⁷ while others write that even more can be given so long as a meaningful amount is left over for the heirs.²⁸ Since even money for charity cannot technically be gifted after death, the money can instead be placed into a "trust" during the testator's lifetime based on the principle of "*mitzvah le'kayem divrei hames*" (i.e., it is a mitzvah to fulfill the wishes of the deceased). This principle permits one to set aside assets in any trust account (which according to many authorities can even be a revocable trust)²⁹ so long as there is a third party trustee of the account.³⁰ While this generally necessitates at least the establishment of a stand-alone trust, in the case of charity, any kind of written (or even oral) declaration suffices for the donation to be deemed enforceable since "an oral commitment to sanctify funds is equivalent to handing over the funds to another party."³¹

While in many cases, the desire of children to fulfill "*kibbud av v'em*" will cause heirs to agree to share assets of their parents' estate with non-Torah heirs, such as brothers sharing their inheritance with their sisters to satisfy the wishes of their parents, this is by no means a sure thing, and it is unfortunately the reality that many families experience much strife over inheritance disputes. In my years of experience in the Beth Din, I have been involved in the adjudication and resolution of numerous such cases. One major advantage of a halakhic will is that it enables individuals to see to it that the bulk of their estate is given to children in equal shares, thus preventing acrimony. It is therefore very prudent to work with an experienced Beth Din³² or rabbinic advisor who can help one navigate the execution of a "halakhic will" to ensure that his or her wishes be respected. This process should also be coordinated with one's estate attorney to ensure

that it does not trigger any adverse secular law consequences. May our punctiliousness with respect to devising a proper "halakhic will" also serve as a *z'chus* for a long and rewarding life.

It is... very prudent to work with an experienced Beth Din or rabbinic advisor who can help one navigate the execution of a "halakhic will" to ensure that his or her wishes be respected.

1. There are several excellent articles that have already been written on this subject. See the series on Estate Planning by Rabbi Chaim Jachter in his *Gray Matter*, volume III, Rav Mordechai Willig's articles, "The Halachah of Wills," posted on the Beth Din of America website, and "Inheritance Without a Fight: Writing a Will in Modern Times," posted at TorahWeb.org, and the annotated notes that were penned by Rabbi Aaron Kraft of the Chicago Rabbinical Council on the forthcoming halakhic will form of the Beth Din of America and the Chicago Rabbinical Council. See also the seminal essay by Rav Hershel Schachter, "*Dina Demalchusa Dina*: Secular Law as a Religious Obligation," in the *Journal of Halacha and Contemporary Society*, Vol. I, pages 128-132. I also want to thank Rabbi Kraft for his helpful comments to this article.

2. *Bemidbar* 27:8-11.

3. See *Choshen Mishpat* 276:1.

4. See *Choshen Mishpat* 278:1.

5. *Devarim* 21:15-17.

6. See *Even Haezer* 112-113.

7. See *Rambam, Hilchos Nachlos* 1:8 (assuming that the husband's inheritance of his wife is only rabbinic), and *Maggid Mishneh* ad locum (citing the *Ra'avad's* opinion that the husband inherits his wife according to Torah law). Unlike most other cases of inheritance that are not subject to condition or waiver (see text infra), the husband is able to waive his right to inherit his wife, so long as the waiver is made between betrothal and marriage. As to why a waiver can be performed in this case, see my essay in *Kanfei Yona*, pages 51-67.

8. See *Even Haezer* 69:2; 93:3.

9. See *Even Haezer* 90:1 with respect to a husband's inheritance; *Choshen Mishpat* 278:3 with respect to a *bechor*.

10. *Bava Basra* 126b; see *Hagahos Eretz Zvi* ad locum; *Rashba, s.v. hasam*. See also *Bava Basra* 130a.

11. See, e.g., *Bava Metzia* 94a.

12. *Hilchos Nachlos* 6:1.

13. Although there is a suggestion made by Rav Moshe Feinstein that even a secular will could be an enforceable transaction based on the principle of *Dina Demalchusa* (see *Igros Moshe* 1:104), this opinion has not generally been accepted. Some understand this opinion to mean that the testator's intention is really to convey the inheritance one moment prior to death (however, this implicates the issue of *breirah*, as noted infra in the text).

14. See *Choshen Mishpat* 281:1 (technically, this rule would even allow a testator on his deathbed to bequeath all his assets to one heir to the exclusion of the other heirs).

15. See *Beitzta* 38a.

16. *Rema, Choshen Mishpat* 181:7.

17. See *Ran, Nedarim* 45b, s.v. "ve'ika".

18. *Rambam, Hilchos Mechira* 11:15. The fact that this may be viewed as an unenforceable contingent obligation (*asmachta*) can be resolved by the grantor taking on the obligation "*me-achshav*" (immediately) and in front of an esteemed Beth Din (even if only stated to be such). See the opinions cited in the *Shulchan Aruch* and *Rema, Choshen Mishpat* 207:14-15.

