Drafting a Halakhic Will

By: A. YEHUDA WARBURG

Introduction

The purpose of this essay is to expose the reader to some of the building blocks in drafting a halakhic *will*.[1] This presentation is inspired by a reasoned opinion handed down by a Beth Din relating to a *yerusha* matter in our community. The decision of Beth Din begins with the plaintiff's claim, the defendants' counterclaim and a summary of submitted testimony. Subsequently, there is a discussion of the halakhic issues emerging from the parties' respective claims and counterclaims followed by the decision rendered by the Beth Din panel. To facilitate the reader's understanding of the case, the original text of the *will*, which was composed in Hebrew, and a translation of the *will* into English are appended to the essay. To preserve the confidentiality of the parties, names have been changed and some facts have been deleted.

The Decision Issued by Beth Din:

Reuben Levy v. Rachel Singer and Leah Shlanger

The Beth Din having been chosen by the parties as arbitrators pursuant to an arbitration agreement dated October 29, 2007 between Reuben Levy and Rachel Singer and Leah Shlanger to submit their differences and disputes in reference to the estate and inheritance of the late Rabbi Simeon Levy having given said matters due consideration and having heard all parties testify as to the facts of said disputes and differences, do decide and agree as follows:

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[1] For clarity, when the word "will" refers to a "*tzavva'a*" it is italicized.

Plaintiff's Claims:

Mr. Reuben Levy, the plaintiff, maintains that his father's entire estate and inheritance should be given to him, according to the Torah law of inheritance. Since his sister, Rachel Levy, was firstborn of the family, no claim of *bekhora* (right of firstborn male to a double portion) is advanced by Reuben. At the hearing, a document was introduced into evidence (see end note) that shall henceforth be referred to as the alleged *shtar matanah* (gift document) prepared in 1985 by the testator, which purports to be an allocation by the late Rabbi Simeon Levy of his assets among his children, his son and two daughters. The plaintiff claims that the alleged *shtar matanah* is a forgery. Moreover, even if it is authentic, given that this alleged *shtar matanah* was neither attested by witnesses nor validated by a *kinyan*, i.e., a symbolic act to effect the transfer of assets, consequently the alleged *shtar matanah* was halakhically inconsequential.

Furthermore, given that in 2005, their father was diagnosed with dementia and was under Aricept treatment, plaintiff argues that he lacked the halakhic-legal capacity to execute a *shtar matanah.* In fact, Dr. Springlass confirmed (in writing and via the telephone during a Beth Din hearing) that R. Levy, his patient, was bereft of the mental capacity to create a halakhic-legal document during that time period. Consequently, the reconfirmation of the alleged *shtar matanah* in the presence of witnesses, which took place in 2007, had no validity. Hence, in the absence of an authenticated *shtar matanah* to the contrary, their father's assets ought to be divided according to the Torah laws of inheritance, namely that the plaintiff is the "*yoresh me- de-'oraita,*" the sole heir to his father's assets. Should the Beth Din affirm this testamentary disposition, they will be engaging in "*avurei aḥsanta,*" i.e., disinheriting the heir who is the only one recognized as an heir by the Torah.[2]

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[2] Given that in this *will*, the testator desires to transfer all of his assets, immovable and movable property, the assumption of Mr. Reuben Levy is that "*avurei aḥsanta*" applies regarding both types of property. Though *Hilkhot Ketanot* 2:267 supports such a conclusion, others argue that disinheriting a Torah heir applies only to immovable property, i.e., *karka*. *Teshuvot Maharit* 2: *Ḥoshen Mishpat* 6; *Levush Orah*, *Bereshit* 24:10.

Furthermore, plaintiff claims that the defendants' initiation of probate proceedings in Brooklyn Surrogate's Court and in Brooklyn Supreme Court regarding other inheritance matters not covered by this arbitration agreement involved recourse to *arka'ot shel akum*, i.e., gentile courts, and therefore is prohibited by Torah law. Hence, plaintiff argues that he is entitled to receive $14,093.75 reimbursement from the defendants for court and legal costs.

Defendants' Counterclaims:

Rachel Singer and Leah Shlanger, the defendants, argue that on March 3, 1985 instructions for dividing up assets of their late father, Rabbi Simeon Levy, equally between his children were memorialized into a one-page document that was prepared, typed and signed by the decedent himself. At the time, though R. Levy signed the alleged *shtar matanah*, there were neither witnesses present to affirm his wishes nor did their father execute a *kinyan*, i.e., a symbolic act to transfer an estate "one moment before my demise" to validate this document. This document allegedly was placed by their father in an envelope (with outside markings of "*tzavva'a*" [*will*]) that was then placed on a dresser in his home. Years later, though the original alleged *shtar matanah* was lost, copies of the original alleged *shtar matanah* were circulating among various family members. Concerned that the plaintiff, their brother, would contest the alleged *shtar matanah*, at the behest of the defendants, on 6 Shevat 5767 (January 25, 2007), the sisters allege that their father desired to add an addendum to the alleged *shtar matanah* and consented to its validation by two witnesses accompanied by the execution of a *kinyan*. Prior to reading of the *will* to the testator, the following addendum was prepared by a local rabbi.

The addendum to the *will,* which was typed, stated the following [translation]:

> "All the above is my true will, and when the gift will arrive today and a moment before my death to my son and daughters without any exception according to the usage of our Torah scholars, *Shulḥan Arukh* and decisors and I hereby declare (*mesirat moda'ah*) since the original *will* is lost therefore I confirm and sign off on this copy and nullify retroactively all *wills* that were written regarding my inheritance and assets, and one can

> nullify this *will* only in the presence of my son and daughters, and my signature shall attest to all the above as a full admission (*ho'da'ah gemurah*) in the presence of the two signed witnesses below, and it is executed with the *kinyan suddar* (a legal form of undertaking a duty to perform an action and involves taking from whom the duty is owed an article such as a pen or handkerchief, which obligates him to perform the action) and other effective *kinyanim*. Today, I have signed with sound mind, Thursday, *Parashat Bo'*, 6 Shevat 5767, January 25, 2007."

The contents of the aforementioned addendum provides that R. Simeon Levy being of clear mind arranges that his gift will transpire a moment before his demise, acknowledges the loss of the alleged *shtar matanah* and asserts that his signature attests to all that was stated as a firm admission in the presence of the two witnesses accompanied by a symbolic transaction, i.e., *kinyan suddar*, over an object prescribed by Torah law. Accompanying this addendum is the testator's signature as well as the signatures of the two witnesses.

On *Rosh Ḥodesh Av*, 5767 [July 16, 2007], Simeon Levy passed away. Upon his demise, the defendants argue that the disposition of their father's assets should be executed pursuant to the alleged *shtar matanah,* which allegedly was halakhically validated on January 25, 2007.

