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Inheritance Law and Procedure in Israel

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1. Introduction

Israel is a small country, about the same size as Belgium in Europe or New Jersey in North America. It is located on the eastern shore of the Mediterranean Sea and has excellent access by air and sea to Europe, Africa, Asia, and North America.[1] Since 2010, Israel is a member of the Organisation for Economic Co-operation and Development (OECD).[2]

Israel is a country of immigration. Formal statistics[3] show that at the time of its establishment, Israel's population was only 872,700 people, out of which 716,700 (82%) were Jews, and 156,000 (18%) were Muslims, Christians and Druze. Formal statistics[4] further show Israel's phenomenal population growth, as Israel's population in the end of 2018 was 8,955,300, out of which 6,554,700 (73%) were Jews, 1,874,800 (21%) were Muslims and 525,800 (6%) others and all of whom enjoy equal legal rights in all areas of life. It is also interesting to note that since the establishment of the State of Israel and until 2017, approximately 110,000 immigrants were born in the USA.[5]

Israel is known as a "start-up nation" when relating to high-tech and technology. This sector of the economy is a source of tremendous wealth and has created a new generation of rich families. The magazine *Israel 21c* reported that in the year 2017[6] Israeli high-tech exits totaled in $7.44 billion. This amount represents an increase of 9% over 2016, and 9% of those deals were worth $400 million to $1 billion.

This demographic and economic environment provides a fertile ground for U.S. persons, whether U.S. or Israel residents, to invest in assets in Israel.

2. Preamble: Inheritance Law in Israel

Inheritance in Israel is governed by the Succession Law.[7] According to section 2 of the Succession Law, the estate of a deceased passes to his heirs in accordance with the law — intestate inheritance, unless the deceased has left a valid will, in which case the estate is bequeathed in accordance thereof.

3. Intestate Inheritance

In the absence of a valid will, the Succession Law provides a mechanism that determines the order of inheritance, and the portion of each heir. Accordingly, the first right of inheritance is divided equally between the spouse of the deceased and his children. The spouse receives one-half of the estate and the children divide the remaining half between them in equal shares.[8]

4. Inheritance Under a Will

Alternatively, the estate can be distributed as set out in the testator's will. Under the Succession Law, a will can be made in one of four ways, as set forth below:[9]

a) A handwritten will.[10] Such will shall be written entirely in the testator's own hand and shall be dated and signed by the testator.

b) A will made in the presence of witnesses.[11] Such will is written and dated, and signed by the testator before two witnesses after the testator has declared before the witnesses that it is the testator's will. The witnesses must attest by their signature upon the will that the testator declared and signed the will as stated.

c) A will made before an authority.[12] Such will must be made by the testator stating its provisions orally before a Judge, a Court Registrar, the Registrar of Inheritance, or a Member of the Religious Court, or by a deposit of a written will by the testator with any of these authorities. It is further provided that for this purpose, a notary is equivalent to a judge.

d) An oral will.[13] People who are on their deathbeds, or who in all circumstances reasonably regard themselves as facing death, may declare

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> a will orally before two witnesses. The testator's directions and the circumstances of the making of the will must be recorded in a memorandum signed by the two witnesses and deposited with the Registrar of Inheritance. An oral will becomes invalid within one month, provided the circumstances which warranted its making has changed, and the testator is still alive.

Despite the formal requirements mentioned above, the court is authorized to validate a will even if it is defective or missing certain formal requirements, provided the court is convinced that it reflects the true and free will of the testator.

5. Freedom of Testation

The principle of Freedom of Testation is one of the cornerstones of the Israeli inheritance law. Section 27, whose title is "Liberty to bequeath", provides that an undertaking to make a will, to change it, or to cancel it, or not to make any thereof is invalid. It further provides, that a provision of a will that negates or limits the right of the testator to change the will or cancel it is invalid.[14]

The principle of Freedom of Testation is also evident in Section 8 of the Succession Law, which provides that "an agreement in respect of the succession of a deceased and a renouncement regarding such succession, executed prior to the demise of the deceased, are void."[15] The section further provides that that "a gift granted by a donor during the donor's lifetime, when such gift is to be effectively provided to the donee subsequent to the donor's demise, is also null and void, unless such gift was included within a valid will."[16]

Justice Cheshin stressed the importance of the freedom of testation in the *Lishitzky*[17] case:

> If there is a foundation principle, if you will, a super-principle, in inheritance law, there is none but the principle that instruct us that a person, any person, is at liberty to bequeath his estate, and the principle that derives from it, whereby the living are obliged to keep the deceased's wishes. The freedom of testation and the obligation to keep the deceased's wishes — two sides of the same coin — the two, as one, derive from the human dignity, and the personal autonomy derived from the dignity.[18]

The principle of Freedom of Testation also manifests in the fact that there is no forced heirship in Israel, and the order and portions of inheritance set forth in the Succession Law applies only in the absence of a valid will, and where a valid will is made with respect to the entirety of a person's estate, it shall apply on the entire estate accordingly.

6. Maintenance Out of the Estate

An exemption to the principle of the freedom of testation is the right to receive maintenance out of the estate.[19] Section 56 of the Succession Law provides that where the deceased left a spouse, children or parents that are in need of maintenance, they shall be entitled to such maintenance, regardless whether the deceased has made a valid will.

Moreover, section 63 of the Succession Law provides a "claw-back" rule and determines that in the event that the estate is insufficient to provide maintenance to all that are entitled to it, the court is authorized to view transfers of assets carried out without proper consideration during the two year period prior to the death of the deceased as part of the estate, except for gifts and donations made as customary under the circumstances.

Section 57 defines the scope of the right for maintenance out of the estate, and *inter alia* provides that a child under 18 years of age of the deceased, who is handicapped, or mentally ill, or cognitively disabled is entitled to maintenance.

Chief Justice Shamgar in the case of *Levitt*[20] clarified that it is insufficient to belong to the class of persons that are entitled to maintenance out of the estate, and that a "need of maintenance" should also be established, and where such need is not properly established, the testator may bequeath his entire estate to another. Chief Justice Shamgar continued and held that such need exists only when the applicant for maintenance cannot properly satisfy his basic needs. According to Shamgar, the wishes of the testator should be enforced only to a certain extent. The limit lies where a first degree relative of the testator becomes an unreasonable burden on the society. The maintenance out of the estate manifests the notion that the existence of a family relationship justifies imposing an obligation of maintenance, in specific instances, upon the estate.

7. Inheritance Procedure in Israel

Under the Succession Law, the rights of the heirs in the estate are created only upon the issuance of order with respect to the estate by the competent authority. In circumstances where the deceased left a will, an application should be made for a probate order, and only upon the issuance of the order the will becomes valid and enforceable. It should also be noted that only a probate order issued in Israel in accordance with the Succession Law is regarded as valid, and probate orders issued by foreign authorities are invalid.[21] However, in circumstances where the deceased left a will relating to only a part of his or her estate, or the deceased did not leave a will at all, an application should be made for an inheritance order.[22]

Both an application for a probate order and an application for an Inheritance order are made to the Registrar of Inheritance, and it is authorized to declare the rights of the heirs accordingly.[23] However, if the circumstances described in section 67A of the Succession Law are present, the Registrar of Inheritance must forward the application to the Family Court. Such circumstances arise, for example, when the application is contested, when the will is defected, or when the Administrator General represents in the application minor. The Family Court is authorized accordingly to issue the relevant order.[24]

Probate procedure in Israel requires that the original will be submitted with the Registrar of Inheritance, except to an oral will. In the absence of an original will, such as when the original has already been submitted in another jurisdiction, a separate application should be made to the court to approve the submission of a copy.[25]

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Section 54 of the Inheritance Regulations[26] provides that a copy of any application, including an application for a probate or inheritance order, shall be submitted to the review of the Administrator General, who may, in its discretion, conduct additional inspection of the application and require further information and documents.

Section 17 of the Inheritance Regulations requires that a notice with respect to the application for the inheritance or probate order be published in one daily newspaper and in the formal publication of the State of Israel (*Reshumot*). The notice includes an invitation to contest the application.

Section 14 of the Inheritance Regulations provides that an application for a probate or inheritance order shall be dismissed, unless notifications are sent with respect thereof as follows:

a) In the instance of an application for an inheritance order—notifications to the heirs under law listed in the application.

b) In the case of an application for a probate order—notifications to the beneficiaries under the will, together with a copy of the will itself.