19. See *Ktzos Hachoshen* 33:3; *Igros Moshe*, EH 1:110.

20. Arguably, the willingness of rabbinical authorities to allow this type of device, which involves gift-giving in one's lifetime, is based upon the precedent found in *Bereishis* 25:6 with respect to Avrohom and his children. See *Rashi* ad locum.

21. *Bava Basra* 133b.

22. See *Nachlas Shiva, siman* 21, note 6.

23. See *Igros Moshe* CM 2:50.

24. The reasoning to include this carve-out amount in the Halakhic Will document is to clarify that this amount is being conveyed as part of the enforceable inheritance rather than as merely part of the voluntary compliance by the heirs with the otherwise unenforceable last will and testament.

25. See *Bava Basra* 139b.

26. *Kesuvos* 67b.

27. See *Aruch Hashulchan* 249:1.

28. See *Igros Moshe* CM 2:49-50.

29. This was the opinion of Rav Gedalia Dov Schwartz zt"l, and is also the opinion of *yblc*" Rav Hershel Schachter *shlit*"a.

30. See *Tosafos, Gittin* 13a (citing Rabbeinu Tam). It would also not be necessary to have a separate halakhic will with respect to any such assets placed in a trust during one's lifetime so long as the beneficiary is clearly identified.

31. *Nedarim* 29b, *Kiddushin* 28b, *et passim*.

32. The Chicago Rabbinical Council is currently in the process of finalizing a revised halakhic will form with instructions and annotations (see note 1) and plans to post the form shortly.

GLUTEN-FREE FLOUR

(continued from cover)

- c. They are not *chametz* (but might be *kitnios*)
- d. There is no concern of **chodosh / yoshon** (the prohibition to consume grain that has yet to be in existence for at least one occurrence of the Pesach holiday¹).

2: The second type of gluten-free flours are those that contain gluten-free oats or gluten-free wheat flour, and we will discuss each of those separately.

GLUTEN-FREE OAT FLOUR

Oats are inherently gluten-free, and if the manufacturer makes sure that none of the other primary grains are mixed in, they will remain gluten-free.

- a. The **bracha** on foods baked with oat flour is *mezonos* or *hamotzi* (depending on what was baked), but in some cases the percentage of oats in a recipe or blend is so low that a person cannot eat a **kezayis** quickly enough to require **birchas hamazon** or *al hamichyah*. In those cases the person should recite borei nefashos.
- b. Breads and other items baked with gluten-free oat flour require **hafrashas challah**, but there are some nuances to how this applies to gluten-free oats. If there are other grains mixed in to help with the dough's consistency, they typically do not count towards the *shiur challah* (the minimum amount of dough that is subject to this mitzva²), and one must, therefore, calculate whether there is the requisite amount of the oats alone. Furthermore, the *shiur challah* is essentially a volumetric amount, and the amount required in weight differs from grain to grain; the amounts required for oats are 1.8 pounds (*hafrashah* without a *bracha*) and 3.5 pounds (with a *bracha*).
- c. Gluten-free oat flour should be assumed to be possible **chametz**, as water/steam is sometimes used in the processing.
- d. In the United States, oats are planted in the spring, which means that they may be **chodosh** from late summer until Pesach.

GLUTEN-FREE WHEAT FLOUR

Gluten-free wheat flour (a.k.a. Molino flour) is a relatively new item, and it is made by separating wheat flour into starch and gluten/protein. If done properly, this yields a wheat starch that is free of gluten and may be eaten by celiacs and others who are gluten-sensitive. In order for it to function similar to "regular" wheat flour, manufacturers will typically add xanthan gum and other ingredients to compensate for the lack of gluten.

- a. As a result of these added ingredients, gluten-free wheat flour requires **hashgachah** to ensure its kosher status.
- b. The **bracha** on foods made from it are *mezonos* or *hamotzi* (depending on what was made).
- c. **Hafrashas challah** is required for breads and other items baked with it, subject to the recipe containing 2.5 pounds of wheat flour (i.e., without the other components) for *hafrashah* without a *bracha*, or 4.7 pounds for *hafrashah* with a *bracha*.
- d. The process of separating gluten from wheat starch involves water and, therefore, gluten-free wheat flour is surely **chametz** and must be disposed of or sold before Pesach.
- e. This flour is also subject to the *halachos* of **chodosh/yoshon**.

1. For more details see <https://consumer.crc kosher.org/faqs/yoshon>
2. For more details see <https://consumer.crc kosher.org/publications/hafrashas-challah>

Chicago Rabbinical Currents is a monthly community newsletter of the Chicago Rabbinical Council (cRc), featuring articles by the staff of the cRc Beth Din and of cRc Kosher.

We value proactive community engagement, education and partnership, and Chicago Rabbinical Currents articles address aspects of practical halacha that are applicable to all.

Rabbi Yosef Posner, President

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2701 W. Howard Street
Chicago, IL 60645

Questions? Comments? Feedback?
773.250.5499
office@crcweb.org
www.crcweb.org

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Chicago Rabbinical Council