יוצא לאור ע"י כולל 'משפטי מרום'
בביהמ"ד 'גבורה' בעיר מנהטן, ניו יורק
Gevurahkollel@gmail.com

The Wall St. Torah Journal

An informative project of the Gevurah Shul Kollel for monetary matters and contemporary Halacha

Year 1| issue 5
בין המצרים שנת תשפ"ו לפ"ק

Beyond the Letter of the Law

By: Rav Moshe Rieger

Chazal teach us that Yerushlayim was destroyed because its people judged strictly according to the law and did not go beyond the letter of the law - lifnim mishuras hadin (Bava Metzia 30b). At first glance, why should one be faulted for following the halacha.

The answer lies in another statement of Chazal: the Second Beis HaMikdash was destroyed because of sinas chinam (Yoma 9b). Baseless hatred is not limited to open hostility; it also includes indifference to another person's needs. This is reflected in the verse, "Hashem saw that Leah was hated" (Bereishis 29:31), which the Rabbeinu Bachya and Radak explain to mean that Leah was merely less loved than Rachel—not literally hated.

Similarly, sinas chinam arises when people lack genuine care and brotherhood. They fulfill only their legal obligations, without extending themselves on behalf of others. When a person feels connection only in his social circle, and all others seem like irrelevant to him, that itself is an element of sinas chinam.

Tosafos (Bava Metzia ibid) asks: if Chazal teach that the Beis HaMikdash was destroyed because of sinas chinam (Yoma 9b), why do they also attribute the destruction to the failure to act beyond the letter of the law? Tosafos answers simply: "Both factors contributed."

Perhaps we can understand that these two causes are, in fact, inseparable. When a person does not feel genuine brotherhood and concern for others, he naturally limits himself to fulfilling only the strict letter of the law, without extending himself on another's behalf. As a result, others feel neglected and unloved. Thus, the lack of lifnim mishuras hadin is itself an expression of sinas chinam, and together they brought about the Churban.

During these days, let us strengthen our love for one another, deepen our sense of shared responsibility, and merit to see these days transformed into joy and gladness. ■

Is a Legal Will Sufficient? A Halachic Perspective on Estate Planning

By: Rav Yosef Yitzchak Meisels

Bilam famously declared, *"Tamos nafshi mos yesharim"*—"May my soul die the death of the righteous." Throughout history, the Jewish people have lived according to a comprehensive legal system established by the Torah. Long before modern legal systems developed sophisticated rules governing ownership, inheritance, and estate administration, the Torah had already established detailed laws regulating financial transactions, property rights, inheritance, and the transfer of assets.

Estate planning is no exception. Entire sections of *Choshen Mishpat* are devoted to the laws of *yerushah* and the transfer of property upon death. In this article, we will examine several of the principal halachic issues raised by civil wills and discuss the various approaches adopted by contemporary *poskim*.

Civil Inheritance Law and the Torah's Seder HaYerushah

Civil law and halacha approach inheritance from fundamentally different perspectives.

Under modern civil law, a surviving spouse generally inherits all or a substantial portion of the deceased's estate. Under halacha, however, a wife does not inherit her husband's estate. This should not be misunderstood as leaving her unprotected. Chazal established extensive financial protections for a widow through the *kesubah*, support obligations, housing, medical care, and numerous other >page 2

Daily Shiurim at the Gevurah Shul:

- Shiur in Chok L'Yisrael
  8:00 AM
  by Reb Dov Ber Zyskind
- Nach Following Shacharis
  by R. Hillel Gross
- Daf Yomi
  1:20 PM
  by Reb Baruch Karfunkel
- Gemara – Sotah
  2:15 PM
  by R. Yosef Cohen
- Gemara - Oraysa
  5:30 PM
  by Reb Dov Ber Zyskind
- Contemporary Halacha
  Every Monday,
  2:15–2:30 PM
  by Rabbi Levi Yitzchak Osdoba

The Laws of the Nine Days

By: Rav Shaya Lichtenstien

1. *Beginning Time*
   The restrictions of the Nine Days begin ideally from sunset on Erev Rosh Chodesh; if delayed, one may be lenient until bein hashmashos.
   (פמ"ג סי' תקנא א"א ס"ק כו; מג"א סי' תקנא ס"ק כו)
2. *Sephardic Custom*
   Those who follow the Mechaber begin these restrictions only during the week in which Tisha B'Av falls.

