

# STEP JOURNAL

## Marital complications

Wednesday, 20 July 2016

Dr Alon Kaplan and Meytal Liberman explain the interaction of matrimonial property rights with succession law in Israel.

### Key points

**What is the issue?** The interaction of matrimonial property rights with the Succession Law in Israel.

**What does it mean for me?** In Israel, the law to be applied to the spouses' marital estate is the law of the spouses' residence at the time the marriage was concluded or, if a prenuptial agreement was made, the law of the spouses' residence at the time of making the agreement.

**What can I take away?** The matrimonial regime to be applied may become a complicated issue, and one that may adversely affect the succession rights of the deceased's surviving spouse.

When someone wishes to determine how their assets will be distributed on death, the step usually taken is to make a will. This is often an insufficient solution, however, when a matrimonial property regime governs the estate of the deceased.

## The matrimonial property regime

The matrimonial property regime governs the property that is included in a marital estate; it determines how the marital estate is divided if the marriage dissolves. In other words, the matrimonial property regime determines, inter alia, what assets are included in one's estate and, therefore, can be bequeathed in a will. Such regimes control matrimonial property either by operation of law or by way of a prenuptial agreement.

In Israel, the matrimonial property regime is determined by the Financial Relations Between Spouses Law<sup>1</sup> and case law. Under the Financial Relations Between Spouses Law, the law to be applied to the spouses' marital estate is the law of the spouses' residence at the time the marriage was concluded, or, if a prenuptial agreement was made, the law of the spouses' residence at the time of making the agreement. As a result, when a spouse has ties to more than one jurisdiction, or immigrates to another jurisdiction, the matrimonial regime to be applied may become a complicated issue, and one that may adversely affect the fulfilment of the deceased's wishes in their will.

## A case-based example

In 2011, in the case of AZ v AM,<sup>2</sup> the District Court handed down a decision on the relationship between the Succession Law<sup>3</sup> and the Financial Relations Between Spouses Law.

### Facts of the case

The deceased was the father of two children from a previous marriage. On the first wife's death, his children had waived rights in their mother's estate to the father's benefit, such that the court had declared him sole inheritor, and so the parents' apartment had been registered in the deceased's name alone. A year later, the deceased married his second wife in a civil marriage, in the course of which the parties had signed an agreement according to which the second wife would have no claim to the apartment.

Several years later, the deceased died intestate. Notwithstanding the aforesaid agreement, the second wife sought half of the estate in accordance with the statutory terms of intestate succession, including the apartment. The deceased's children objected, arguing that the second wife was estopped from inheriting the apartment due to the agreement. The court of first instance rejected their petition, on the grounds that, as an heir by law, she was entitled to a share in the apartment. This decision was appealed to the District Court.

### The District Court's decision

The District Court ruled that the Succession Law and Financial Relations Between Spouses Law are complementary, inasmuch as the Financial Relations Between Spouses Law determines the extent of the estate belonging to the deceased, and the Succession Law determines the identity of the heirs and their relative rights to shares in the estate property. To the extent that the Financial Relations Between Spouses Law applies, the surviving spouse becomes a creditor of the estate, and, as such, is entitled to whatever share accrues to the spouse by virtue of the 'asset-balancing' procedure undertaken via the Financial Relations Between Spouses Law or by virtue of case law. In this sense, the matrimonial property regime determines the rightful extent of the estate to be attributed to the deceased spouse, after deducting the relevant spousal rights. That remaining property will be allocated by virtue of a succession or probate order.

The District Court determined that, although the waiver agreement between the deceased and his second wife was valid, it did not derogate the wife's rights to the apartment as heir to the intestate deceased, as per the Succession Law. The significance of the waiver agreement was only that the apartment be included in the estate in its entirety, but thereafter the surviving spouse still maintained, in her capacity as heir by law, her portion in the property alongside the other heirs.

## Place of residence

Another issue may arise when the spouses enter into a prenuptial agreement while resident outside of Israel, and subsequently immigrate to Israel. It should be noted that, since its establishment in 1948, Israel's population has grown from approximately 806,000 to 8,522,000 people today – ten times over – and a significant part of that growth is due to immigration.

Prima facie, the application of the Financial Relations Between Spouses Law should be simple but, as case law shows,<sup>4</sup> when a claim is raised that the couple who immigrated to Israel altered the agreement that they wrote at their earlier place of residence, and/or the original arrangement that applied to them at their place of residence at the time of the marriage, the validity of the new agreement will be determined in accordance with Israeli law and not in accordance with the law of the place where the original agreement was entered into.

Case law<sup>5</sup> also provides that this new agreement does not require the formalities of a prenuptial agreement (which requires that it is made before a notary or a judge);<sup>6</sup> therefore, an ordinary express or implied agreement entered into in accordance with the laws of contract in Israel may alter the property arrangement before they emigrate to Israel.

## Conclusion

It is very important to take into consideration the matrimonial property rights of one's spouse when conducting estate planning. Estate planners may wish to consider creating a trust to provide a solution for the distribution of the estate between the spouses and to future generations.

1. Financial Relations between Spouses Law, 5733-1973, SH no.712 p.267 (Isr)
2. Family Appeal (BS), 28507-10-10 AZ v AM (11 September 2011), Nevo Legal Database (by subscription) (Isr)
3. Succession Law, 5725-1965, 19 LSI 215 (1964–1965) (Isr)
4. Civil Appeal 7687/04 Mordechai Sasson v Zohar Sasson [2005] IsrSc 59(5) 596
5. Additional Civil Hearing 1558/94 Vicktoria Nafisi v Simantov Nafisi [1996] IsrSc 50(3) 573

## 6. Financial Relations Between Spouses Law, §2

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