Defendants argue, pursuant to the alleged *shtar matanah*, all items including but not limited to manuscripts and *seforim* belonging to their father are to be divided equally among all three children except if specified otherwise in the alleged *shtar matanah.* Furthermore, they claim that their initiation of probate proceedings in Surrogate Court does not fall under the status of proceedings in *arka'ot shel akum*. Moreover, they claim that pursuant to NY case law, the court will not confirm an award of any arbitration panel concerning the distribution of the assets of a decedent's estate. Therefore, plaintiff would be left with no forum to enforce the Beth Din's award, so plaintiff would be forced to file in Brooklyn Supreme Court in any event. Secondly, since the defendants had a fear that the plaintiff would abscond with items of their father's assets, the defendants filed in court. This same concern motivated the defendant's decision to initiate a restraining order in Brooklyn Supreme

Court that effectively blocked the sale of the property by the plaintiffs without the defendant's authorization. Hence, they argue, they are liable neither for remuneration of plaintiff's court and legal fees relating to the Brooklyn Supreme Court action nor for the fees regarding the probate proceeding.

Summary of Submitted Testimony:

Rabbi Israel: R. Israel described the procedure that took place on January 25, 2007 at the testator's home. R. Israel read the entire alleged *shtar matanah* to R. Levy in the presence of two kosher witnesses, Mr. Joseph Cohen and Mr. Aryeh Rabinowitz. At the conclusion of each clause, R. Israel asked the testator if the instructions conformed to his wishes. Though the typewritten alleged *shtar matanah* was reconfirmed, at the testator's request, R. Israel, in his own handwriting, added the following:

1. In section three, illegible words that possibly read "and my daughters" were added.
2. In section five, the words "three to my sons-in-law" were added.

Upon completing the reading of the alleged *shtar matanah* and the addendum, the testator dated the document accompanied by his personal signature, and the two witnesses affixed their signatures accompanied with their addresses, and a *kinyan suddar* was performed.

Mr. Joseph Cohen and Mr. Aryeh Rabinowitz: Both individuals profess and are known in their respective communities to be Orthodox Jews and attested to the aforementioned procedure as outlined by R. Israel. They understood the purpose of the procedure and testified that Simeon Levy was cognitively aware of what was transpiring.

Dr. Springlass: Since 1982, Dr. Springlass was the deceased's internist. Having observed R. Levy in October 2006, three months prior to reading and signing of the addendum, Dr. Springlass attested that R. Simeon Levy had difficulties with speech and expression, was incontinent, physically weak and needed total care. He received Aricept treatment, a medication intended to help dementia patients that generally does not impair their cognitive abilities.

Though he was unable to create a legal document, he was able to follow simple commands, able to express his approval concerning a specific question posed to him and may have understood what he read. In his remarks, Dr. Springlass writes, "...a diagnosis of dementia indicates that the patient has impaired judgment, but even a demented patient could make a decision (yes or no) to a clear directive while retaining a certain level of comprehension." In other words, a patient with mild, moderate and even severe dementia is able to demonstrate capacity to make some decisions, including the execution of an advance directive whether to accept or deny certain medical treatments.

Mr. Miller, Mr. Simon and Mr. Levine: All three individuals had known R. Simeon Levy, the *gabbai* (sexton) of their shul for over two decades. All three testified that the decedent was an organized individual who handled the record keeping of the contributions to the synagogue, and surmised that he was a successful businessman. Attesting to his business acumen, Mr. Levine acknowledged that he would not have hesitated in asking him to be a partner in his personal business. Though in 2006, the consensus was that R. Levy was frail and exhibited slurred speech, nevertheless, in the synagogue, Mr. Miller and Mr. Levine pointed out that he was aware of his surroundings. Furthermore, both Mr. Miller and Mr. Simon remarked that one could clearly see from his expression and demeanor whether he was content with a particular *oleh* to the Torah.

Mikhail Szold: In April 2006, prior to R. Levy's admission to the hospital (as well as during his hospital stay), Mr. Szold was an attendant for R. Levy during the night hours. Mr. Szold testified that R. Levy would fall asleep at the dinner table, was incontinent, unable to converse, and incapable of signing a legal document.

Halakhic Discussion:

1. Based upon the cumulative evidence, it is our opinion that this typed document (the alleged *shtar matanah*) with its meticulous concern for detail was prepared by R. Simeon Levy. His meticulous concern for detail is clearly demonstrated, for example, in sections six and seven of his testamentary disposition.

These portions of the *will* read as follows:

> 5. The pages of an illustrated copy of the *Moreh Nevukhim* written and published in Barcelona, for which I paid one thousand dollars for each flip page, shall be distributed to my son except for a few flip pages to my sons-in-law ** [illegible] three to my sons-in-law.
> 6. During 1980 I acquired ten plots at the Beth Shemesh Cemetery in Israel. I sold one plot to my nephew, Yankel. For the remaining nine I have "contracts of sale" in my bank safe, and I request of my son that after my demise I shall be taken there, to be buried in one of the aforementioned plots. If at all possible my son should escort me until there; that is my preference. The rest of the plots shall be left for family members.

In addition to the *will's* directives being reflective of the testator's character and personality, the signature on the document is unassailably R. Simeon Levy's signature. There was no evidence on record that Simeon Levy was coerced into writing this document. Quite to the contrary, R. Simeon Levy crafted this document (which he intended to be a *shtar matanah*) in total privacy from his family. By their own admission, the plaintiff knew of its existence many years before the execution of the addendum and lodged no protest of fraud. Hence, we reject the plaintiff's contention that the alleged gift document is a fraud.

Even assuming the authenticity of this testamentary disposition, is there any basis for the plaintiff's contention that a Beth Din affirming this document will be engaging in "*avurei aḥsanta,*" i.e., disinheriting the halakhic heirs? Already the *Mishnah* notes:[3] "If a man

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[3] *Mishna Bava Batra* 8:5, which is codified by *Rambam, Hilkhot Naḥalot* 6:11; *Shulḥan Arukh Ḥoshen Mishpat* 282:1. Whether this ruling entails a prohibition against disinheritance or is a halakhic-moral imperative that inheritance assets be given to Torah heirs is subject to debate. See *Yerushalmi Bava Batra* 8:6; *Alfasi, Bava Batra* 133b; *Teshuvot Rosh*, *kelal* 85, *siman* 3; *Rashbam, Bava Batra* ibid. *s.v. assur; Rambam*, op. cit.; *Kehillot Ya'akov* 46. Whether it is a biblical or rabbinic prohibition, see *Sedei Ḥemed, Kelalim*, *Kelal* #3. However, one should refrain from retracting a verbal commitment to disinherit a Torah heir lest one be regarded as one who is of the "*meḥusrei emunah,*" i.e., lacking in trustworthiness. See *Teshuvot Ranakh* 118.

assigns his estate to others and leaves nothing for his sons to inherit, what he has done is done, i.e., it is valid, but the spirit of the Sages shows no pleasure in him." Though our Sages have frowned and even warned against any disinheritance or diminution of inheritance assets from Torah heirs, nevertheless numerous decisors argue that if a significant share or, according to others, a nominal amount is put aside for the Torah heirs, one may divert assets to others.[4] Though we are unaware of the decedent's intent for choosing to divide his assets equally between his son and daughters, nevertheless, halakha sanctions such a distribution for the purpose of financially benefiting all of one's children rather than for egalitarian considerations.[5]

Given that death divests the testator of title and automatically transfers title to the Torah heirs,[6] how can one disinherit or diminish the assets of the Torah heirs during one's lifetime? By making a gift in a halakhically effective manner during one's lifetime, i.e., *matnat bari*, i.e., the gift of a healthy person, one can divest oneself

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Poskim emphasize that either both the testator and Beth Din or the testator alone must refrain from engaging in "*avurei aḥsanta.*" See *Sefer Ha-Ḥinnukh Mitzva* 400; *Teshuvot Ranakh* 118; *Netziv Ha'amek Shealah, Sheilta* 135; *Ramban, Devarim* 21:16-17; *Maharam Schick Sefer Ha-Mitzvot, Mitzva* 401.