Business and Purchases

3. *Wedding Needs*
   One should not purchase wedding clothing, furnishings, or preparations during the Nine Days.
   (שו"ע שם ס"ב; מג"א ס"ק ז'; שעה"צ ס"ק י"ג)
4. *Wedding After Tisha B'Av*
   If the wedding is immediately after Tisha B'Av and delaying will cause difficulty, purchases are permitted.
   (מחצה"ש ס"ק ח'; משנ"ב ס"ק י"ד)
5. *Reservations*
   One may reserve a hall, singer, badchan, and similar services if delaying may cause the date to be lost.
6. *Luxury Purchases*
   Expensive items, such as furniture, cars, antiques, or similar purchases, should not be bought.
   (פמ"ג א"א ס"ק ז')
7. *Financial Loss*
   If a major sale or opportunity will be lost, even expensive items may be purchased.
   (פמ"ג שם; משנ"ב ס"ק י"א)
8. *Buying a Home*
   One should avoid closing on a new home, unless delaying may cause a loss; signing a contract is permitted.
   (עי' מג"א שם; פמ"ג שם; שו"ת מקדש ישראל סי' ס')
9. *Loans*
   Taking a mortgage, line of credit, or other loan is permitted.
10. *Business Property*
    The restriction applies to personal housing; business purchases, rentals, warehouses, or investment properties are permitted.
11. *Leasing*
    Signing a lease to rent a home is permitted.
    (שו"ת לבושי מרדכי או"ח קמא סי' קא)

Construction

12. *Joyful Construction*
    Building for beauty, expansion, or pleasure is prohibited during the Nine Days.
    (שו"ע שם ס"ב; מג"א ס"ק ז')
13. *Painting and Decorating*
    Painting, scraping, varnishing, or refinishing for beautification is prohibited.
    (שו"ע שם ס"ב; מג"א ס"ק ז'; שו"ת התעוררות תשובה או"ח סי' של"ט)
14. *Home Improvements*
    Home improvements done merely for comfort or appearance, such as remodeling a kitchen or installing tiles, should be postponed.
    (מג"א ס"ק ז')
15. *Necessary Repairs*

rights.

With respect to inheritance itself, the Torah's primary heirs are generally the deceased's sons. Unmarried daughters are entitled to maintenance and, under certain circumstances, marriage expenses, but they do not ordinarily inherit together with sons under the Torah's default laws of succession.

Because most people today wish to provide generously for their spouse and daughters, estate planning generally requires transferring assets through valid lifetime gifts or other halachically recognized mechanisms. Since the assets pass by way of gift rather than inheritance, they are no longer governed by the Torah's default *Seder HaYerushah*.

Can a Standard Legal Will Avoid the Seder HaYerushah?

A conventional civil will raises several significant halachic questions.

The Requirement of a Kinyan

Under secular law, a properly executed will distributes property according to the testator's expressed wishes. Halacha, however, generally recognizes a transfer of ownership only through a valid act of acquisition (*kinyan*). Mere intent—even when reduced to writing—is ordinarily insufficient to transfer title (חו"מ סי' קפ"ט).

Some contemporary authorities (אחיעזר ח"ג סי' ל"ד) suggest that this difficulty may be resolved through the doctrine of *situmta*. The Gemara recognizes that commercial practices universally accepted by society may acquire independent halachic validity. Since ownership today is commonly transferred through a legally executed will, such a document may itself constitute a recognized halachic mechanism for transferring ownership.

A Will Takes Effect Only After Death

A more fundamental difficulty nevertheless remains.

A civil will ordinarily becomes effective only upon the testator's death. Halacha, however, generally does not recognize a gift that first takes effect only after the donor's death. Since the attempted transfer is ineffective, the Torah's default *Seder HaYerushah* automatically governs the distribution of the estate.

