For the Love of Money

צוואה בטעות

Mr. Goldberg was diagnosed with Lou Gehrig's disease and was in really bad shape. He needed extensive help with even the smallest things. He asked his son, Yitzi, to tend to him. Yitzi told him that with his busy life, he had no time. He was very sorry but just couldn't do it.

However, the very next day, Mr. Goldberg had a visitor. The visitor happened to be a licensed nurse, and agreed with pleasure to take care of Mr. Goldberg. To Mr. Goldberg's delight, this nurse was an excellent worker and very trustworthy. He took care of Mr. Goldberg for five years, until sadly Mr. Goldberg succumbed to his ailment.

After his passing, the family had the town's Bais Din read over the will to them. To their amazement, Mr. Goldberg had huge hidden savings of over five million dollars! Not only that, but he left over every penny to his trustworthy nurse who had cared for him all those years, leaving nothing for Yitzi, his only child! The will stipulated that due to the kindness and willingness of the nurse in taking care of Mr. Goldberg, all the money belonged to him. The will went on and on about how the nurse took time out of his schedule and gave up everything just to take care of Mr. Goldberg.

Yitzi was beside himself. He quickly ran to his bank and printed out the last three years of bank statements. He then showed the lawyer and judge the statements. The statements clearly showed that Yitzi had been paying the nurse a stipend of $2500 a month to tend to his father. Yitzi claimed that the will was a mistake and he rightly deserved the money. A huge shouting match broke out. Now what?

Questions to Consider

- Do we take a person's intention into account, or do we only go by what it says in his will document?
- If a person's intentions can change things, how explicit does their intention have to be? Does their intention have to be 100% obvious, or is probable intention good enough?
- What are the odds in our case that – had the father known of his son's actions – he would have changed the will to be in his son's favor?

Sources

[1] Gemara Bava Basra 146b

[2] Rif, ibid.

[3] Shulchan Aruch: Choshen Mishpat 246:1

[4] Me'iras Einayim (the Sm"a) ibid., 2

[5] Taz ibid., 1

[6] Shulchan Aruch: Yoreh Deah 242:34

[7] Rema, ibid.

[8] Chashukei Chemed on Megilah 12a

נכנס אחריה לחורבה לבודקה. פי' רבינו יעקב דנמלוכסה מיירי (ו) ובא לרחות אם היא תומרנית אם לאו ואם היא תומרנית ישתנה ואמרו מכמים הואיל ולא נכנס אחריה אלא לבודקה ולא נסמ ניאומין נכנס ולכן אם מתה לא יירשנה אבל אם לא נכנס אחריה לבודקה היה יורשה שכל שהרואה עדיין לא נתקלקלה ואין לחוש שמא נכנס אחריה לבודקה ומתה ואמרו מכמים הואיל ולא נכנס אחריה לבודקה אלא לראות אם היא תומרנית אם לאו ואם היא תומרנית א

Gemara Bava Basra 146b [1]

MISHNAH:

A dying person who wrote all of his possessions over to others and left any amount of land (for himself), his gift stands (if he survives his illness). If he did not leave over any amount of land, the gift does not stand (if he survives his illness).

GEMARA:

Which Tanna is the one who follows an assumption? (Meaning, our Mishnah implies that we can assume that if someone gave away everything, they thought they were not going to live to be able to use it at all.)

Rav Nachman says, it is Rabbi Shimon Ben Menasya, as it says in a *Baraissa*: "Someone whose son went to a far-off land and heard that his son had died – if he went and gave all his money to someone else and afterwards his son returned, the gift stands. Rabbi Shimon ben Menasya says that the gift does not stand, because had he known that his son was alive, he would not have given it over."

Rif, ibid. [2]

מ״ט דאזלינן בתר אומדנא דאי הוה יודע דחי לא הוה כתב לכולהו ניכסי לאחריני אבל אם שייר קרקע כל שהוא אמרינן למיסמך עליה שיירה הלכך מתנתו קיימת ותניא נמי הרי שהלך בנו למדינת הים ושמע שמת בנו ועמד וכתב כל נכסיו לאחר ואח״כ בא בנו מתנתו מתנה רבי שמעון בן מנסיא אומר אין מתנתו מתנה שאילו היה יודע שבנו קיים לא היה כותבן ואמר רב נחמן הלכה כרבי שמעון בן מנסיא:

Why? (Referencing the ruling in the Mishnah)

Because we follow an assumption that if he had known that he would eventually survive (his illness), he would not have given over all of his property to someone else. But if he left over any bit of land, we say that he left it over to rely on it (in case he survived), and therefore the gift stands. And we have a similar *Baraissa*: "Someone whose son went to a far-off land and heard that his son had died – if he went and gave all his money to someone else and afterwards his son returned, the gift stands. Rabbi Shimon ben Menasya says that the gift does not stand, because had he known that his son was alive, he would not have given it over." Rav Nachman says that the Halacha follows Rabbi Shimon ben Menasya.