4 *Sefer Ha-'ittur Mat'nat Sekhiv Me'ra* 59b (p. 118); *Teshuvot Tashbetz* 3:147; *Teshuvot Avkat Rakhel* 92; *Taz Even Ha'ezer* 113:1 in the name of *Teshuvot Rama* 92; *Sho'el U-Meshiv Mahadura Tanya* 4:1 in the name of *Teshuvot Rama* 92; *Naḥalat Shiva* 21:4,6; *Ketzot Ha'Ḥoshen* 282:2; *Iggerot Moshe Even Ha-'ezer* 1:110, *Ḥoshen Mishpat* 2:49-50; *Teshuvot Minḥat Yitzchok* 3:135. Cf. others who argue that any amount of diminution of inheritance is proscribed. See *Rosh*, supra note 2; *Teshuvot Ḥatam Sofer Ḥoshen Mishpat* 151; *Teshuvot Maharsham* 7:12. *Teshuvot Zerah Avraham* 2:110 argues that half of the estate should be left to the Torah heir(s) provided that the testator is wealthy. As *Pitḥei Ḥoshen*, Volume 8, Chapter 4, note 9 observes there is no clear resolution how much must be given to the Torah heirs in order to avoid the strictures of disinheritance.
According to R. Zalman N. Goldberg, the amount being given to the Torah heirs who will not be inheriting assets shall be mentioned in the will. *See Shurat Ha'din,* Volume 2, 360, note 11.

5 *Teshuvot Ḥatam Sofer, Ḥoshen Mishpat* 153.

6 *Bava Batra* 135b.

so that upon death the title to the property shall not automatically vest with the Torah heirs.[7]

For a gift during one's lifetime [*donatio inter vivos*] to be effective in the transfer of assets, it must be based upon the utilization of certain terminology that will effect the transfer, otherwise as far as halakha is concerned, this document is invalid. Language indicating a gift transfer would be the following: "I hereby acknowledge by a perfect acknowledgment [*ho'da'ah gemura*] that I transferred a perfect gift, a gift of a healthy person that is publicly known from today, and retain the right to revoke this gift during my lifetime until one moment before my demise the following assets..."[8] In effect, the gift recipient receives title to the property, while the testator, similar to any donor, retains the right of the income derived from the property during his lifetime and has the authority to revoke or modify his gift until his demise.[9] In this manner, the donor continues to retain possession of his assets during his lifetime and avoids becoming dependent upon others.

To formally transfer title, there is a requirement to execute a *kinyan suddar*, i.e., a symbolic act of transfer by handing over a scarf or any other object by the beneficiary to the donor or the witnesses to the agreement as a symbol that the object has been transferred. The disadvantage to utilizing this *kinyan* is that it is ef-

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7 *Rosh*, supra note 2; *Knesset Gedolah Ḥoshen Mishpat* 282:10; *Ha'amek Shealah, Parashat Vayetzeh Sheiltah* 21; *Teshuvot Minḥat Yitzchok* 7:132; *Dinnei Mamonoth* Volume 3: *sha'ar* Four; *Pitḥei Ḥoshen*, Volume 8, Chapter Four [end].

For one of the earliest post-talmudic uses of this technique, see the *will* attributed to R. Saadia Gaon found in the Geniza. See Yosef Rivlin, *Inheritance and Will in Jewish Law* (Hebrew), Chapter 9 and accompanying addendum.

For others who reject this technique to divest property during one's lifetime, see *Teshuvot Maharam Mintz* 31; *Teshuvot Ranach* 118; *Teshuvot Maharashdam Ḥoshen Mishpat* 311; *Teshuvot Maharsham* 7:12; *Teshuvot Zemach Tzedek* [Lubavitch], *Ḥoshen Mishpat* 42; *Teshuvot Ḥatam Sofer Ḥoshen Mishpat* 151.

8 *Pitḥei Ḥoshen*, Volume 9, 174. For similar terminology, see *Dayan Grunfeld, The Jewish Law of Inheritance* (Jerusalem: 1987), 108-109; *R. Zvi Y. ben Ya'akov, Mishpatekha Le-Ya'akov*, Volume 2, 296.

9 *Shulḥan Arukh, Ḥoshen Mishpat* 257: 1, 7.

fective in transferring property and chattel only. Currency, bank accounts, promissory notes and mortgage cannot be transferred in this manner.[10] Secondly, *kinyan suddar* is ineffective in transferring assets that are neither in the donor's possession nor in existence at the time the *kinyan* is made.[11] Moreover, according to various decisors this *kinyan* will be ineffective if the language of transfer is "the person will take," "will possess," "will be distributed" and the like.[12] Finally, a gift must be given openly in a public fashion lest the donor be parsimonious in his donation or give the same gift to another individual in public.[13]

To overcome some of the limitations of a *shtar matanah*, many *wills* incorporate a *ho'da'ah*, i.e., an acknowledgement utilizing the language of "I gave this object to...," "this object belongs to..." or "I am obligated to...this amount of..." alongside the gift formula.[14] Sometimes called "*odita,*" this admission to be effective in transferring the asset must be executed either in writing, before witnesses or before

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10 *Shulḥan Arukh, Ḥoshen Mishpat* 190:1, 195:1, 203:1; *Pitḥei Ḥoshen,* volume 8, 170, note 2.

11 Ibid. *Ḥoshen Mishpat* 209:4-7.

12 Many *poskim* view this language as a promise to execute a future action and therefore falling in the category of a *kinyan devarim*, i.e., an act that fails to create a halakhically enforceable obligation. See *Bava Batra* 3b, 148b; *Shulḥan Arukh Ḥoshen Mishpat* 245:1, 253:3; this writer's "Breach of a Promise to Marry," 17 *Jewish Law Annual* (2007), 267.
A promise for future action is invalid since death relinquishes the testator's title and vests title with the Torah heirs and there is "no *kinyan* after death."