> If the beneficiaries under the will do not include children of the deceased or their children, parents of the deceased or their children, or the deceased's spouse, then such notifications should be delivered to the deceased's children and spouse at the time of his death, and if none of whom is alive, then to the deceased's parents, and if none of whom is alive, then to the deceased's siblings.

As evident from the above, the inheritance procedure in Israel is a complex and cumbersome procedure. It may also be uncomfortable for the deceased's family members due to the requirement to disclose the contents of the will.

8. Cross-Border Inheritance

The Succession Law deals with private international issues relating to one's estate in chapter 7, sections 135-144.

A. Jurisdiction of the Israeli Court

Section 135 and 136 of the Succession Law provide that the Israeli court has jurisdiction over the estate of any person (a) whose center of life was in Israel, or (b) has left assets in Israel, on the day of his or her death. Each of these two alternatives raises its own difficulties.

Determining one's Center of Life may prove to be a difficult task. In the case of *Nafissi*,[27] two spouses married each other in Iran in 1944. The husband visited Israel in 1979, purchased an apartment, and then returned to Iran. Later on, the spouses immigrated to Israel in 1983 with their children, and in 1987 a dispute arose between the spouse. Section 15 of the Financial Relations between Spouses[28] sets forth a default rule and provides that the applicable matrimonial regime is that of the spouses' center of life at the time of their marriage. The Supreme Court referred to section 135 of the Succession Law and affirmed that a person's center of life is where a person has the majority of ties to, whereas such ties are established on a factual basis, rather than a subjective one. In the case of *Nafissi*, the spouses had ties to more than one jurisdiction, thereby making the determination of where their center of life was complex. Furthermore, Justice Goldberg quoted Justice Barak, who said:

> Needless to mention, that it is often difficult to point out a specific point in time, where a person ceases from permanently residing in a country, and surly a space in time exists where one's center of life is as if floating between its previous location and its new location.[29]

The other alternative—that the deceased has left assets in Israel—arises further difficulties. The Succes-

sion Law does not set a minimal threshold such assets are required to meet, nor does it refer to types of assets. A common example of absurdity of this requirement is of a backpacker who visits Israel and dies as a result of a car accident. *Prima facie*, since the backpacker left an asset in Israel—the backpack—the Israeli court has jurisdiction over his estate. Furthermore, the location of certain types of assets may be difficult to determine, such as intellectual property or bearer shares of a company.

The complexity of described above may cause an adverse effect and prevent the fulfillment of the deceased's wishes. It is therefore recommended to write a separate will for each relevant jurisdiction.

B. The Applicable Law

Section 137 of the Succession Law continues and provides that the law of the deceased's center of life at the time of his or her death shall apply to his or her estate, unless an exception listed in Sections 138-140 is applicable.[30]

A person's center of life is determined in accordance with the person's ties to a specific jurisdiction, as detailed above with respect to the question of jurisdiction. The determination of the applicable law may have significant implications, such as when the applicable law is of a jurisdiction which has forced heirship rules.

Section 142 of the Succession Law deals with a situation of Renvoi, and provides that despite the aforesaid in the Succession Law, if the law of a jurisdiction A applies, and this law reverts to the law of jurisdiction B, than this reversion shall not apply and the law of jurisdiction A shall apply, unless the law of jurisdiction A reverts to the law of Israel, then the law of Israel shall apply.

In circumstances where the Israeli court has jurisdiction of the matter, it can nonetheless refuse to take jurisdiction where there is a more appropriate forum available to the parties — Forum Non Conveniens. The court shall accept such claim only if the ties of the parties and of the dispute between them to the foreign jurisdiction are significantly stronger than those to Israel. A Recent decision of the Supreme Court goes further and holds that the todays modern life and technological developments have reduced the importance of the "majority of ties" test with respect to Forum Non Conveniens claims.[31]

9. Conclusion

Inheritance law and procedure in Israel are very complex, and may result in adverse effects if not planned and managed properly. Therefore, for estate planning purposes, it is recommended to make a separate will relating to every relevant jurisdiction, thereby enabling the beneficiaries to initiate inheritance procedures in each jurisdiction separately.