Shulchan Aruch: Choshen Mishpat 246:1 [3]

סימן רמו
השומע שמת בנו וכתב נכסיו לאחר

לעולם אומדין (פירוש משערין) דעת הנותן אם היו הדברים מראין סוף דעתו עושים על פי האומד אף על פי שלא פירש כיצד מי שהלך בנו למדינת הים ושמע שמת וכתב כל נכסיו לאחר מתנה גלויה גמורה ואחר כך בא בנו אין מתנתו קיימת שהדברים מוכיחים שאלו ידע שבנו קיים לא היה נותן כל נכסיו לפיכך אם שייר מנכסיו כל שהוא בין קרקע בין מטלתלין מתנתו קיימת.

We always attempt to discover the intentions of the gift-giver; if theres grounds to indicate his final decision was one way, we follow that evidence even if he did not say anything explicitly. What is an example of this? One whose son went to a far-off land and heard that he (the son) died. The father wrote over all of his property to another as a clear and complete gift. Later, his son returned. The gift does not stand because it is obvious that if he had known that his son was still alive, he would not have given everything away to the other person. Therefore, if he left over a tiny bit of his property, whether land or movable property, the gift stands.

Me'iras Einayim (Sm"a) ibid. 2 [4]

ב] **מנכסיו כל שהוא** - האי כל שהוא, ממש קאמר דבר מועט לכו"ע, ואינו דומה לשכיב מרע הנותן כל נכסיו דאם עמד חוזר ואם שייר אינו חוזר דפליגי ביה, כמ"ש הטור והמחבר בסימן ר"ן [טור סעיף ו' ומחבר והג"ה] בסעיף ד' די"א דבעינן שיור כדי פרנסתו [והגמרא (ב"ב קמ"ו ע"ב) מנינהו יחד] ע"ש, לכל מר כדאית ליה, הבא שאני וכמו שכתבתי שם [סקט"ז], ועיין פרישה [סעיף י"ב ובסימן ר"ן סעיף ו'].

[If he left over] a tiny bit of his property – This "tiny bit" actually means even a tiny amount according to everyone. It is not similar to the case of a dying person who gives everything away, where the law is that the gift does not stand if he gets better but if he left over it does stand – about which there is an argument as the Tur and Shulchan Aruch say in Siman 250:4 that some hold that he needs to leave over enough to sustain himself (even though the Gemara in Bava Basra counts them together)....

Taz (1) ibid. [5]

מנכסיו כל שהוא - נ"ל דלהרא"ש [ב"ב פ"ט סי' כ"ו] דס"ל בסימן ר"ן [בטור סעיף ו'] בשכ"מ ששייר כל שהו דלא הוי מתנה דבעינן כדי פרנסתו, ס"ל ג"כ בכתב כל נכסים לאחרים ושייר קרקע כל שהו מיירי ג"כ בכדי פרנסתו, ועיקר דין בכדי פרנסתו מבואר בגמ' [שם קמ"ט ע"ב] אצל שכ"מ שהוא גוף הדין, ואיתא שם בגמ' [קמ"ו ע"ב] מאן הוא דאזיל בתר אומדנא בשכ"מ שכתב כל נכסיו, ר' שמעון בן מנסיא היא דס"ל גבי שמע שמת בנו כו', ש"מ הד דינא אית להו...

[If he left over] a tiny bit of his property – It seems to me that according to the Rosh (in Bava Basra) who holds in Siman 250 that regarding a dying person who leaves over a tiny bit of property that a minimum of enough to sustain himself [is necessary to void the gift if he survives]. He also holds that regarding one who gives all his property to someone else [because he thought his son had died] and leaves over a tiny bit also means he left enough for his [son] to sustain himself. And the main concept of "enough to sustain himself" is explained in the Gemara (Bava Basra 149b) by a dying person where that is the main rule – and it says there in the Gemara that the one who follows assumptions by a dying person who gave away all of his property is Rabbi Shimon Ben Menasya who holds [the same concept] regarding one whose son, etc., which proves that the two have the same rule.