The Approach of the Igros Moshe

Rav Moshe Feinstein (אגרות משה אבה"ע ח"א סי' ק"ד) advances a novel analysis. According to Rav Moshe, the effectiveness of a civil will does not depend upon the ordinary laws governing *kinyanim* at all.

Rav Moshe analogizes this to the Gemara's principle of *hen hen devarim haniknin ba'amirah*, where Chazal recognized transactions based upon an extraordinary manifestation of intent despite the absence of the usual formalities. A person ordinarily executes a will only after careful deliberation and with the expectation that it will govern the distribution of his entire estate. Such exceptional intent may itself be sufficient to validate the transfer.

Under this approach, the will becomes effective upon death despite the objections noted above. The property remains the testator's throughout his lifetime and passes upon death pursuant to the legal framework established by the will. Because the transfer does not depend upon a conventional *kinyan*, it need not be completed during the testator's lifetime.

Many distinguished authorities, however—including the *Minchas Yitzchak* and others—disagree. They maintain that regardless of a will's legal validity under secular law, halacha still requires a recognized mechanism of transfer that becomes effective during the donor's lifetime. According to these authorities, the fundamental objections therefore remain unresolved.

Mitzvah Lekayem Divrei HaMeis

Rav Chaim Ozer offers a different basis for recognizing a civil will. The *Shulchan Aruch* (חו"מ סי' רנ"ב) records the rabbinic principle of *mitzvah lekayem divrei hameis*—the obligation to fulfill the wishes of the deceased.

Although some authorities limit this principle to situations where the deceased deposited his assets with a third party during his lifetime, Rav Chaim Ozer argues that a legally enforceable will serves an equivalent function.

Since a person who executes a formal will clearly intends for its provisions to be carried out, and civil courts will generally enforce it, these authorities maintain that the halachic heirs are obligated to honor those wishes. Under this approach, however, the halachic heirs initially inherit under the Torah's laws of succession. Their obligation arises only afterward through the rabbinic duty to fulfill the deceased's instructions. Consequently, where fulfilling the will conflicts with another halachic obligation, that competing obligation may prevail. Furthermore, according to some authorities (ר"ן גיטין), minor heirs are not bound by this obligation until reaching adulthood.

Rav Elyashiv (קובץ תשובות ח"ג) distinguishes between a secular Jew who intended to rely upon the legal effectiveness of his civil will and an observant Jew who ordinarily would not intend to depart from halacha. Accordingly, the halachic effect of a civil will may differ depending upon the testator's presumed intent.

The *Mishpetei HaTzava'ah*, however, argues that in countries such as the United States, where many observant Jews mistakenly assume that a properly drafted legal will is also halachically valid, even Rav Elyashiv would agree that such a will should be enforced by *beis din*.

>page 3

Is a Notarized Document Suff icient for *kiyum shtaros*?

By: Rav Boruch Krausz

This matter may be divided into two separate questions: first, whether a notarized document may serve as *kiyum* for the document itself; and second, whether a notarized document may, in certain circumstances, obviate the need for *kiyum* altogether.

Before addressing these questions, it is necessary to clarify the nature of *kiyum shtaros*.

Midoraisa, a document signed by witnesses, or by the principal himself, is valid without any additional requirement. However, the *rabanan* instituted a requirement of *kiyum shtaros*, due to concern that forged documents might be circulated. Accordingly, they established a procedure by which signatures are authenticated. This is done by presenting the document before a *beis din* of three *dayanim*, who then append an authentication notation known as a *henpek*.

Shulchan Aruch (Choshen Mishpat 46:7) sets forth five methods of *kiyum*. The fourth method is that two witnesses appear before *beis din* and testify that they recognize the signature as that of the document's signatory. Notarization by a notary public is most similar to this form of *kiyum*, since the notary is likewise attesting that the signature belongs to the signatory.

We may now return to the first question: may notarization be relied upon for *kiyum shtaros*? There are several reasons to conclude that it is insufficient.

First, if the document was notarized by a non-Jewish notary, such a person is not a kosher witness. Even if the notary were Jewish, the process would still be deficient, as *kiyum* requires two witnesses, whereas a notary is only a single individual.