13 *Shulḥan Arukh Ḥoshen Mishpat* 242:3-5. For extenuating circumstances allowing for the drawing up of a secret gift document, see *Pitḥei Ḥoshen*, volume 8, p. 352, note 91. Some argue that nowadays one need not be concerned with the possibility of a secret gift; nonetheless, *le-khateḥillah*, one should mention this fact in the document. See *Shulḥan Arukh Ḥoshen Mishpat* 242:5; *Rama*, ibid.

14 *Rama Ḥoshen Mishpat* 257:7; *Rama Ḥoshen Mishpat* 60:6; *Shulḥan Arukh Ḥoshen Mishpat* 250:3; 40:1.

a Beth Din.[15] Complying with these formal requirements allows a testator to transfer property either not yet in existence or not in his possession.

Realizing that his wishes to leave bank accounts, stocks and bonds, land, buildings, manuscripts, books and silver-made items as well as assets that will come into his possession in the future for his children may be accomplished through drafting a *will* that is a *shtar matanah* and *ho'da'ah,*[16] R. Simeon Levy prepared such a *will* utilizing the terminologies of "gift-giving" and "acknowledging." Did his *will* meet the requirements of a properly written *shtar matanah* and *ho'da'ah*? If the *will* was defective, was the addendum that was prepared years later properly crafted, addressing the shortcomings of the original *will*?

A review of the original *will* indicates that the basic building blocks of a gift donation are absent.

Instead of incorporating the conventional gift language "retain the right to revoke this gift during my lifetime until one moment before my demise," the *will* reads "and to be effective from today and after my demise" Moreover, the *will* was prepared in the privacy of R. Levy's home, divorced from family, and is bereft of language indicating that these gifts were being given in an open and public fashion. Finally, the continuous use of the language "shall be distributed" throughout the various sections of the *will* denotes a promise of future action, which is ineffective terminology for trans-

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15 This matter is subject to much debate. See Rambam, *Hilkhot Mekhirah* 11:15; *Ketzot Ha-ḥoshen* 40:1, 194:3; *Ḥazon Ish, Bava Kamma* 18:6; *Netivot Hamishpat* 40:1, 60:17.

16 The combination of both formulations of gift-giving and admission is advanced by many contemporary *poskim*. See *Grunfeld*, supra note 7, at 106–111; *Pitḥei Ḥoshen*, Volume 9, 174; *Mishpatecha Le-Ya'akov*, Volume 2, page 296, Volume 3, 370; R. Sha'anan, "A *Will* According to Halakha" (Hebrew) *Teḥumin* 13 (5752-5753), p. 317; R. M. Bleicher, "A *Will*: Its Drafting and Formulation," (Hebrew) *Shurat Ha-din* 2 (5754), p. 353. Cf. R. Feivel Cohen, *Kuntres Me'dor Le'dor*, 9–17. For advocates of implementing *odita* as a vehicle to transfers assets that are not yet in existence, see *Yad Rama, Bava Batra* 149a; *Ri Megash, Bava Batra,* op. cit.; *Rambam, Hilkhot Zekhiyah* 9:9.

ferring assets.[17] Had the donor expressed his wishes in the following manner: "I transferred a perfect gift, a gift of a healthy person that is publicly known, from today, and retain the right to revoke this gift during my lifetime until one moment before my demise the following assets..." his gifts would have been transferred to his children.

Similarly, the implementation of "*ho'da'ah*" in the opening words of the *will* "my hand signature on this gift award shall serve as proof upon myself as one hundred witnesses, whereas that today...which is ten days into the month of..., I begin the process of writing this *Will*..." is faulty. In effect, the testator is utilizing a *ho'da'ah* for the purpose of attesting to the timing of the disposition. In a *will*, admission is being implemented for a very different purpose. Regarding a *will*, *ho'da'ah* or *odita* is employed as a form of *hitchayvut*, i.e., undertaking an obligation.[18] As we explained, such terminology is utilized for the purpose of acknowledging a gift in order to transfer the asset to someone else. Thus, language such as "I acknowledge that I gave this object to..." or "this object belongs to..." will allow for such a transfer.[19] Hence, the testator is utilizing *ho'da'ah* for a totally different purpose. Finally, even if such "*ho'da'ah*" language would have been utilized by R. Levy, the absence, in this *will*, of the performance of a *kinyan* or the absence of a *kinyan* executed in the presence of witnesses, with the testator articulating "you are my witnesses," may have made this *will* invalid.[20]

In short, the drafting of this original *will* by R. Levy has various drawbacks in terms of both gift-giving and obligating via admission the transfer of certain assets. The outstanding question is whether the addendum that was prepared years later properly addressed the halakhic shortcomings of the original *will*.

The addendum reads as follows:

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17 See supra note 11.

18 Though *rishonim* and *aḥaronim* utilize the concepts interchangeably, R. Saadia Gaon distinguishes between the two concepts. See Berachyahu Lifshitz, *Promise: Obligation and Acquisition in Jewish Law* (Hebrew) (Jerusalem: 1988), 265, note 322.

19 *Rama Ḥoshen Mishpat* 60:6, 245:1; *Shulḥan Arukh Ḥoshen Mishpat* 250:3. A promise for a future action such as "I obligate myself to you this..." is invalid. See *Rama Ḥoshen Mishpat* 250:3; *Ketzot Ha-ḥoshen* 40:1.

20 See supra note 14.

> "All the above is my true *will*, and when the gift will arrive today and a moment before my death to my son and daughters without any exception according to the usage of our Torah scholars, *Shulḥan Arukh* and decisors, and I hereby declare (*mesirat moda'ah*) since the original *will* is lost, therefore I confirm and sign off on this copy and nullify retroactively all *wills* that were written regarding my inheritance and assets, and one can nullify this *will* only in the presence of my sons and daughter, and my signature shall attest to all the above as a full admission (*hoda'ah gemurah*) in the presence of the two signed witnesses below, and it is executed with the *kinyan sudar* (a legal form of undertaking a duty to perform an action and involves taking from whom the duty is owed an article such as a pen or handkerchief, which obligates him to perform the action) and other effective *kinyanim*. Today, I have signed with sound mind, Thursday, *Parashat Bo'*, 6 Shevat 5767, January 25, 2007."

Affixed to the addendum are R. Levy's signature and the names of the two witnesses.

