

Business Law Vs. Halacha with Regard to Inheritance

Case: My father passed away suddenly, leaving a sizable estate. He never executed any halachic or legal will. I know that according to Halacha my sister does not get a portion, and my brother and I should split the estate. However, my lawyer explained that according to secular law she would get a third unless she signs away her rights to it. My sister refuses to do so, claiming that under *Dina D'malchusa* she should indeed get a portion.

Question: Who is right? Must a legal inheritor give up their rights if the Torah does not grant them a portion?

Answer: This question is the subject of much debate in the Achronim. On the one hand, in the area of *yerushah* [inheritance] we do not follow the secular law. The Torah order of inheritance falls into the realms of *issur* and *heter*, right and wrong, and not subject to the dictates of Government. For an unrightful heir according to the Torah to use the secular law to get a share in the inheritance is tantamount to theft. [See Rashdam Choshen Mishpat 304]

On the other hand, if the sister should choose not to take any portion, but also refuse to sign away her legal portion, it is difficult to conceive of a way for the brothers to force her to sign. This effectively would leave them in a stalemate, with no one getting that portion. Therefore, some Achronim suggest she can use this bargaining tool to charge her brothers a service fee for her signature- up to the equivalent of her share in the estate.

Other Achronim suggest that the laws of Hashavas Aveida require her to sign away her share for free to enable her brothers to receive their full portion according to the Torah. Practically, a *pshara* (compromise) is usually called for. [See Pnei Moshe Vol 2, Chapter 16]