Second, in certain notarial procedures, such as an acknowledgment, the notary does not actually witness the signing of the document. Rather, the notary merely verifies that the signatory acknowledged before him that the signature is his. This is not the same as direct testimony that the signature is authentic, and therefore it is uncertain whether such notarization satisfies the requirements of *kiyum* as set forth in Shulchan Aruch.

We may now turn to the second question: whether a notarized document may not require *kiyum* at all. There is a *sugya* in *Gittin* (10b) concerning documents signed by non-Jewish witnesses in a secular court, and whether such documents possess halachic validity. The *Mishna* rules that such documents are valid, and the *gemara* offers two explanations:

A judge serving in a long-term position will not risk damaging his reputation and is therefore presumed trustworthy.

Dina d'malchusa dina.

The *nafka mina* between these two explanations is whether such >page 4

<page 2

The Importance of Precise Drafting

Even according to Rav Moshe, where a civil will may be halachically recognized, the wording of the document is critically important.

Expressions such as "my daughter shall inherit" or "my wife shall inherit" may be construed as an attempt to alter the Torah's prescribed laws of succession, raising concerns of *masneh al mah shekasuv baTorah*. For that reason, halachic estate-planning documents ordinarily avoid inheritance terminology, instead employing carefully drafted language of gifts, obligations, or other halachically recognized mechanisms.

Conclusion

Ultimately, whether a civil will satisfies halachic requirements depends upon numerous factors, including the precise language of the document, the identity of the halachic heirs, and the halachic authorities whose opinions are followed. Consequently, relying solely upon a standard legal will may leave significant room for dispute, with no assurance that a *beis din* will ultimately enforce its provisions.

Fortunately, achieving compliance with both secular law and halacha is generally straightforward. An experienced *rav* can often review an existing estate plan and prepare a concise halachic addendum that operates alongside the civil documents, preserving their legal effectiveness while ensuring halachic validity according to all major halachic opinions.

By ensuring that one's wishes are both legally enforceable and halachically sound, an individual leaves behind not merely an organized estate, but a lasting legacy of foresight, integrity, *shalom*, and dedication to the Torah.

In the next installment, iy"H, we will examine additional halachic considerations that arise in connection with civil wills and estate planning. ■

Essential repairs, such as fixing leaks or damage, are permitted since they are considered maintenance rather than beautification.
(משנ"ב ס"ק יב; קובץ מבית לוי עמ' י'; ארחות חיים אות ח')

16. *Business Construction*
Construction, renovations, or painting for business purposes, including preparing property for sale or rent, are permitted.

17. *Construction for a Mitzvah*
Building or repairing a Beis Midrash, Talmud Torah, Mikvah, Ma'akeh, or any other mitzvah project is permitted.
(רמ"א ס"ב; מג"א ס"ק ז')

18. *Non-Jewish Contractors*
One should preferably postpone work even if performed by a non-Jew. If postponement is impossible or would cause a loss, it may be permitted.
(מג"א ס"ק ז')

19. *Preventing Financial Loss*
Work necessary to prevent damage, such as watering plants or maintaining landscaping, is permitted.
(ט"ז ס"ק ב'; משנ"ב ס"ק יג)

Laundry and Ironing

20. *Washing Clothing*
Clothing may not be washed or ironed during the Nine Days, even if it will not be worn until afterward.
(שו"ע סי' תקנא ס"ג)

21. *Giving Laundry to a Non-Jew*
Laundry may not be given to a non-Jewish cleaner during the Nine Days, even if it will be collected after Tisha B'Av.
(רמ"א שם ס"ג)

22. *Before Rosh Chodesh*
Laundry given to a non-Jewish cleaner before Rosh Chodesh may be washed during the Nine Days.
(רמ"א שם ס"ג)

23. *Washing Machine*
A load may be started immediately before nightfall on Erev Rosh Chodesh, even if it continues into the Nine Days.
(שו"ת מקדש ישראל סי' פ"ח)

24. *Dryer*
Wet clothing may be dried in a machine, but freshly washed clothing should not be hung outside.
(שו"ת עמק התשובה ח"א סי' צ"ב; שו"ת מקדש ישראל סי' פ"ח)

25. *Children's Clothing*
Clothing of young children that frequently becomes dirty may be washed. Preferably, a non-Jew should operate the washing machine.
(רמ"א סי"ד; כף החיים ס"ק קכ"ט)

26. *Guests for Shabbos*
If necessary for Shabbos guests, bedding may be washed, preferably by a non-Jew.
(מג"א ס"ק יד)

27. *Spot Cleaning*
Stains may be removed from clothing without laundering the garment.