At first glance, the incorporation of the addendum language of "from today and one moment prior to my death," linking the admission to the enumerated assets, the employment of a *kinyan* and the signing of proper witnesses ought to validate the original *will* and serve to properly transfer the assets to the sons and daughter. And, in fact, normative halakha would argue that an improper formulation of a *shtar* can be remedied by inserting at the end of the document that an effective *kinyan* has been made and by executing a *kinyan*. We therefore assume that the individual who was obligating himself or herself wanted to effect such a transfer of assets.[21] Despite the flaws in the *will*, there is a presumption that a true expression of the testator's wishes is reflected in the writing of the disposition, the execution of a *kinyan* and the presence of witnesses rather

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[21] *Teshuvot Ha-Rashba* 2:301; *Beth Yosef Ḥoshen Mishpat* 195:20, 22; *Rama Ḥoshen Mishpat* 60:6, 212:1. See R. Joseph Goldberg, "An Improperly Drafted Legal Document Finalized by a *Kinyan*" (Hebrew), *Shurat Ha-din* 1 (5754), 301. According to *Ketzot Ha-ḥoshen, Ḥoshen Mishpat* 245:1-2, a *kinyan suddar* must be implemented.

than bound to its flaws.[22] The *will's* defects do not, *per se*, create doubts as to its veracity regarding the testator's subjective wishes to execute the asset transfer.[23]

However, this conclusion may be challenged. If we accept the view that prior to the distribution of the inheritance assets, the real "*muḥzakim,*" i.e., possessors of the estate, are the heirs in accordance with the Torah,[24] then this sole Torah heir, i.e., the son of R. Levy who will receive a smaller share in the inheritance due to his father's *will* which gifts assets to his sisters, can make use of the halakhic argument "I side with those opponents of normative halakha who would invalidate such a *will.*"[25] In light of this reasoning, all the assets would be given to the son, the Torah heir, the estate holder. On the strength of this argument, the devised *will* in the form of a *matanah* and o*dita* obligations that would have in effect given shares of the estate to R. Levy's daughters has been frustrated.[26]

In short, in terms of the requirements of *hilkhot shtarot*, i.e., the laws of halakhic documents, neither the *will* nor the subsequent addendum to the *will* would be effective in transferring assets to R. Levy's daughters, non-Torah heirs.

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22 In effect, the burden of proof to authenticate a *will* is equivalent of that required in secular criminal law—proof beyond a reasonable doubt rather than negating any uncertainty as to the *will's* veracity.

23 Consequently, any further claims against the veracity of the *will*, unrelated to the defects in question, should be treated as claims against a valid *will*.

24 *Teshuvot Pnei Moshe* 15; *Teshuvot Maharyah Ha-levi* 2:86; *Teshuvot Ḥatam Sofer Ḥoshen Mishpat* 142; *Maharbil* 3:35.Cf. *Teshuvot Minḥat Shai*, nos. 75, 79.

25 This argument is known as *kim li*, lit. "I hold the opinion," and the rationale of the argument is that we do not extract money on the basis of uncertainty. See *Get Pashut*, Kelal Aleph; *Teshuvot Ḥikrei Lev* 1: *Ḥoshen Mishpat* 38. Even if the *muḥzak* does not advance the argument, beth din has the right to raise the plea. See *Dinnei Mamonoth*, Volume 4, 144.

26 To circumvent this problem, had R. Levy inserted a provision in his *will* that precluded the advancement of such a plea, the *will* would have been valid. In fact, one such contemporary proposed *will* incorporates such a disclaimer. See *Dinnei Mamonoth*, Volume 3, 185.

Though R. Levy's employment of terminology of gift-giving and admission in his *will* falls short in creating a halakhically acceptable disposition of his assets, nevertheless is the *will* valid based upon the rule "*mitzva le-kayeim divrei ha-met,*" i.e., there is a religious duty to carry out the wishes of the deceased"?[27] A testamentary disposition of assets reflects "the wishes of the deceased."[28] Even if this rule has none of the attendant formalities of *hilkhot shtarot*, nonetheless, the operation of this rule has been circumscribed by various decisors. The scope of applicability of this rule has been a matter of much debate. According to *Rabbeinu Tam* and those who subscribe to his position, for the rule to be applicable the property[29] or money must be deposited by the donor with a third party for the purpose of complying with the testator's wishes, which was not the case here. *Tosafot Ri Ha-Zaken* and notably *Ramban* argue that the rule is binding only if there is clear instruction on the testator's part to the heirs of a third party who will comply with the testator's wishes, which was not the case here. Finally, according to *Rosh* and others the deposit with a third party must have been executed prior to the verbal directive in order for the rule to be applicable, which again was not the case here.[30] In sum, "*mitzva lekayeim divrei hamet*" may not serve as the basis for affirming R. Levy's *will*.[31]

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27 *Gittin* 14b-15a; *Ketubot* 69b-70a; *Bava Batra* 149a; *Shulḥan Arukh Ḥoshen Mishpat* 252:2. Whether this rule is a type of *kinyan* is subject to debate. *Teshuvot Maharit* 2:95; *Teshuvot Rivash* 207; *Maḥane Ephraim, Hilkhot Zechiyah U-Matanah* 29; *Ketzot Haḥoshen* 248:5; *Rama Ḥoshen Mishpat* 252:2; *Teshuvot Aḥiezer* 3:35; *Teshuvot Lev Arye* 2:57; *Iggerot Moshe, Ḥoshen Mishpat* 2:53; *Teshuvot Ḥeshev Ha'ephod* 2:135.

28 The assumption is that this rule is effective regarding our *will,* which is a *shtar matanah*. See *Tosafot*, *Ketubot* 70a *s.v. ho ki'bail*; *Shulḥan Arukh Ḥoshen Mishpat* 252:2. Cf. *Teshuvot Rivash* 207; *Teshuvot Maharsham* 2:224.

29 See *Pitḥei Ḥoshen*, Volume 9, 143 notes 84-85.

30 For a summary of the varying positions, see *Teshuvot Maharbil* 2:39.

31 It is possible that if R. Levy possessed retirement assets, pursuant to R. Tam's position, which is codified by *Shulḥan Arukh Ḥoshen Mishpat* 252:2, these assets that he transferred during his lifetime to a trustee have a status of "*hashlasha,*" i.e., deposit and therefore based on "*mitzva lekayeim divrei ha-met,*" the transfer to the beneficiary[ies]would be effective.

Despite the shortcomings in this testamentary disposition based upon *hilkhot shtaroth* and "*mitzva lekayeim divrei ha-met,*" it is our opinion that the children's compliance with the instructions of this document is based upon the performance of the *mitzva* of *kibbud av*, i.e., honoring one's father[32] or *morah*, i.e., filial reverence.[33] Under the rubric of *morah*, a son may neither stand nor sit in his father's place nor contradict his words.[34] The fundamental motif underlying *morah* is for a son to refrain from diminishing the dignity, the identity and self-worth of his father. In fact, the centrality of *morah* resonates in the words of R. Simeon Levy who wrote in his *will*:

> "....And by utilizing every possible expression of appeal, I request there shall be no differences of opinion on any matter of the matters, but that everything shall be peaceful and unanimous, for this is my dignity, the dignity of the family and the dignity of your mother."

The decedent's concern for his own dignity and the paramount significance of avoiding "*kalone avihem*," i.e., embarrassment to the parties' father in the distribution of his assets,[35] propels this panel to affirm this document, the wishes of R. Simeon Levy and transfer the assets as set down in the *will.*[36]

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[32] *Teshuvot Mahari Levy* 2:86; *Teshuvot Ḥavot Ya'ir* 214; *Teshuvot Minḥat Shai* 79; *Teshuvot Maharsham* 2:224; *Pitḥei Ḥoshen*, Volume 9, 146–148; and *M. Schwartz, Mishpat Hatzava'ah*, 467-478.

