



BY: **RUSSELL D. MAYER, ADV.**

SUBJECT: **WHERE THERE'S A WILL THERE'S A WAY/ELDER CARE**

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As it says in Kohelet, there is a time for everything. Planning for the inevitable, BE"H, therefore makes good sense.

What arrangements can be made in a Will? Does it matter if you already have a Will that you executed abroad? What happens if you don't have a Will? Who takes care of your children when you die? Who gets your prized possessions when you die? Is it really necessary to engage an attorney to draft your Will? Below will seek to address some of these issues, in very broad terms.

General Rules

Inheritance. Israeli inheritance laws govern the distribution of a deceased's property located in Israel. The law pertains to distribution of assets in the absence of a legally valid Will ("intestate") as well as the rules applicable to preparing and executing a Will.

In the absence of a legally binding Will, a deceased's spouse would receive all movable property (including a car) owned by the deceased at the time of his or her death and, with respect to the remaining assets: (a) if the deceased had children, then the spouse would receive half of the remainder and the children or their descendants would receive the balance (equal shares to each of the children or their descendants) or (b) if the deceased had no children but left a surviving spouse and siblings, then the spouse would receive two-thirds of the remainder with the balance divided among the siblings.

Outside of Israel, certain types of joint ownership will automatically convey the deceased's share to the surviving joint owner regardless of intestate succession or provisions of a Will. In such cases, notwithstanding the provisions of a Will, the property of the deceased will pass automatically to the survivor. In Israel, the presumption is that each joint owner of an asset, such as a bank account or an apartment, is owned proportionately by the owners and does NOT pass to the other joint owner(s) upon the demise of one of them – it is necessary to get a Court order to transfer the interests of the deceased either according to the deceased's Will or, if there is no Will, the rules of intestacy as explained above. In the course of planning one's estate it is important, therefore, to share with your lawyer, a thorough description of all assets held by the

parties as well as the technical title so that the lawyer can advise how to structure the estate passing under the Will while taking into consideration assets they may pass outside of it.

Section 17(a) of the Inheritance Law provides that where an heir cannot otherwise be identified pursuant to the Law, the State of Israel shall inherit the estate.

Guardianship. Israel's guardianship law will determine who will be appointed as guardian of minor children or incapacitated individuals. The Guardian General will often take the totality of circumstances into consideration in determining who is best suited to be appointed guardian but in the absence of a surviving parent will give preference to immediate relatives (e.g. parents' siblings, parents' parents, aunts and uncles). If a parent provides in a Will for the appointment of a specific guardian, the Guardian General and the courts will generally respect that provision subject to overriding concerns as reflected in the law. It is, therefore, highly recommended that one provide for appointment of guardianship of minors in a Will and that the appointment be made within the parameters of the law.

Israeli Inheritance Tax. Israel had an inheritance tax until several years ago. From time to time the tax authorities suggest that they are considering reintroducing the tax. Until such time as the tax is re-implemented, tax considerations which may have been considered in developing a Will abroad, may not be applicable regarding Israeli assets (although they may still be subject to foreign inheritance taxes) and, therefore, design of inheritance schemes may have more flexibility than did their foreign counterparts. It is, however, important to take into consideration the tax regimes to which the individual may be subject (e.g. U.S. inheritance tax for U.S. citizens even if they live outside of Israel – the Federal exemption for U.S. citizens' inheritance tax as of January 1, 2018 is \$5.60 million).

Probate. A Will generally needs to be processed (e.g. probated) in every jurisdiction in which assets are located (e.g. if there is one Will and assets in both Israel and the U.S., probate will need to be done in both countries).

Trusts. Particularly if minors are involved, immediately or potentially, a properly executed Will, that we recommend be drafted by an experienced attorney, may very well include the establishment of trusts that will control the use of assets which would otherwise be directly bequeathed to minors.

Wills Generally

A Last Will and Testament (e.g. "Will") is an instrument through which a testator seeks to determine the method and arrangements for handling the testator's interests upon her demise. A Will seeks to supersede the default provisions of intestate succession with the "will" of the testator. There are significant rules and regulations regarding the extent to which intestate succession (default statutory provisions) can be substituted in a Will as well as intricate rules involving its proper execution. Mistakes in either of these crucial components can frustrate the intentions of the testator making the Will either worthless or harmful to the testator's actual intent – designing a Will (e.g. estate planning) as well as writing and executing a Will should only be undertaken by a qualified, knowledgeable lawyer who is experienced in these matters.

Like all written agreements, the clearer the terms and conditions in the Will, the less is the likelihood that there will be misunderstanding or that someone will successfully contest its legality. Specificity in the Will can communicate the testator's intentions and avoid disputes among the heirs. Actual and emotional value, tax ramifications and legal constraints should be considered in designing a personal Will appropriate for the circumstances.

Sound Mind and Body

In order for a Will to be binding, it must be executed at a time that its maker was of sound mind and body. The law determines that a Will made by: (a) a minor; or (b) by a person who has been declared incapacitated/incompetent; or (3) where the Will was made at a time when the Testator did not distinguish or comprehend the nature of the Will, will be invalid.

Jurisdiction

Israeli courts have jurisdiction to adjudicate cases (whether for probating a Will or under circumstances of intestate succession) if, at the time of his death, the deceased had been domiciled in Israel or left assets in Israel. Domicile will be determined based on the "center of life" of the individual. Citizenship is not, necessarily relevant. It will be necessary to apply to the Israeli court in the event that the deceased left assets in Israel even if a Will is probated in a court abroad.

Types of Wills

The most common form of Will is the Printed Will Executed in the Presence of Witnesses. Other types of Wills which may be valid under specific, limited circumstances include: (a) handwritten Wills, (b) Wills executed in the presence of certain officials, and (c) oral Wills. We cannot sufficiently emphasize that the requirements for all of these Wills, are quite intricate and it is easy to inadvertently err in their execution causing the entire Will to be considered invalid and unenforceable. We strongly recommend that a Will be prepared by a lawyer who is competent in this area of the law.

A Will properly prepared and executed in one county will likely be effective in the other (e.g. the U.S. and Israel) and may be written in English or Hebrew. After the maker passes away, it will likely be necessary to translate the Will with notarial certification into the language of the country for which it is not in the native language. For that reason, it may be advantageous to have a separate Will for assets in Israel (even though a U.S. Will would be recognized in Israel) as U.S. Wills tend to be more lengthy and, therefore, more expensive to translate and certify not to mention that they tend not to have the specificity of identifying heirs as currently required by Israeli law and procedure.

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*This memorandum is not to be considered as a legal opinion.
For legal advice, we suggest you contact legal counsel directly.*

R.D.M.