28. *Wigs*
A sheitel should not be washed or professionally styled during the Nine Days.
(קובץ מבית לוי)

29. *Towels and Linens*
Towels, bed linens, and tablecloths may not be washed. Cleaning cloths used only for household chores may be laundered.
(שו"ע שם ס"ג)

30. *Laundry for Shabbos*

If clean clothing is needed for Shabbos, it may be washed. Preferably, a non-Jew should operate the washing machine.

(משנ"ב ס"ק ל"ב)

31. *Polishing Shoes*

Shoes should not be polished during the Nine Days. Cleaning off dirt, and polishing for Shabbos, is permitted.

(שבילי דוד; שו"ת שלמת חיים מהדו"ח סי' שיב; שבט הלוי ח"ו סי' רמ"ד;)

32. *Washing Floors*

The custom is not to wash floors during the Nine Days. Sweeping and vacuuming are permitted, and washing is allowed if the floor is dirty or in honor of Shabbos.

(שו"ת שלמת חיים; שו"ת כפי אהרן סי' מב;)

Wearing Freshly Laundered Clothing

33. *Fresh Clothing*

Freshly laundered clothing may not be worn during the Nine Days, even if washed before Rosh Chodesh.

(שו"ע סי' תקנא ס"ג)

34. *Towels and Bedding*

Freshly laundered towels, bed linens, and tablecloths should not be used.

(שו"ע שם ס"ג)

35. *Dish Towels*

Clean towels designated for drying dishes may be used.

36. *Excessive Perspiration*

One who has no usable clothing due to excessive perspiration may wear a freshly laundered garment after first placing it briefly on the floor.

(משנת יעקב סי' תקנא ס"ק י'; שו"ת תשובות והנהגות ח"ה סי' קע)

37. *Clothing for Shabbos*

Freshly laundered clothing and towels may be used for Shabbos. Bed linens should not be changed.

(רמ"א ס"ג, משנ"ב ס"ק ל"ג)

38. *Hotel Bedding*

When staying in a hotel, one should preferably place fresh linens on the floor before using them and request that they not be changed daily.

(שו"ת מנחת יצחק ח"י סי' מ"ד)

Eating Meat and Drinking Wine

39. *Meat and Wine*

From Rosh Chodesh Av, one refrains from eating meat and drinking wine or grape juice.

(שו"ע סי' תקנא ס"ט)

40. *Foods Cooked with Meat*

Foods cooked together with meat are prohibited. Foods cooked in a meat pot without meat are permitted.

(מג"א ס"ק כ"ט; פמ"ג א"א ס"ק כ"ט)

41. *Wine in Food*

Foods or beverages containing a noticeable taste of wine should not be consumed during the Nine Days.

(שערי תשובה בשם מהר"י ברונא; א"ר ס"ק כ"ב; שו"ת שבט הלוי ח"ט סי' קל"ב)

42. *Children*

Children should be trained to refrain from meat and wine, although one may be lenient when necessary. If grape juice is given, it should preferably be diluted with water.

(דגול מרבבה; משנ"ב ס"ק ע'; שערי תשובה;)

43. *Havdalah*

The accepted custom is to recite Havdalah over wine, and the one making Havdalah drinks the wine, even on Motzaei Shabbos Chazon.

(שו"ע ס"י; לקט יושר ח"א עמ' ק"ז)

44. *Seudas Mitzvah*

sadueS a ta dettimrep era eniw dna taeM
(muyiS ,neBaH noydiP ,sirB ,.g.e) havztiM
.dnetta yliranidro dluow ohw esoht rof

(טו"ז ס"ק י"ב)

Bathing and Personal Hygiene

45. *Bathing*

Bathing, showering, or swimming for pleasure is prohibited during the Nine Days, whether in hot or cold water.