[33] *Teshuvot R. Akiva Eiger* 1:68; *Ḥazon Ish, Yoreh Deah* 148:8.

[34] *Tosefta Kiddushin* 1:11.

[35] See *Bava Metzia* 62a "if a father leaves a cow or a garment or anything that is stolen, the heirs are obligated to return it in order to uphold the dignity of their father." See *Rashi, Bava Metzia,* ad. locum *s.v. ha'mesuyam; Tosafot, Ketubot* 86a. *s.v. perias ba'al ḥov*; *Mishpat. Hatzava'ah*, 469. The implicit assumption of our opinion is that the *mitzva* of "*morah*" is applicable even after a father's demise. See *Birkhei Yosef Yoreh Deah* 240:24 [subsection 17].

[36] Given that based upon the *shtar borerut*, i.e., the signed arbitration agreement between the parties, it is within our authority to coerce the parties to comply with the *mitvzot* of *kibbud av* and *morah,* we shall refrain from addressing whether in the absence of an arbitration agreement a Beth Din can obligate the parties to comply with these mitzvoth. See *Se-*

Hence, we may choose to refrain from adjudicating whether the addendum executed on January 25, 2007 was valid and simply address the status of the handwritten clarifications (in provisions 7 and 10) as incorporated in the *shtar matanah* at that juncture in time.

2.a. Even if it were deemed to be necessary to address the validity of the aforementioned addendum, it would still remain unnecessary to adjudicate whether in January 2007 R. Levy was mentally capable of executing a *new* halakhically legal document such as a *shtar matanah.* Even assuming that the facts would indicate that he exhibited cognitive inability to execute a *shtar*, and therefore is considered a *shoteh* in regard to these matters,[37] nevertheless, a person who is mentally incompetent in certain forms of conduct is not deemed to be necessarily globally impaired with regard to all other matters.[38] Though he may have been cognitively impaired to execute a *shtar*, it is our opinion that R. Levy, though suffering from occasional memory loss and mild disorientation, was sufficiently lucid and oriented, i.e., *bar da'at*, to understand that his personally prepared document enumerating his wishes of 1985 was being read to him in January 2007 and upon the conclusion of its reading to decide to sign it.

This level of *da'at*, i.e., the parties' father's capacity to render such a decision, was sufficient for reaffirming the existence of this document. To buttress our position, we invoke R. Yechezkel Landau's ruling that "*gadol o'maid al ga'bav,*" i.e., a legally responsible individual supervising a legal incompetent will be effective for a *shoteh* participating in a *seder haget*, i.e., execution of a divorce docu-

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fer Ha-Hinnukh 33; *Shulḥan Arukh Ḥoshen Mishpat* 107:1; *Shakh Ḥoshen Mishpat* 107:1; *Sema, Ḥoshen Mishpat* 107:2; *Rama Yoreh Deah* 240:1. For the grounds of our authority, see *Shulḥan Arukh Ḥoshen Mishpat* 12:7, R*ama* ad. locum.; *Sema*, ad. locum. (18); *Shulḥan Arukh Ḥoshen Mishpat* 13:2.

37 *Teshuvot Ḥachmei Provencia* 57 and *Yavin She'mua Le-Ha-Rashbatz, Tikkun Soferim, Sha'ar* 16.

38 *Sema, Ḥoshen Mishpat* 35:21; *Te'vuot Shor Yoreh Deah* 1:11; *Teshuvot Zemaḥ Zedek Even Ha'ezer*, 153; *Iggerot Moshe Even Ha'ezer* 1:120.

ment.[39] *Kal va-ḥomer*, i.e., a fortiori, in our case, which involves a level of *da'at* that is more basic than that which is required to execute a *get*, the parties' father's mental capacity would be sufficient to reaffirm the document's existence. Persons with dementia are often assumed, inaccurately, to be globally decisionally incapacitated. Certain halakhic views,[40] as well as contemporary medical research,[41] indicate otherwise.

In sum, in our opinion, this gift disposition accompanied by the addendum, though signed by kosher witnesses and formalized by a *kinyan,* may not constitute a valid gift disposition according to requirements of drafting a *shtar* and "*mitzva lekayeim divrei ha-met,*" but nevertheless is to be complied with based upon *kibbud av*, respecting a father's honor, *morah*, filial reverence and avoiding "*kalone avihem,*" as previously explained.

b. Section three of the *will* reads: "The cemetery shall remain the possession of my son." Regarding the validity of the handwritten clarification in provision three, which possibly reads "and my daughters," we find that the addition is unacceptable for the following reason: In January 2007, if R. Levy had a change of mind and wished to have his daughters share equally with his son in this asset mentioned in provision three, then according to halakha, any incorporation of a handwritten change must be followed by either the father's signature, initials, or other *kiyum* (certification of the emendation).[42] Neither the parties' father's signature nor his initials are annexed to this handwritten change. Hence, in the case of doubt, i.e., *safek* regarding the intent of the decedent, one does not remove an asset from the Torah heirs since they are the presumptive heirs.[43]

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39 *Nodah Be-Yehuda* cited in *Or Hayashar* [*Teshuvot* Regarding the *Get* of Cleves] 30.

40 See supra note 37 and infra note 40. Cf. *Teshuvot Oneg Yom Tov* 153; *Teshuvot Yehuda Ya'aleh* 93; *Teshuvot Mishnat R. Aharon* 56.

41 For contemporary scientific data, see Zev Schostak, "Alzheimer's and Dementia in the Elderly: Halachic Perspectives," *Journal of Halacha and Contemporary Society* 52 (Fall 2006), 83, 86–88.

42 *Pitḥei Ḥoshen*, Volume 9, 171.

43 See supra note 24. See also, *Teshuvot Maharashdam Even Ha'ezer* 144.

c. Regarding the validity of the handwritten clarification in provision five, which now reads "three to my sons-in-law," based upon common usage, i.e., *lashon bnei adom*, we find this addition to be acceptable.[44] Hence, the parties' father's presumed intent was to distribute three leaves of the *Moreh Nevukhim* to each of his sons-in-law.