It should also be noted that the Israeli law provides another instrument for estate planning—a private trust under the Trust Law.[32] Such trust can be created during the lifetime of the settlor, i.e., an *inter vivos* trust, or upon death, i.e., a testamentary trust. The *inter vivos* trust deed is a secret document, contrary to a will, and the only copy the trust deed is deposited with is the Notary. The settlor may set the terms and conditions of the trust as he sees fit. Once the assets are settled into the trust during the lifetime of the settlor, they are removed from his estate, and therefore the need for an inheritance or probate order with respect thereof becomes superfluous, provided the trust is irrevocable and was set properly.

It is important to note that there are no estate tax and gift tax in Israel, and if the trust is created and managed properly, the transfer of assets from the settlor to the trustee is not considered as a tax event.[33]

Estate planning in Israel requires special expertise, including with respect to taxation, and, special care to the personal circumstances of a person, therefore it is highly recommended to consult with professionals for this purpose.

Endnotes

1. Alon Kaplan (General Editor), *Trusts in Prime Jurisdictions*, Fourth Edition (April 2016), chapter on Israel.
2. http://www.oecd.org/israel/israelsaccessiontotheoecd.htm.
3. *See* Central Bureau of Statistics, *Population, by Religion and Population Group, available at* https://www.cbs.gov.il/he/publications/DocLib/2004/2.%20Shnaton%20Population/st02_01.pdf (last accessed: Jan. 22, 2019).
4. *See* Central Bureau of Statistics, *Population, by Population Group, available at* https://www.cbs.gov.il/he/publications/doclib/2019/yarhon1218/b1.pdf (last accessed: Jan. 22, 2019).
5. *See* Central Bureau of Statistic, *Immigrants, (1) By Period of Immigration, Country of Birth and Last Country of Residence, available at* https://www.cbs.gov.il/he/publications/doclib/2018/4.%20shnatonimmigration/st04_04.pdf (last accessed: Jan. 22, 2019).
6. ISRAEL21c Staff, *Israeli high-tech exits in 2017 totaled $7.44 billion*, Israel21c (Dec. 31, 2017), available at https://www.israel21c.org/israeli-high-tech-exits-in-2017-totaled-7-44-billion (last accessed: Jan. 22, 2019).
7. Succession Law, 5725-1965, 19 SH 215 (1964-65) (Isr.).
8. *Id.* §§ 11, 12.
9. *Id.* §§ 18-23.
10. *Id.* § 19.
11. *Id.* § 20.
12. *Id.* § 22.
13. *Id.* § 23.
14. Section 36 of the Succession Law clarifies and provides that the testator may cancel a will by expressly stating so in a new will, or by destroying the will.
15. Succession Law § 8.
16. *Id.* § 8.
17. CA 4660/94 *Attorney-Gen. v. Lishitzky* 55(1) PD 88, 115 [1999] (Isr.).
18. *Id.*
19. Succession Law §§ 56-65.

20. CA 393/93 *Doe v. the estate of Israel Levitt* (Apr. 3, 1994), Nevo Legal Database (by subscription) (Isr.).
21. Succession Law, § 39.
22. *Id.* § 66.
23. *Id.* § 66.
24. *Id.* § 67A(b).
25. *Id.* § 68(b).
26. Inheritance Regulations, 1998, KT 5923 (Isr.).
27. CFH *Nafissi v. Nafissi* 50(3) PD 573 [1996] (Isr.).
28. Financial Relations between Spouses Law, 5733-1973, 712 SH 267 (1973) (Isr.).
29. *Nafissi*, at 598.
30. Sections 138-140 of the Succession Law list the exceptions to the center of life rule. Section 138 provides that assets inherited only according to the law of their location shall be subject to that same law; Section 139 provides that the capacity of the testator to bequeath his assets will be governed by the law of his center of life at the time of preparation of his will. Section 140 provides that (a) a will is valid according to its form if it is valid according to Israeli law, the law of the place where it was made, the law of the center of life or normal residence or citizenship of the testator at the time of making the will or at the time of his death, or, in the event that the will relates to fixed property, also according to the law of the location of the property *and* (b) regarding the applicability of the foreign law in accordance with this section, the necessary capacity of the testator or the witnesses to the will, will be viewed as relating to form.
31. PCA 2736/98 *Habboub Bros. Co v. Nike International Ltd* 54(1) PD 614 [2000] (Isr.).
32. Trust Law, 5739-1979, 33 SH 41 (1966-1967) (Isr.).
33. Income Tax Ordinance [New Version], 5721-1961, 6 DMI 120, §§ 75C-75R (1961) (Isr.).