(שו"ע ורמ"א סי' תקנ"א סט"ז)

46. *Reason for the Restriction*

These restrictions reflect our mourning over the destruction of the Beis HaMikdash, similar to the practices of an avel.

(ביאור הגר"א)

47. *Washing Hands and Face*

One may wash the face, hands, and feet with cold or lukewarm water. Hot water should not be used.

(משנ"ב ס"ק צ"ד; שו"ע יו"ד סי' קצ"ט; ביה"ל סי' ר"ס; א"א סט"ז)

48. *Washing Hair*

Hair should not be washed with hot water. Cold water is permitted, and one who is excessively perspiring may be lenient when necessary.

(שו"ת מהרי"ל סי' ט"ז; ערוך השלחן סל"ז)

49. *Removing Dirt*

One who is dirty may wash the affected area, even with hot water. If necessary, the entire body may be washed.

(ערוך השלחן סל"ז; משנ"ב סי' תרי"ג ס"ק א')

50. *Children*

Young children may be bathed as needed. Older children should be bathed only when necessary, and recreational swimming is prohibited.

(עי' שם)

51. *Mikvah*

One who regularly immerses in the mikvah may continue during the Nine Days, but should not remain in the water longer than necessary.

(מג"א ס"ק מ"א; ערוך השלחן סל"ה; משנת יעקב ס"ק מ"א)

52. *Washing Dishes*

Dirty dishes may be washed normally with hot water and soap.

(מג"א סי' תקנ"ד ס"ק י"א)

53. *Lotions and Deodorant*

Applying sunscreen, deodorant, and similar products is permitted during the Nine Days.

(רק בת"ב אסרו סיכה)

54. *Washing for Shabbos*

One may wash the head, and according to custom, the face, hands, and feet with hot water in honor of Shabbos.

(רמ"א סט"ז; משנ"ב ס"ק צ"ז)

55. *Showering for Shabbos*

Where needed, one may shower the entire body with lukewarm water in honor of Shabbos, using soap only as necessary.

56. *Cutting Fingernails*

Although the Poskim dispute whether fingernails may be cut during the Nine Days, the common practice is to permit it on Erev Shabbos.

(מג"א ס"ק י"א; טו"ז ס"ק י"ג; פמ"ג א"א ס"ק י"א; יד אפרים)

<page 3

a document can create a *kinyan*. According to the first explanation, it does not create a *kinyan*, but merely serves as proof of the document's authenticity. According to the second explanation, however, the document itself can create a *kinyan*.

With this in mind, one could argue that a notarized document does not require *kiyum* according to either explanation. According to the first explanation, the same rationale applies to a notary public: the notary is presumed not to risk his reputation by certifying a false document. According to the second explanation, *dina d'malchusa dina* would likewise apply, since the law of the land recognizes notarization as sufficient authentication. In that sense, notarization confirms that the signature is valid, which is essentially the function of *kiyum*.

However, the *poskim* draw an important distinction within this entire framework. The Tur (Choshen Mishpat 68) writes: "All agree that documents written by scribes do not possess the halachic status of documents written in court, even though they were appointed by the judges, because they were not written in the presence of the judges."

Two early *Acharonim* explain the words of the Tur: Maharam Padva (44) and the Mahari L'beis Levi (9:70 quoted by the *Shach*). They explain that there are two categories of individuals appointed by the court. The first category is one who sits in the courthouse and is regarded as being appointed by the government. This is the type discussed in the aforementioned *sugya* in *Gittin*.

The second category is described as "other scribes, of whom there are countless numbers in every city and town, appointed by the judges. They operate from their homes and shops, are found in every corner, and are called notaries. These are not considered comparable to court scribes, because people do not trust them as much as they trust court scribes."

Based on this distinction, it appears that a modern-day notary public is no better than the notary discussed by the *poskim*. Indeed, one may argue that modern notaries are even less reliable in this regard, since in practice notaries today often do not accord significant weight or attention to the work they perform.

In conclusion, a notarized document would not appear to be sufficient for *kiyum shtaros*. ■