3. The prohibition of *lifneihem ve-lo lifnei arka'ot shel akum* proscribes Jews from litigating their disputes in an adversarial proceeding in civil court.[45] Matters that are administrative in nature, such as confirming an award of a Beth Din or probating an uncontested testamentary disposition, do not fall within the parameters of this prohibition.[46]

However, in a *contested* testamentary disposition, there must be a determination of how to divide up the assets by a Beth Din *prior* to recourse to a probate proceeding. Hence, initiating a probate proceeding regarding a contested testamentary disposition prior to a Beth Din ruling entails a violation of the prohibition of recourse to *arka'ot shel akum*. Should a plaintiff submit a claim in civil court in violation of the prohibition of litigating in *arka'ot shel akum*, resulting in the defendant incurring expenses such as legal and court fees, upon proving his outlay of expenses, the plaintiff is obligated to pay for all these expenses.[47]

However, if a party institutes proceedings in the form of injunctive relief, i.e., *ikul*, in civil court for the purpose of rescuing funds that otherwise may be lost to the plaintiff, though some authorities require prior permission of Beth Din, other decisors argue if "time is of the essence" either *le-khatḥila* or *be-de-avad* there is no violation of *lifneihem ve-lo lifnei arka'ot shel akum*.[48] Hence, under these cir-

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[44] *Teshuvot Rivash* 207; *Sema, Ḥoshen Mishpat* 42:28 and *Pitḥei Ḥoshen*, supra note 42 at 4:35.

[45] *Shulḥan Arukh Ḥoshen Mishpat* 26:1.

[46] *Teshuvot Doveiv Meisharim* 1:76; *Teshuvot Maharshach* 1:192; *Teshuvot Emunat Shemuel* 17.

[47] *Tur Ḥoshen Mishpat* 26:7; *Teshuvot Divrei Ḥayim* 2, *Ḥoshen Mishpat* 1; *Teshuvot Radvaz* 1:172.

[48] See *Kesef Ha-kodshim Ḥoshen Mishpat* 26:1, *Teshuvot Havot Ya'ir* 45 and *Minḥat Pe'tim* 26.

cumstances, the plaintiff will not be remunerated for his court and legal fees.

A "*heter arka'ot,*" i.e., permission to litigate a matter in civil court that is given by a Beth Din, does not mean that one is allowed to accept every award. If a Jew receives a monetary award in civil court, a Jew may accept the award only if Torah law would have sanctioned such an award. If Torah law would not permit such an award, should a Jew accept the civil monetary award, he is a thief.[49] Hence, pursuant to the matters within its jurisdiction as expressed in the signed arbitration agreement, this Beth Din is the final arbiter regarding the provisions of this document and the decedent's distribution of his assets. Hence, the son and daughters of the late R. Levy cannot accept an award in Surrogate's Court that is in excess of the award as mandated by this decision.

Decision:

1. We hereby order pursuant to our authority under the signed arbitration agreement that R. Levy's assets be divided up between his son and daughters, in accordance with his wishes as expressed in his gift document dated Adar 10 5745 (March 3rd 1985) and the handwritten clarification of provision number five of the *will* of January 25, 2007.

Any assets that the gift document does not reference shall be allocated to the son, as *yoresh mi-de-oraita* (inheritor according to Torah law).

Should the three children agree to divide any asset or assets differently from the directive of this decision, the children's wishes will be determinative and override the ruling of this Beth Din as well as the wishes expressed in their father's gift document.

Pursuant to the above holding:

1. All *seforim* that belonged to Rabbi Simeon Levy are to be divided up equally according to their value among his son and daughters.

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[49] *Teshuvot Tashbetz* 2:290, which is cited by *Teshuvot R. Akiva Eiger, Ḥoshen Mishpat* 26; *Teshuvot Ḥut HaMeshulash* 1:19.

2. All *seforim* belonging to R. Levy that will appear in the future are to be divided up equally according to their value among his son and daughters.
3. All of the silverware items from R Levy's home shall be distributed equally according to their value among his son and daughters.
4. If any *seforim* or silver items are missing, and upon submission of evidence it is demonstrated that the possessor is either the plaintiff or one of the defendants, the item will be returned and allocated as per the foregoing. If the item has been sold to a third party, the seller of the item to the third party shall pay the value of the item to the other siblings pursuant to the foregoing.
5. Each son-in-law will receive three pages of the manuscript of *Moreh Nevukhim*.
6. The cemetery plot shall remain in the possession of Reuben Levy.
7. All the funds in the banks, stocks and bonds shall be distributed equally, according to their value between his son and daughters.
8. The proceeds from the sale of the two houses in Baltimore shall be distributed among his son and daughters.
9. For *bizayon beth ha-din*, i.e., denigrating a Beth Din, Mr. Reuven Levy is fined $10,000 for failure to provide the name(s) and address(es) of the person(s) who possess estate items given by him without the consent of his siblings or this Beth Din. As of the date of the issuance of this decision, the name(s) had not been submitted to this panel, with a willingness to supply a copy to the other parties. Each sibling of Mr. Reuven Levy is correspondingly to receive $5,000 from Reuben Levy.[50]

With the handing down of this *psak din*, may ***menuḥat hanefesh*** be restored to your personal lives and may **shalom** reign between yourselves and your families.

The obligations set forth herein shall be enforceable in any court of competent jurisdiction, in accordance with the rules and procedures of the Beth Din and the arbitration agreement.

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[50] To impose monetary penalties for contempt of Beth Din, see *Teshuvot Yakil Avdi*, 6: 96. For the authority to impose penalties for withholding information, see R. Shilo Refael, *Seridim* 10 (Shevat 5749) 18, 27.

Any request for modification of this award by the arbitration panel shall be in accordance with the rules and procedures of the Beth Din, and the Arbitration Agreement of the parties.

All of the provisions of this Order shall take effect immediately.

IN WITNESS WHEREOF, we hereby sign and affirm this Order as of the date written above.

_____ _____ _____

The *Will*:

חתימת ידי על שטר מתנה זו תעיד עלי כמאה עדים איך שהיום יום ראשון לס' כי תשא, שהוא עשרה ימים לחודש אדר תשמ"ה, אני מתחיל לכתוב כתב צוואה זו בדעת צלולה שעזה"י והיא צוואה לבני ובנותי שליט"א ומהיום על אחר אריכת ימי השנותי על כל הירושה שתשאר אחרי בין נכסי דניידי ובין נכסי דלא ניידי, בין אותם נכסים שיש כבר תחת ידי ובין אותם נכסים שיבואו תחת ידי עד עת קצי על הכל אני מצוה בשטר זה שיחולו כנזכר לעיל בשורה הראשונה.