Shulchan Aruch: Yoreh Dei'ah 242:34 [6]

If one's father lost an object and his (main) Rabbi lost an object, the Rabbi's object takes precedence. If his father is a scholar of equal stature to his Rabbi, his father's object takes precedence. If his father and Rabbi were carrying objects, he assists his Rabbi and then he assists his father. If his father and Rabbi were in prison, he bails out his Rabbi and then his father. If his father is a Torah scholar, he bails out his father and then his Rabbi.

Rema, ibid. [7]

He also redeems his father before his Rabbi (if he is a Torah scholar) even if he is not of equal stature to his Rabbi. But he doesn't return his father's lost object first unless he is of equal stature to the Rabbi. Some say that this rule that his Rabbi takes precedence over his father is only when he (the Rabbi) teaches him for free, but if his father pays for the Rabbi to teach him then the father takes precedence for everything. It seems to me that this is the proper opinion.

דף יב ע"א

הם לא עשו אלא לפנים

שירתו בנאמנות וכתב לו ירושתו, ונתברר שקיבל עבור זה שכר

שאלה מעשה באחד שכעס על בנו, מאחר ואינו דואג לו, ומהשי"ת הזדמן לו אחד ששירתו בנאמנות והתמסר אליו בכל לבבו ובכל נפשו במשך שלש שנים, לאחר פטירתו פתחו את הצוואה ומצאו שכתב שמצד הכרת הטוב אני מוריש את כל רכושי, שהוא מטתכם במיליון דולר לראובן ששירת אותו. ועתה בא הבן לבית הדין ומספר שאמנם ראובן שירת את אביו בנאמנות גדולה, אולם בסתר העביר לו כל חודש אלף דולר כדי מחייתו, וביקש ממנו שאביו לא יידע מזה, ולכן כל הירושה שהוריש לו הוא מקח טעות, האם הצוואה בטלה או לא?

תשובה יש לברר מי הזמין את ראובן שיטפל באביו, אם הבן הזמינו והבטיח לו שישלם לו כל חודש אלף דולר, יתכן שהבן זוכה בירושה, דכתב השו"ע (חו"מ סימן קפג ס"ג) שמי ששלח שליח לקנות לו חפץ, והשליח קנאו לעצמו במעות המשלח, אף על פי שזקפן עליו במלוה, המקח של המשלח. והטעם, שדעת המוכר להקנות רק לבעל המעות, והכא נמי יתכן שעיקר מה שהוריש את צוואתו אינו מורישו אלא לבעל המעות, משום שבכסף הזה טיפל ראובן באביו. אלא שיש לחלק, דהשו"ע מיירי במוכר שצריך למעות, ולכן כל כוונתו במכירה אינו אלא בשביל המעות, אבל בנותן מתנה אולי כוונתו לשליח.

ונראה להביא ראיה שהוה צוואה בטעות, דכתב השו"ע (חו"מ סימן רמו ס"א) לעולם אומדים דעת הנותן, אם היו הדברים מראין סוף דעתו, עושים על פי האומד אע"פ שלא פירש, כיצד מי שהלך בנו למדינת הים ושמע שמת, וכתב כל נכסיו לאחר, מתנה גלויה גמורה, ואחר כך בא בנו, אין מתנתו קיימת, שהדברים מוכיחים שאילו ידע שבנו קיים לא היה נותן כל נכסיו. ונראה קצת לומר דהכא נמי כשנתן המתנה חשב כאילו בנו עוזבו לנפשו ואינו עוזר לו, ולבסוף התברר שבנו חי וקיים ועוזרו לסעדו בימי זקנתו.

וראיה לזה ממה שכתב המהר"ם מלובלין (סימן קח וציין לזה הש"ך סק"א) על אחד שנתן מתנה מחייו, ולאחר מכן התחתן עם אשה ונולד לו בן, וכתב שהמתנה בטלה, אף שהטעות הוי נולד, דבשעה שנתן לא היה לו בן, דבדבר קל אנו דוחים המתנה ואומדין דעתו של אדם, שלא היתה כוונתו לזה, ואילו היה יודע שיתיילד ענין זה לא היה נותן, והוי כאלו לא נתן מתנה זו מרצונו.

עוד נראה להביא ראיה דאמרינן בטפר חסידים (סימן תקפה הו"ד ברמ"א יו"ד סימן רמב סל"ד) דהא דאמרינן אבידת רבו קודמת לאבידת אביו, זהו כשאין אביו שוכר לבנו רב, אבל כשאביו שוכר רב, והרב לא היה מלמדו בחנם, אז אבידת אביו קודמת. ואם הרב לא היה רוצה ללמוד אלא בשכירות, ויהודי או יהודית נותנים השכירות ללמדו אז אבידת הנותן קודם. הרי שהולכים אחר נותן המעות שהוא העיקר. ולפי"ז נראה עוד שאף אם ראובן המטפל קיבל מעות מאחר, והזקן הוריש לו את כל רכושו, אולי הצוואה שייכת לנותן המעות, וצ"ע.

