

Divorce and Inheritance in the Rabbinical Courts: Similarities and Differences

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Abstract

During the last several years, I conducted two studies at the Tel Aviv Rabbinical Court. One study included the analysis of 360 divorce files opened during 1997-1999. The other study included the analysis of 300 intestate and testate probate orders initiated in 2000, 2002 and 2004. The studies also included comparative samples from the relevant civil authorities, i.e., the Family Court and the Inheritance Registrar and interviews with the Director of the Rabbinical Courts, the Rabbinical Courts Legal Advisor, and three Rabbinical Judges.

In this paper I wish to point at the similarities and the differences in the praxis of the Rabbinical Court when dealing with divorce and when dealing with inheritance. In both consensual divorce and inheritance procedures, the Rabbinical Court provides a relatively cheap and efficient alternative to the one offered by the Family Court and the Inheritance Registrar. Moreover, unlike in the civil authorities handling divorce and inheritance, in the Rabbinical Court, this procedure can be initiated and handled by the parties without the assistance of a lawyer.

Notwithstanding the similarities in consensual procedures, the Rabbinical Court relates very differently to divorce disputes and inheritance conflicts. While in divorce disputes, the Rabbinical Court fights to preserve its authority and strives to deliver its independent rulings, it is reluctant to rule in inheritance disputes and prefers that the parties turn to the Family Court. One of the explanations to this reluctance is that the Rabbinical Judges do not wish to deliver rulings that will infringe upon wives' and daughters' equal inheritance rights, which they might have to do if they rule according to Jewish law. The desire to avoid rulings that are detrimental to women stands in stark contrast to the Rabbinical Court's refusal to adopt a judicial policy that will overcome the gendered discriminatory effects of Jewish divorce law.

I will offer two possible explanations for the differences in the Rabbinical Court's praxis in divorce and inheritance conflicts. One explanation is intrinsic to religious law regarding the consequences of civil rulings in divorce and inheritance cases; the other explanation is an institutional one, embedded in the competition between the religious and civil courts and the resources provided to each by Israeli law.

By comparing divorce and inheritance procedures within the Rabbinical Courts, I wish to contribute to our understanding of religious tribunals operating in democratic and multicultural environments.