

INTRODUCTION TO SUCCESSION LAW IN ISRAEL

1. INTRODUCTION

Inheritance in Israel is governed by the Succession Law of 1965 ('Succession Law'). The courts of Israel have jurisdiction over the estate of any person who was resident in Israel at the time of death or who left property in Israel. In general, the law applicable to succession is the law of residency of the deceased at the time of death. The Succession Law determines two ways of bequeathing: by will (testate succession) or by law (intestate succession).

2. WILLS

a. Requirements for valid will

Any person is entitled to bequeath his entire estate, a proportional part of the estate or specific assets of the estate. Under the Succession Law, the making of a will is a personal act which must be done by the testator personally. All persons are capable of bequeathing their estate except minors (persons under 18), persons who have been declared legally incompetent and persons who at the time of making their will were unable to understand the nature of a will.

b. Forms/types of wills

The Succession Law sets out four forms of wills that are recognized as valid:

i. Handwritten will

A handwritten will shall be written entirely in the testator's own hand and shall be dated and signed by the testator.

ii. Will made in the presence of witnesses

A will is valid if it is written (not necessarily handwritten) and dated, and signed by the testator before two witnesses after the testator has declared before the witnesses that it is the testator's will. The witnesses must attest

by their signature upon the will that the testator declared and signed the will.

iii. Will made before an authority

A will made before an authority must be made by the testator stating its provisions orally before a Judge, a Court Registrar, the Registrar of Inheritance, a Member of the Religious Court or by deposit of a written will by the testator with any of these authorities.

iv. Oral will

People who on their deathbeds or who in all circumstances reasonably regard themselves as facing death may declare a will before two witnesses. The testator's directions and the circumstances of the making of the will must be recorded in a memorandum signed by the two witnesses and deposited with the Registrar of Inheritance. An oral will becomes void if the testator is still alive one month after a change to the circumstances which warranted its making.

The court is empowered to validate a will even if it is defective or missing certain formal requirements (such as signature or date) or is defective as to the capacity of witnesses.

c. Revocation and alteration of wills

One of the fundamental features of the Succession Law is the right of the testator to revoke and change the will and to replace it with a new will at any time.

However, any undertaking or promise to make, alter or revoke a will or not to do any of these is of no effect. Moreover, a testamentary provision that negates or restricts the right of the testator to alter or revoke the will is void.

The testator may revoke the will by destroying it or by unambiguously revoking it by any of the four means by which a will can be validly made. A new will is

deemed to revoke an earlier will, even if it does not expressly do so, to the extent that its provisions are inconsistent with those of the earlier will (unless the new will merely contains additions to the earlier will).

Under the Succession Law, a will is void in the following circumstances:

- where the testamentary provision was made under duress, threat, undue influence or as a result of fraud or where a testamentary provision is made by reason of error, and the court is unable to determine clearly what the testator would have directed in the will if it was not made by reason of error. (When a year has passed from the day the duress, threats, undue influence ceased to affect the testator, or from the day when the testator learned of the fraud or error, and the testator has not revoked the will, the testamentary provision will not be void.);
- where a testamentary provision is illegal, immoral or impossible to execute;
- where a provision in a will, other than an oral will, is made in favour of a person who prepared or witnessed the will or was otherwise involved in its preparation, or where the will is in favour of that person's spouse; and
- where the meaning of the will is unintelligible or where to whom and what was bequeathed cannot be ascertained.

Neither the testator's marriage nor divorce alters or revokes the testator's valid will.

d. Testamentary gifts

The Succession Law does not recognize gifts made by a person which are to be endowed only after the person's death, otherwise than by one of the forms of making a will under the Succession Law. As such, any agreement in respect of a person's estate made during the person's lifetime is void. Moreover, the Succession Law does not recognize transfers which are dependent on the testator's death other than transfer by will. However, a person may place that

person's assets in trust and under certain circumstances those assets will no longer form part of the testator's estate.

3. DEPENDENTS' RELIEF

The Succession Law affords a right to maintenance out of an estate to a spouse, children or parents of the deceased in need of financial support, whether or not the deceased left a valid will.