א. השני בתים שיש לי בסטעטן איילענד יתחלקו בשוה כדי שווים בין בני ושתי בנותי.
ב. כל הכסף המונח בבנק וכן כל הסטקס ובונדס יתחלקו שוב בשוה בין הבן והבנות או בדרך החלוקה של הנ"ל או ע"י מכירה, ודמיהם יחלקו ביניהם כנ"ל.
ג. הבית החיים ישאר ביד בני (ובכתב יד למעלה מהמלה המודפס "ובנותי").
ד. כל הספרים יחלקו שוה בשוה בין הבן והבנות, כפי ערכם.
ה. העמודים של מורה נבוכים שנכתבו והודפסו ברצלונה ששילמתי בעבורם אלף דולר לכל עלה יתחלקו בין הבן והבנות חוץ מאיזה עלים לכל אחד מחתני יחיו (לא ברור) שלשה לחתניי.
ו. בשנת תש"מ קניתי עשרה מקומות בביה"ח בבית שמש. מקום אחד מכרתי לאחין, יעקל. מט' הנשארים יש לי "קניני שטרות" מונחים בכספת של הבנק ואני מבקש מבני שאחרי מוע"ש להוליך אותי שמה באחד המקומות הנ"ל. ואם אפשר שבני יחיה ילוה אותי עד שמה, מה טוב. שאר המקומות יניחו רק לבני משפחתנו הי"ו.
ז. כל כלי הכסף יתחלקו שוה בשוה בין הבן והבנות כפי שויים וערכם.
ח. אם יהיו ח"ו איזה חילוקי דעות בין הבנים והבנות באיזה ענין הנוגע להירושה אזי אני מרשה בכל כחי ודעתי את בני הרב ר' ראובן להכריע בכל דבר גדול וקטן ואליו ולהכרעתו ישמעון. ואני מבקש בכל לשון של בקשה שלא יהיו שום חילוקי דעות בדבר מן הדברים רק הכל יהיה בשלום ובדעה אחת שזהו כבודי וכבוד המשפחה וכבוד אמכם תחי'. וכבר שנתברר שאצל משפחות כבודות היו מתעקשים ולא חסו על כבוד הנפטר איך היו לחרפה ולבזות של כל המשפחה.
ט. אני מצוה לבנותי תחי' להזהר בצניעות יתרה בלבושי בגדים וביחוד בשערות ראש בלי שום פשרות וזה ענייי מכל עמלי להשאיר בן ובנות בעוה"ז הולך והולכות בדרכי אבוה"ק וי"ע שעל זה נתתי את נפשי בעזהש"י לחנכם וגדלם על דרכי התורה והיראה במסורת אבותינו ורבותינו.

חתימה: הרב שמעון בן יוסף לוי, י אדר תשמ"ה

כל הנ"ל הוא רצוני האמיתי ושיגיע המתנה מהיום ושעה אחת קודם מיתתי לבני ולבנותי בלי שום יוצא מן הכלל ובתיקון חז"ל שו"ע והפוסקים. והריני מוסר מודעה שהיות שנאבד הצוואה המקורי ע"כ הנני מאשר וחותם על העתק זה ומבטל

כל שאר צוואות שנכתבו כבר בנוגע לגבי הירושה והנכסים. וא"א לבטל צוואה זו רק בפני בני ובנותי, וחתימת ידי תעיד עלי על כל הנ"ל בהודאה גמורה בפני שתי עדים החתומים מטה ונגמר בקאג"ס ובשאר קנינים המועילים חתימת שמי היום בדעה צלולה יום ה', פרשת בוא, ו' שבט תשס"ז, 25 ינואר 2007.

חתימה: הרב שמעון בן יוסף לוי, פרשת בוא, ו' שבט תשס"ז, 25 ינואר 2007

חתימה: יוסף כהן, עד לפי הכתובת

חתימה: אריה רבינוביץ, עד לפי הכתובת

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English Translation of the *Will*:*

My hand signature on this gift award shall serve as proof upon myself as one hundred witnesses, whereas that today, Sunday of Torah reading *Ki Tissa*', the tenth of Adar, 5745 [March 3, 1985], I begin the writing of this *will*, with a clear state of mind with the assistance of the Almighty, which is a *will* for my son and daughters may they live and be well, and [to be effective] from today and after demise, on the entire estate that will be left after me, both moveable property and real property, both such assets that I already have in my possession and such assets as may come into my possession until my demise; I am hereby offering my desire in this document, which shall become effective as mentioned above in the first line.

1. The two houses I have here in Staten Island shall be equally distributed according to their value between my son and daughters.
2. All of the funds in the bank, as well as all of the stocks and bonds, shall be equally distributed between my son and daughters, either by distributing the above, or by selling [them], and the proceeds shall be distributed amongst them as mentioned above.
3. The cemetery shall remain the possession of my son [handwritten word on top of typewritten text reads: *U-venosi*, "and my daughters"].
4. All my religious books shall be equally distributed amongst my son and daughters, in accordance with their value
5. The pages of an illustrated copy of the *Moreh Nevukhim* written and published in Barcelona, for which I paid one thousand dollars for each flip page, shall be distributed amongst my son and daughters except for a few flip pages to my sons-in-law ** [illegible] three to my son-in-law.
6. During 1980, I acquired ten plots at the Beth Shemesh Cemetery in Israel. I sold one plot to my nephew, Yankel. For the remaining nine I have "contracts of sale" in my bank

* Translation of the *will* is by Targem Translations with some modifications.

safe, and I request of my son that after my demise I shall be taken there, to be buried in one of the aforementioned plots. If at all possible my son should escort me until there; that is my preference. The rest of the plots shall be left for family members.

7. All the silverware shall be distributed equally among my son and daughters according to their worth and value.
8. In the event there will be any differences of opinion amongst my son and daughters on any matter that relates to the estate, then I authorize, with all of my powers and my mind, my son Rabbi Reuben to decide on every significant or insignificant matter; he and his determinations should be followed. And by utilizing every possible expression of appeal, I request there shall be no differences of opinion on any matter of the matters, but that everything shall be peaceful and unanimous, for this is my dignity and the dignity of the family. It has already turned out that in respectful families people were stubborn and they didn't care about the deceased's dignity, how the entire family became disgraceful and shameful.
9. I direct my daughters to be careful in [exhibiting] an abundance of modesty in their attire and especially about the hair of the head, without any compromises; this is my compensation for all my effort, to leave behind my son and daughters on this world, who proceed in the path of my holy forefathers of blessed memory, for which I have devoted myself to the Grace of the Almighty, to educate them and to raise them on the path of the Torah and fear of God.

Affixed Signature: Rabbi Simeon ben Yosef Levy, 10 Adar 5745.

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The Addendum:

All the above is the my true will, and when the gift will arrive today and a moment before my death to all my sons and daughters without any exception according to the usage of our Torah scholars, *Shulḥan Arukh* and decisors, and I hereby declare (*mesirat moda'ah*) since the original *will* is lost therefore I confirm and sign off on this copy and nullify retroactively all *wills* that were written regarding my inheritance and assets and one can nullify this will only in the presence of my son and daughters, and my signature shall attest to all the above as a full admission (*ho'da'ah gemurah*} in the presence of the two signed witnesses below, and it is executed with the *kinyan suddar* (a legal form of undertaking a duty to perform an action and involves taking from whom the duty is owed an article such as a pen or handkerchief that obligates him to perform the action) and other effective *kinyanim*. Today, I have signed with sound mind, Thursday, *Parashat Bo'*, 6 Shevat 5767, January 25, 2007.

Affixed Signature: Rabbi Simeon ben Yosef Levy, Thursday, *Parashat Bo'*, 6 Shevat 5767, January 25, 2007.

Affixed signature: Joseph Cohen, witness with an address at...
Affixed signature: Arye Rabinowitz, witness with an address at... ☙