ואם ראובן המטפל התחיל לעבוד בהתנדבות, והבן שלח לו מעצמו כל חודש אלף דולר, נראה שצריך לאמוד אם ראובן הוא איש עשיר ויש לו פרנסה והיה ממשיך ככה גם בלא האלף דולר שהבן שלח לו, הרי הכל של ראובן. אבל אם בי"ד אומדין שראובן לא היה יכול להמשיך לשרת אותו, אלא בזכות האלף דולר, כל הירושה עוברת לבן.

לסיכום: אם ראובן שירת את האבא בגלל הכספים ששילם לו הבן שייכת הירושה לבן.

QUESTION:

There was a case where someone became angry at his son because he wasn't caring for him, and Hashem sent someone to him who assisted him faithfully and was dedicated to him with all his heart and soul for three years. After his death, they opened the will and found that out of gratitude, I (meaning the father) will all of my property, which is worth a million dollars, to Reuven who assisted me. And now the son comes to court and says that even though Reuven assisted his father with great faithfulness, the truth is that he (the son) secretly paid him (the caretaker) $1000 a month for his needs and requested that his father not find out about it, and therefore the entire inheritance that the father gave over was a mistake. Is the will nullified or not?

ANSWER:

We must determine who asked Reuven to care for his father. If the son hired him and promised him that he will pay $1000 a month, it is possible that the son earns the inheritance, as the Shulchan Aruch says (Choshen Mishpat 183:3) that someone who sends a representative to buy an object and the representative buys it for himself with the sender's money... the item belongs to the sender. The reason is that the seller only intends to sell to the owner of the money, and here too, it is possible that the main one he bequeathed to in the will is only going to "the owner of the money" (i.e. the son), because with this money (that the son paid Reuven), Reuven cared for the father. However, this might be different, since the Shulchan Aruch is talking about a seller who needs money and therefore his intention in the sale is only for the money, but if he gave it as a gift maybe the intention is to [give the object to] the representative.

And it seems that we can bring a proof that it is a will in error (and therefore void), since the Shulchan Aruch says (Choshen Mishpat 246:1), "We always attempt to discover the intentions of the gift-giver; if theres grounds to indicate his final decision was one way we follow that evidence even if he did not say anything explicitly. What is an example of this? On whose son went to a far-off land and heard that he (the son) died and he wrote over all of his property to another as a clear and complete gift and afterwards his son returned, the gift doesn't stand because it is obvious that if he had known that his son was alive he would not have given everything away." And it slightly seems from this that we could say that here too, when he gave the gift he thought that his son had abandoned him and would not assist him, but in the end it was discovered that his son was "alive" and that he was helping him in his old age.

And the proof for this is from what the Maharam of Lublin said about someone who gave a gift to take effect upon his death, and afterwards he married a wife and gave birth to a son. And the Maharam said that the gift is void, even though the [cause for the gift being a] mistake came after the fact because he had no son at the time he gave the gift - nevertheless, for a small thing we can push off the gift and assume the intention of a person that he would not have intended this. And if he had known that this situation would come about (that he would have a son) he would not have given the gift, and it is like he did not give the gift willingly.

It also seems that we can bring a proof from what is said in Sefer Chassidim that the idea that his Rabbi's lost object takes precedence over his father's lost object, that's only when the father doesn't pay the son's Rabbi, but when the father pays the Rabbi and the Rabbi would not have taught the son for free, then the father's object comes first. And if the Rabbi would only teach if he is paid, and a Jew or Jewess gives money to teach him (the son), then the lost object of the one who pays takes precedence. Therefore we see that the one who pays the money is the main one. And therefore it also seems that if Reuven, the assistant, received money from someone else and the elderly person bequeathed him all of his property, maybe the will actually belongs to the one who gives the money, and this requires further research.

And if Reuven, the assistant, started to work as a volunteer and the son sent him $1000 a month on his own, it seems that we have to judge if Reuven is a rich man and has his own livelihood and would continue to do this even without the $1000 that the son sends him, then it all belongs to Reuven. But if the court judges that Reuven would not have been able to continue to serve him without the $1000, then the entire inheritance goes to the son.

IN SUMMARY:

If Reuven assisted the father because of the money the son paid then the inheritance belongs to the son.

CONCLUSION

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The views and opinions presented in this sourcesheet should not be taken as *halachah l'maaseh*.
Before applying these halachos to real-life situations, one must consult with a competent halachic authority.