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Disinheriting children who marry outside the faith



**Charles
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While I have previously addressed the legality of disinheriting intermarried children in both the *Jewish Tribune* (<http://bit.ly/9ADVJY>) and in the *Ontario Lawyer's Weekly* (<http://bit.ly/bv9Rjm>) a recent case suggests another review is warranted. In *Re Estate of Max Feinberg* (<http://bit.ly/cb5CKO>) three Illinois courts reviewed what they called the Jewish Clause, which stated: "A descendant of mine other than a child of mine who marries outside the Jewish faith (unless the spouse of such descendant has converted or converts within one year of the marriage to the Jewish faith) and his or her

descendents shall be deemed to be deceased for all purposes of this instrument as of the date of such marriage."

The court weighed testamentary freedom against the common law's disdain for wills that restrain people from entering into an otherwise legal marriage. The Illinois' court of first instance and appellate court ruled that the Jewish Clause was invalid because it seriously interfered with the right of individuals to marry a person of their own choosing. It was now up to the Supreme Court of Illinois.

The Illinois Supreme Court held that the Jewish Clause was valid. The test was whether the provision was capable of producing harm that its enforcement would be contrary to the public interest. The Illinois Supreme Court upheld the Jewish Clause because they placed a premium on the right of individuals to decide what happens to their assets after they die. They disagreed

with the lower courts who suggested that the clause in question was a restraint of marriage.

What is the position of other jurisdictions? As Illinois' Justice Greman pointed out, "... In most states they allow this – not just with Jews but for Catholics and others." So what about Ontario? The Ontario Court of Appeal, in a non-binding aside (obiter), addressed this issue in the *Fox Estate case* (<http://bit.ly/98b5gw>). Fox's will gave the executor absolute discretion to use trust money for his grandchildren. The executor removed all the money to disinherit her son because he married a non-Jew. At issue was whether the executor's conduct was proper. The judge commented, "...in response to a query from the bench, counsel in this case were not prepared to argue that any court would today uphold a condition in a will which provides that a beneficiary is

to be disinherited if he or she marries outside of a particular religious faith."

Given the treatment of this issue in the US, does that mean a Jewish Clause would be void in Ontario? Maybe – maybe not. The fact that three Illinois courts and one Ontario Court came to different conclusions should tell you that this issue is complicated and this review should not be taken as legal advice. I receive calls about this and similar issues all the time. Cases often turn on the specific facts. If you have a legal question relating to something similar, you are best advised to seek out competent legal counsel to determine your best course of action.

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'I Feel Israeli,' Italian PM tells pro-Israel rally

ROME (Arutz-7) – Italian Prime Minister Silvio Berlusconi told a pro-Israel rally in Rome recently that Israel has a right to exist and a right to its security – and that ensuring both are an ethical and moral imperative for the Italian people.

"Israel's security within its borders, as well as its right to exist as a Jewish state, is the ethical choice for Italians and a moral obligation against antisemitism and Holocaust denial," Berlusconi told the crowd.

"My visit to the Auschwitz extermination camp, as well as the horror of the Holocaust barbarity, gave rise to my indelible feeling of solidarity," the Italian prime minister explained. "Since then, I feel Israeli."

The rally, *For the Truth of Israel*, organized by *Amici di Israele* (Friends of Israel), and held at the Temple of Hadrian, was headed by a parliamentarian from Berlusconi's political party.

Former Spanish Prime Minister Jose Maria Aznar, founder of the Friends of Israel organization, also spoke at the start of the rally.

"Israel is not a Middle East country, but a Western country of the Middle East," he said. "Every problem for Israel is our problem."

Aznar's views were strongly supported by Italian House of Representatives Speaker Gianfranco Fini, who emphasized Israel's role as a democratic nation with "Western values in the Middle East."



PHOTO: JACK BEKER PHOTOGRAPHY

Dream comes true for Bubbie, granddaughter

Shauna Pekar and her grandmother Esther Kurtzman became B'nai Mitzvah together at Congregation Darchei Noam, the only Reconstructionist synagogue in Toronto recently. The ceremony was the fulfillment of a lifelong dream for Kurtzman, who was not able to become a Bat Mitzvah as a young woman; it was Shauna's idea to share her Bat Mitzvah with her Bubbie.

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באו נאץ את טורונטו קדימה

Bonhams selling silver snatched, sold by Nazis

LONDON – A 17th century German silver-gilt table decoration in the form of a ship (£20,000-25,000) with a tragic and poignant history appears at auction in Bonhams Silver Sale in London on Nov. 3, 2010.

It is being sold by the Viennese-born Hungarian aristocrat Count Ferdinand Orssich de Slavetich, and is only one of two known surviving pieces from the fabulous Egger Silver collection confiscated by the Gestapo in Vienna in 1944 and sold anonymously by the Nazis at an auction in December of that year.

The spectacular 150-piece collection had been amassed by a Jewish couple, Fanny and Ernst Egger, who were arrested in 1944 and sent with the rest of their family to a concentration camp where they died sometime before the end of the war.

Ferdinand Orssich was Fanny's and Ernst's step grandson – his father, who was not Jewish, had married the Eggers' daughter. He acquired the ship when a friend of the Eggers bought it, unwittingly, at the '44 December auction, and returned it once he realized where it had come from.

Technically known as a nef, the ship was made by Jeronymus Gilg in Augsburg in the 1620s. Elaborately and beautifully decorated, it features six figures – four firing rifles – at the rear of the rig and two further figures in the rigging and is raised on four wheels so it can be rolled along the table.

The only other piece from the Egger collection ever to have resurfaced was a silver cup found in a Viennese museum by an Austrian Committee investigating art works in public hands stolen during World War II. It was returned to the family but all the other pieces are presumed to be in private hands.