

Is a Secular Will Valid According to Halacha ?

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Question: Shimon passes away, leaving behind sons and daughters. He left a will that divides his assets equally between his sons and daughters. The will was prepared by a lawyer according to secular law. Do his sons have to abide by the will?

Answer: This is a subject of considerable controversy amongst the Poskim of the last century or two.

Even though, as we previously said, we uphold the supremacy of the Torah's *sefer yerusha* over secular laws of the non-Jews, there are those who argue that a secular will is binding according to halacha. Some say that this is so because it is a *mitzvah l'kayem divrei hameis*. When it comes to arrangements regarding a person's estate, the heirs are obligated to obey the express wishes of the deceased. There are limitations to that rule but some say that it applies to wills and, therefore, the father's desires have to be fulfilled. Others say that even though *dina d'malchusa dina* does not apply to *sefer yerusha* itself, it may apply to incorporate secular law into certain aspects of a will. A third basis some Poskim mention is that the general mitzvah of *kibud av v'eim* would require them to obey the father's wishes.

All of these arguments are controversial and none are universally accepted; therefore, it is a major *machlokes* whether a secular will would be enforceable according to halacha. *B'dieved*, after the fact, especially if daughters are already in possession of some of the assets, if the heirs would go to *bais din* the daughters possibly might win. Certainly, however, *l'chatchila* it is not recommended to rely on a secular will because it is not at all clear that it is valid according to halacha.