The spouse of the deceased (including common-law spouse) is entitled to maintenance out of the estate until remarriage unless the spouse has been denied the right of maintenance immediately before the deceased's death. In addition, the court may make a lump sum grant to a widow who has remarried.

The children of the deceased (including a posthumous child, a child born out of wedlock and an adopted child) are entitled to maintenance until the age of 18 unless the court considers that maintenance should be provided until age 23, or in other cases where the child has a disability, is mentally ill or retarded.

The parents of the deceased who were dependent on the deceased immediately prior to the deceased's death are entitled to maintenance for the term of their lives.

In determining the right to maintenance, the court examines, among other things, the value of the estate, what the person entitled to maintenance may receive from the estate as an heir or beneficiary, the standard of living of the deceased and that of the person entitled to maintenance, and the assets and income of the person entitled to maintenance.

4. INTESTACY RULES

If the deceased did not leave a valid will, or if there are assets which were not bequeathed under the will left by the deceased, or if the provisions made by the

will be invalid, then the distribution of the estate of the deceased is governed by the rules of intestate succession.

The following persons are eligible to be heirs at law:

- the deceased's spouse at the time of death. (which may include a common-law spouse.);
- the deceased's issue, including illegitimate and adopted children and their issue, the deceased's parents, grandparents and their issue; and
- the State of Israel in the absence of any other heirs.

The Succession Law provides that children of the deceased and their issue take precedence over the parents of the deceased, and the parents of the deceased and their issue take precedence over the grandparents of the deceased. Heirs of the same class, namely children, parents or grandparents, are entitled to receive the share in the estate due to such class of heirs, in equal shares among themselves.

The deceased's spouse is entitled to all movable property, including motor vehicles, which were part of their common household and is also entitled to the remainder of the estate as follows:

- where the deceased is survived by issue or parents, the spouse is entitled to half the estate;
- where the deceased is survived by grandparents, siblings, nieces or nephews, the spouse is entitled to two-thirds of the estate. The spouse also receives the deceased's share of the residential property provided that: (1) the spouse had been married to the deceased for at least three years preceding the deceased's death; and (2) the spouse had been living with the deceased in the residential property which was fully or partially included in the estate; and
- where the deceased is not survived by any of the abovementioned relatives, the spouse is entitled to the entire estate.

5. SPOUSAL RIGHTS ON DEATH

The Spouses (Property Relations) Law 5733 - 1973 applies to spouses who were married on or after January 1, 1974. This law determines that upon the termination of a marriage through divorce or death of a spouse, each spouse has a right to half of the value of the couple's assets except any assets owned by either spouse prior to the marriage; assets received by way of gift or inheritance during the marriage; a pension paid out to one of the spouses by Israel's National Insurance, or a pension or compensation payable to one of the spouses by reason of bodily injury or death; and assets in respect of which the spouses agreed in writing that their value would not be distributed.

In respect of spouses who were married before January 1, 1974, principles of joint ownership of property arising from decisions of the Israeli Supreme Court, apply. These principles provide that if there is proof of a "shared lifestyle" and "joint efforts" between the spouses (including persons publicly known as spouses), a presumption of joint property ownership arises, which encompasses all the spouses' assets. The Court is split on whether the principles of joint ownership of property can be applied in respect of spouses who were married on or after January 1, 1974.

Spouses may reach a property agreement which regulates their property relations and may provide for a different outcome to that outlined above.

Assets belonging to the surviving spouse (because of operation of the Spouses (Property Relations) Law, the principles of joint ownership of property, or a property relations agreement) are not included in the estate of the deceased spouse which is to be inherited.

6. POWERS OF ATTORNEY

a. **Regular power of attorney**

Under the Agency Law 5725-1965, an agency may be created orally, in writing or by conduct. A power of attorney may be general or may authorize specific acts only.

A regular power of attorney ends upon the occurrence of one of the following events: (1) cancellation by the principal or the agent; (2) death of the principal or the agent; (3) loss of legal competence of the principal or the agent; or (4) bankruptcy or winding up of the principal or the agent. If the agent or third party is unaware of the termination of the agency, they are entitled to treat the agency as continuing in operation.

