THE BAIS HAVAAD
HALACHA JOURNAL
Family, Business, and Jewish Life through the Prism of Halacha

VOLUME 5781 • ISSUE LXV • PARSHAS PINCHAS

A PUBLICATION OF THE
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ב"ר משה גרוסמן זצ"ל
Dedicated in loving memory of HaRav Yosef Grossman zt"l

DOMAIN NAME

Does a wife actually own property titled in her name?

Adapted from the writings of Dayan Yitzhak Grossman

In our previous article, we discussed the classic halachic framework governing marital assets and their disposition in divorce: All assets are generally assumed to be separate property (there is no concept of community property), and the husband and wife each retain all property upon divorce, subject to the payment of any settlements imposed by halacha (like the husband's kesubah obligation) or agreed to by the couple. In this article, we consider the question of whether the titling of assets in the wife's name is grounds for considering her their owner.

THE POSITION OF THE ROSH

The Rosh says that a man who purchases real estate does not generally include his wife in the purchase document, so if he does include her name along with his, "it appears that half the funds used to purchase the property came from her" and she is considered a half-owner of the property. Similarly, if she is the only purchaser named in the purchase document, she is considered the sole owner of the property.[1]

THE POSITION OF THE RASHBA

The Rashba rules similarly that when a husband includes his wife's name in a purchase document, the question of whether she is considered the owner hinges on whether her assets were actually used to fund the purchase: If they were not, then the decision to include her in the document is not deemed to constitute a gift to her of a share of the property, and the husband remains the sole owner; but if they were, then she is considered a half-owner.

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1 Shu"t HaRosh *klal* 95 *siman* 4, cited in Tur E.H. end of *siman* 86. Cf. Prishah ibid. *s.k.* 13 and Sema C.M. *siman* 62 *s.k.* 6.

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HEIR IN LAW

Excerpted and adapted from a shiur by Dayan Yosef Greenwald

If his father has no brothers, you shall give over his inheritance to the kinsman (sh'eiro) closest to him in his family, who shall inherit it.

Bemidbar 29:11

In the Torah's laws of inheritance, a person who dies is inherited by his closest male blood relative. According to the Rambam and Sefer Hachinuch, the Torah uses the word "*veha'avartem*"—and you (plural) shall give over—because the mitzvah of *yerushah* applies to the bais din, which is directed to ensure that the Torah's inheritance protocol is followed. However, in the *pasuk* above, the Torah says "*veyarash osah* (and he shall inherit her)." According to *Chazal*, this refers to the husband inheriting "*sh'eiro,*" which means his wife (see Bava Basra 111b).

It would seem from the use of the singular "he" in this instance that a

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Father Time

Q Our baby is due to be born during the Three Weeks. Should I refrain from reciting the bracha of *shehecheyanu* for a girl or *hatov vehameitiv* for a boy?

A The Shulchan Aruch (551:17) writes that the *bracha* of *shehecheyanu* is not made during the Three Weeks. This is because the words *vehigianu lazman hazeh* (and He made us reach this

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He maintains, however, that if we are not aware of the existence of assets belonging to the wife, the burden of proof is upon her to support her contention that she had them. Her inclusion in the purchase document is not by itself sufficient evidence of this.[2]

THE *ACHARONIM*

The Shach apparently assumes that the Rosh and the Rashba disagree in the case where the wife does not have known assets: The Rosh nevertheless considers her inclusion in the purchase document as prima facie evidence that she is considered an owner of the property, while the Rashba does not. The Shach sides with the Rashba.[3]

The Urim Vetumim agrees with the Shach that the Rosh and Rashba disagree, but he argues that the question ultimately hinges on a broader disagreement among the *Rishonim* about whether property recorded in someone's name can be claimed by that person. He considers that an unresolved dispute and therefore concludes that a court cannot take the property away from the wife, who is the *muchzak* (possessor).[4]

The Nesivos Hamishpat explains that the Rosh and Rashba do not actually disagree. Since one of the Rashba's arguments against inferring from the wife's inclusion in the purchase document that she is an owner is based on the Talmudic idea that a husband may sometimes engage in the subterfuge of pretending to involve his wife in the purchase of property in order to trick her into revealing hidden money that she has to which he is entitled,[5] his ruling is limited to cases where that is a possibility, while the Rosh is referring to cases where it is not.[6]

Note, however, that although in one of his responsa the Rashba does indeed focus on the specific idea of husbandly subterfuge, in another he enumerates several more general rationales for why a husband might choose to put property that is not his wife's in her name,[7] so his position might not actually be limited to where husbandly subterfuge is a possibility.

2 Shu"t HaRashba *cheilek* 1 *siman* 957, cited in Darchei Moshe ibid. at the end of the *siman*. Cf. Nesivos Mishpat (Algazi) Meisharim *nesiv* 23 *cheilek* 6 p. 168.

3 Shach ibid. *s.k.* 7.

4 Urim Vetumim ibid. Tumim *s.k.* 5.

5 Bava Basra 51a.

6 Nesivos Hamishpat ibid. *Biurim s.k.* 7, and cf. *Chiddushim s.k.* 6.

7 *Cheilek* 3 *siman* 193, cited (in part) in Bais Yosef ibid. at the end of the *siman*.

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husband's *yerushah* of his wife is not part of the standard *seder nachalos* that bais din oversees. This is because the wife is not a blood relative. Her relationship with her husband is built upon marriage and the mutual obligations it engenders; he is obligated to provide for her in various ways during her lifetime, and in return, he inherits her assets if she dies.

There may be a practical application of this idea. A person is allowed to distribute his assets as he sees fit shortly before he dies, per the rule that "mitzvah *lekayeim divrei hamais* (it is a mitzvah to uphold the words of a dying person)." Nevertheless, it is recommended to leave at least some of one's assets for distribution according to the Torah's *seder nachalos*. In contrast, there does not appear to be any source that recommends that a woman in a second marriage leave aside some assets for her husband. Rather, it is customary that she gives it all to her children.

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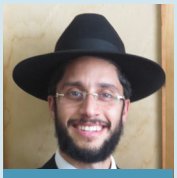
RAV ARYEH FINKEL

time) are not appropriate at the saddest time of the year (see Aruch Hashulchan ibid. 38). The problem is not that a celebratory *bracha* should not be made during this sad period, only that those particular words aren't appropriate, so *hatov vehameitiv* may be recited (Sha'arei Teshuvah).

The Shulchan Aruch rules that if a *shehecheyanu* opportunity like a *pidyon haben* comes along, one should recite it and not wait. But the Mishnah Brurah (ibid.) says that if you see a new fruit during the Three Weeks you should wait until Shabbos to eat it, because *shehecheyanu* may be recited on Shabbos. It would seem that in your case you should preferably wait until Shabbos to recite the *bracha*, because it may be recited for as long as one still feels the joy of the birth (see Mishnah Brurah 223:3).

However, the *poskim* explain why *pidyon haben* is different from a new fruit: The obligation of *shehecheyanu* comes at the time of the *pidyon haben*, so it should not be postponed, but although one *may* say *shehecheyanu* upon seeing a new fruit, the obligation comes only when he eats it.

For this reason the *poskim* rule that in your case, you should say the *bracha* when you see the baby, because your obligation comes at that time (Piskei Teshuvos ibid.).

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