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Religious marriages status in Ontario law



Charles Wagner

Harry, 85, wants to marry 75-year-old Esther, but he does not want to lose his widower's pension. They agree not to obtain a marriage license or register the marriage, but instead to have only a ritual ceremony in a rabbi's office. Harry dies and his will leaves his assets to his children. Does only a religious marriage ceremony give Esther any rights to Harry's estate?

Esther's lawyers would argue that by virtue of the Succession Law Reform Act, a will is revoked by a legal marriage. When a person dies and he or she has no will then the person is said to die intestate. Under the laws of intestacy in Ontario Esther should get a preferential share of the estate (the first \$200,000) and a portion of the balance.

The lawyer for Harry's children would point to *Deborah v Deborah* 1999 CarswellOnt 5; 167 D.L.R. (4th) 759, 116 O.A.C. 196, 43 R.E.L. (4th) 179. This case went to the Ontario Court of Appeal, which ruled that a religious Jewish marriage alone would not qualify a spouse for property rights under the Family Law Act. Since the definition of "spouse" in the legislation that deals with revocation of wills by marriage (the Succession Law Reform Act) is virtually identical with the Family Law Act Harry's children would argue that a ritual marriage alone does not revoke Harry's will.

In the end, in my view, the issue would likely be decided on the basis of section 31 of the Marriage Act, R.S.O. 1990, c. M.3, which states: "If the parties to a marriage solemnized in good faith and intended to be in compliance with this Act...and after such solemnization have lived together and cohabited as a married couple, such marriage shall be deemed a valid marriage...." In *Deborah v Deborah* the court did not accept that the marriage was solemnized in good faith because they purposefully did not intend to be in compliance with the act. If Esther, in good faith, believed that her ritual marriage was being conducted pursuant to Ontario law and she lived with Harry as husband and wife, then it is arguable that the legislation would deem the union to be a valid marriage that would revoke the will.

Esther, as a common-law spouse, may still be entitled to spousal support as a dependant under the Succession Law Reform Act, as long as they had lived together as man and wife continuously for a period of not less than three years. Under the legislation, the court would determine the appropriate

amount of support by considering how Esther and Harry organized their relationship and her needs and circumstances.

Esther might also have a quantum meruit claim, if she could demonstrate that the estate has been unjustly enriched, that she suffered a corresponding loss and there was no requirement of law that the estate should receive such a benefit. For example, if Esther gave up her job to take care of Harry for the last five years of his life and she was unpaid for the service then she could try to make the argument that if not for her the estate would have had to institutionalize Harry at a cost of \$60,000 per year. She may argue that she did more than could normally be expected from a wife and that she lost earnings comparable to the unjust enrichment of the estate.

Despite the temptation to jump to conclusions, it would be a mistake to substitute this case review for substantive legal advice. Every case turns on its own specific set of facts and there is no replacement for hiring a competent solicitor whose own research, analysis and judgment should be canvassed before going to court.

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Danish proposal would ban male circumcision

JERUSALEM (JTA) — A proposal to ban male circumcision for children under the age of 15 could make its way to Denmark's parliament.

Female circumcision is already banned in Denmark.

Denmark's National Council for Children has circulated the proposal among Danish lawmakers in the last week, according to local Danish media. The country's Ethics Council has come out in support of the proposal. The proposal will now be considered by the parliament's medical committee, which can prevent the proposal from coming before the parliament.

There are about 7,000 Jews in Denmark, and 95 per cent have circumcised their sons, *Yediot Achronot* reported.

"If the law forbidding circumcision is ever passed in Denmark, Jews will have to leave the place they have been living in for hundreds of years," Denmark's Chief Rabbi Bent Lexner, a certified mohel, or ritual circumciser, told *Yediot Achronot*.

Court upholds restitution of Nazi-looted painting

NEW YORK (JTA) — A US federal appeals court ruled that a painting looted by the Nazis should remain with the estate of its original Jewish owner.

The US Circuit Court of Appeals in Boston ruled last Wednesday that the painting, *Girl from the Sabine Mountains*, should remain with the estate of art dealer Max

Stern, who lost about 400 works of art when the Nazis closed his Dusseldorf gallery in 1937.

A German baroness, Maria-Luise Bissonnette, of Providence, RI, had sought to recoup the painting, valued somewhere from \$67,000 to \$94,000. Bissonnette was ordered by a federal judge last year to return the painting to Stern's estate.

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