Where the agency is revocable, and ten years have passed since the power of attorney was given, an act whose validity is dependent upon registration where the register is administered under law, including the land registry, will not be registered unless the grantor authorizes the act in writing (this is valid for one year) or if the court authorizes the registration.

b. Irrevocable power of attorney

An irrevocable power of attorney is a power of attorney which is given for the purpose of safeguarding a right of another person or the agent and such right depends on the carrying out of the object of the agency. An irrevocable power of attorney does not end upon the occurrence of any of the events which terminate a regular power of attorney.

c. Power of attorney authorized by a notary

Under the Notaries Law 5736-1976, general powers of attorney and powers of attorney given for land transactions are not valid unless they are created or verified by a notary. Powers of attorney granted in favour of a solicitor where a solicitor has verified the grantor's signature need not be authorized by a notary. However this does not apply to a power of attorney given overseas in accordance with the laws of the relevant country.

7. PROBATE MATTERS

Under the Succession Law, rights cannot be claimed under a will nor can they be relied upon unless a probate order is made in respect of the will. The Registrar of Inheritance may declare the rights of the heirs by way of Succession Order or declare the validity of a will by way of Probate Order. If the testator bequeathed only partial assets under the will, a Probate Order will be made in relation to that portion of the assets, and a Succession Order will be made in relation to the remainder of the assets.

Applications for Succession Orders and Probate Orders are made to the Registrar of Inheritance. They are made by filling out a form as detailed in the Succession Regulations 5758-1998 which includes information with respect to the familial situation of the testator, the legal competence of the heirs or the persons benefiting under the will. The facts of the application should be supported by the applicant's affidavit, and by another person - if facts are not known to the applicant.

The following documentation must be attached to an application for a Succession Order or Probate Order:

- a certificate of death or a declaration of death given under law, or an application to verify the fact of death, which is supported by the applicant's affidavit and the affidavit of another person, which details the circumstances of death and the special reasons for the absence of a certificate of death;
- the applicant must deliver notice to the heirs or beneficiaries under the will of the application. Confirmation of the delivery by registered mail must be attached to the application;
- where the deceased is not resident in Israel, a legal opinion in relation to the succession law of the deceased's place of residence must be attached, as well as proof that the deceased left properties in Israel;

- an application for a Probate Order must accompany the original will or indicate that the will was deposited with the court or the Registrar of Inheritance, attaching a copy of the will. Where the original will has been destroyed, an application to verify the will must be attached to the application. Where the will is in a foreign language, a translation must be attached; and
- As of October 1, 2003, the fee payable, which includes publication in a newspaper, is NIS 541.

Opposition to the application must be submitted to the Registrar of Inheritance within the time limit set by the Registrar. The opposition should detail its reasons, and be supported by an affidavit.

An application for a Succession Order or a Probate Order (“application”) which is filed with the Registrar of Inheritance, in certain circumstances, is transferred to the court. Those circumstances include, among others, cases in which there is opposition to the Application, where conflict of law issues are involved and where a will is defective.

8. ASSETS NOT REQUIRING PROBATE

Under the Succession Law, a deceased’s estate is transferred to the deceased’s heirs. However, ownership by the heirs is not definite until there is conclusive determination in relation to the heirs and the estate. The identity of the heirs and their respective shares are determined under a Succession Order and the validity of a will is declared under a Probate Order. These orders are declaratory rather than constitutional orders. After the making of the orders, the estate is divided among the heirs.

Under the Succession Law, amounts payable under an insurance contract by reason of the death of the deceased, received as a result of membership in a pension fund or superannuation fund (“funds”) are not included in the estate. This

occurs unless the deceased notifies the funds or insurance entity, prior to the deceased's death, that those amounts are to be included in the estate, or bequeaths the amounts in the will and notifies the funds or insurance entity in respect of the will.

9. CONCLUSION

Inheritance in Israel is governed by the Succession Law. The law determines two ways of bequeathing assets: by will or by law. A bequest by will must follow one of four forms in order to be recognized as valid. In the absence of a will, the distribution of the estate of the deceased is governed by the rules of intestate succession. The rules mention the persons eligible to be heirs and the order of precedence. A Deceased's assets held in trust, in some circumstances, will not form part of his estate.

This article may be found in STEP International Year Book.

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****this article was last updated on August 2005****