

## **Pricing Signatures**

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Consider the following (common) case: Reuven died unexpectedly, without leaving behind a will, and without making instructions that are halachically binding. According to the local law of the land, which is common to virtually all states with the partial exception of Arab lands, his daughters will inherit equal an equal portion of his estate as his sons.

The sons, however, are unsatisfied with this outcome, and make a simple request of their sisters: "Please sign a document that waives your legal right to a portion of the inheritors, so that the estate can be distributed according to Torah law."

Though surely eager to comply with their sister's wishes, the daughters understand that signing on the dotted line is not in their financial interest, and, before doing so, they call their local *dayan* for a short consultation. They ask two questions: 1. Are they obligated to waive their rights to the inheritance, or may they insist on receiving their portion in line with the local inheritance law? 2. Even assuming that they are obligated to sign away their portion, may the sisters demand something (such as a large sum of money) in compensation for their signatures?

Concerning the first question, it would appear that daughters are, indeed, obligated to sign a waiver document of their rights to inheritance according to State Law. Although the law of the land is generally binding (*dina demalchusa dina*), this principle does not apply when the law in question runs directly contrary to Torah law—in which case Torah law prevails (*Shach*, CM 73:39; there is room to discuss this issue at length, which we defer for a future opportunity). *Minchas Yitzchak* (2:95) thus writes explicitly that daughters cannot make a claim to the estate based on their rights in State Law.

This ruling, which leaves us with only the second question (of whether or not a daughter may demand compensation for her signature) to decide, limits the scope of the question to cases in which daughters' signature is a legal requirement. This is generally the case for non-movable properties (land), whose legal transfer requires daughters' signature, and for money that is kept in bank accounts. For ordinary moveable items, daughters would be unable to claim inheritance, and their signature is also unnecessary.

Of course, land and money in banks often comprise a major part of a person's assets, and the question of a daughter's demand for compensation is therefore still very pertinent. It is thus little surprise that we find much literature in the writings of *poskim* addressing this delicate issue.

The most important halachic source regarding this issue is a responsum of Rabbi Yitzchak Isaac Halevi (*Maharia Halevi*, Vol 1, no. 4), who cites a dispute concerning the matter between *Mahari Basan*, who states that a daughter may demand compensation for her waiving of her legal rights, and *Maharit*, who maintains that she must sign away her rights without receiving anything in return. *Pnei Yehoshua*, adds Rabbi Halevi, decided in favor of

Mahari Basan, giving daughters a right to demand compensation in return for their waiving of legal rights to inheritance.

In a corresponding responsum (Vol 2, no. 127), Rabbi Halevi addresses the question of a husband whose wife passed away. According to Torah law, the husband inherits his wife, yet the son was empowered with the right of inheritance according to State law. The guiding principle, Rabbi Halevi explains, by which the son may be forced to sign a waiver document, is the concept of *kofin al midas sedom*—the ability of courts to coerce a person who behaves in an unjustifiably spiteful manner to do the right thing. It is "the right thing" for the son to waive his right to his mother's estate, which rightfully belongs to his father. Apart from the principle of honoring one's father, returning the property also fulfils the obligation to "return lost property" to its true owner.

Although Rabbi Halevi states that he would wish to apply the same principle to inheriting daughters (and obligate them to waive their rights without receiving compensation), he writes that he cannot do so against the express opinion of Mahari Basan. One explanation for the right of daughters to claim compensation is suggested by *Divrei Chaim* (Vol. 2, CM no. 3), who writes that a daughter may demand payment for the actual act of signing her name.

Many *poskim* agree with the view that daughters may demand compensation for waiving their legal rights (see Shaul Umeishiv 3:1:78), and although some *poskim* object to this opinion (see especially *Beis Shlomo OC 85:3, CM 108, 109; Yeshuos Malko 16*), the accepted custom is that daughters demand payment for their signatures. This is also the opinion of Dayan Chanoch Dov Padwa zt"l (*Cheishev Ha'eifod* Vol. 2, no. 106).

The question now, of course, is how much is a daughter (or other beneficiary in a similar position) permitted to ask for? One of the only *poskim* who relate to the matter is the *Ben Ish Chai*, who writes that a daughter may demand compensation of up to ten percent of the value of the inheritance in exchange for signing (in the Land Registry) a waiver of their portion in the inheritance (*Rav Pe'alim*, vol. 2, CM 15).

However, the silence of other authorities in the matter teaches us that there is no fixed sum. Rather, *poskim* mention that the *Beis Din* should decide each case individually. *Pischei Choshen* (Inheritance, Chap. 1, note 5) leaves open the question of which types of criteria a *Beis Din* can take into account in deciding the compensatory sum—for instance, the poverty or wealth of one of the parties involved. Certainly, the best option is to find a compromise that all sides are content with.

This question (and many others besides) serves to underscore the importance of writing a *tzavaah*. If properly executed, a *tzavaah* document will solve many problems before they arise.