

## **SUPREME COURT RELIES ON TRUST AND GIFT LAWS TO ACCOMPLISH WISHES OF DECEASED INDIVIDUALS**

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Trusts, their creation and their validity under the laws of Israel have been discussed often over the past few years due to the revisions to the Israeli tax laws in 2003 and the Recommendations of the Committee on the Taxation of Trusts published in July 2003. The subject matter has not come before the courts in Israel for a number of years but as the increasing sophistication of both clients and professionals, several courts have been required to review and rule on the issues of trusts and gifts.

Section 8 of the Succession Law 1965 (the "Succession Law") provides that executing a last will and testament is the only means by which assets may be bequeathed after one's death. Arrangements for the change in the ownership of assets mortis causa, by any other form are invalid. Thus, an individual cannot instruct otherwise than by will that, after the death of said individual, benefits accruing to him as owner will devolve to another, or that the right to assets in a bank account, for example, will be bequeathed to a person nominated by him.

Section 17 of the Trust Law 1979 (the "Trust Law") permits the designation of assets for the benefit of a beneficiary or a purpose. Such designation must be in writing evidencing the grantor's intention to create a trust by the execution of an instrument in accordance with the legal formalities for the execution of a last will and testament. Upon the death of the grantor, probate proceedings of the trust instrument are necessary as in the case of a last will and testament.

Notwithstanding the Trust Law provision, as discussed in the foregoing paragraph, the creation of a trust that would skip generations is difficult and complicated under Israeli law since no irrevocable settlement of assets is valid if it is to take effect upon the death of the settlor. A testament is always revocable. Thus, to make irrevocable arrangements that will take effect in the future, control of the relevant assets must be transferred to a trustee during the lifetime of the settlor. Such an arrangement is not valid if it is evident that it is to take place only upon the death of the settlor.

In the Decision of Moshe Lishitzki v. Attorney General (5056/94), the Supreme Court relied on the Trust Law in its holding on the validity of a deceased's last will thereby carrying out the deceased's wishes. The matter concerned Betty Lishitzki's (the "Deceased") last will and testament executed in accordance with the legal formalities. The provisions of the will bequeathed the Deceased's assets to a "good soldier, a 'mench', wishing to obtain an education but without the financial means to do so; to assist him in obtaining a higher education, to purchase an apartment for him and to advance him in life. The soldier is to say 'Kadish' (prayer) in my memory."

The Deceased's husband and son contested the will by filing a claim with the District Court. The District Court found that, under Section 29 of the Succession Law, since the will did not identify a beneficiary with sufficient specificity, it was invalid. The Supreme Court agreed with the District Court on the issue but held that under Section 17 of the Trust Law discussed above, the creation of a trust does not include the specificity requirements included in the Succession Law. The Court based its finding on the Trust Law in order to accomplish the Deceased's intentions. Moreover, the Court held that the Trust Law provisions take precedence over the provisions of the Succession Law.

The Court found that by the provisions of her will, the Deceased created a testamentary trust. The Deceased identified certain assets to the testamentary trust and created a sufficient connection between the assets and the trustee who obtained control over the assets in order to accomplish the purpose of the trust.

The Gift Law 1968 (the "Gift Law"), has a certain correlation with the Trust Law. Section 1 of the Gift Law defines a gift as the granting of an asset, either real or personal property, by a donor to a beneficiary for no consideration. An undertaking by the donor to grant a gift in the future requires a written document in accordance with Section 5 of the Gift Law. Further, Section 6 of the Gift Law provides that ownership of the asset comprising the gift passes to the beneficiary of the gift upon the actual transfer of the gift or upon providing the beneficiary with a written document evidencing the undertaking by the donor to grant the gift to said beneficiary.

In another Supreme Court Decision, the University of Ben-Gurion v. Ben Bassat et al. (3727/99) (the "Lola Ber Case"), the Court was required to discuss and interpret the Gift Law. The Lola Ber Case establishes an interesting precedent in connection with the bequeathing of assets upon death. The Lola Ber Case involved the estate of Lola Ber, Deceased ("Lola Ber"), whose last will and testament bequeathed her assets located in Israel to family members, the Respondents. The Appellant, Ben Gurion University (the "University") appealed to the Court for an Order prohibiting the distribution of the estate's assets prior to the transfer to the University of an amount agreed by Lola Ber to be granted to the University prior to her death. Said agreement by Ms. Ber to grant the gift is evidenced in a letter written by her to the University prior to her death. The case raised the issue of whether a written undertaking to grant a gift in the future is binding upon the donor's heirs in the event the donor is deceased prior to the granting of the gift.

The Supreme Court, in relying on the Gift Law, found that the letter granted by Lola Ber in which she expressed her intention to grant a gift to the University was valid under the Gift Law as an undertaking by her to grant a gift in the future. As Lola Ber failed to complete the undertaking due to her death, said undertaking passes to her estate and is binding on her heirs. Although the Gift Law permits a future gift to be revoked by its donor, said right is given solely to the donor and cannot pass to the donor's heirs or estate upon the donor's death. Therefore, Ms. Ber's estate was held to be bound to complete the granting of the gift to the University which Lola Ber intended to grant but failed to complete.

Different laws were utilized by the Court, as evidenced by these Decisions, in an effort to reach the goal of accomplishing the deceased's intentions and wishes. It seems that the wishes of a deceased receive top priority. Where possible, the Court will find a legal justification and method for pursuing a deceased's wishes.

It appears that the courts in Israel use great effort to interpret the Trust Law broadly in order to prevent injustice resulting from a narrow interpretation. It is possible that as additional cases on this subject matter reach the court system, the Israeli legislature will revise the Trust Law to be in line with customary trust laws utilized by countries following the Common Law legal system.

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