

## **Disinheritance of Children in a Multicultural Society**

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Bequests of children from their parents present the paradigmatic case of inheritance practice, and more generally of gratuitous transfers. Most parents choose to divide their estate equally among their children. However, some cultures or religious rules consider women, and consequently daughters, to be unworthy heirs. Hebrew and Muslim law are relevant examples. How should the law respond to disinheritance based on discriminating elements? These religious rules can become part of the state law. In Israel, for example, religious courts have authority in estate cases, provided all the relevant parties consent. However, in this paper, I concentrate on disinheriting wills and not on rules imposed by the state.

Provided there is some level of testamentary freedom, a testator may choose to disinherit his daughters based on his religious belief or cultural custom. Such a will is formally immune from any scrutiny. Wills can be invalidated, though, if their provisions are against public policy. I suggest considering another possible legal mechanism for evaluating these wills. This option considers the conception of inheritance and parental obligation alongside with testator's freedom. It is not the discriminating nature of the will per se that is the reason for invalidating a particular will. Instead, the duties of the parent may limit her judgment, and consequently her cultural conviction. Some Common law countries impose flexible limitations on testamentary freedom that are meant to protect children from disinheritance. Inheritance is thus not perceived as the owner's sole prerogative. While not targeted to deal with cultural discriminating preferences, this cause of action may be used to tackle the problem. Instead of striking a general balance that prefers equality to freedom, or equality to custom, it instates a wider understanding of the function of inheritance.

In this paper I set out to examine this approach. It presents some difficulties. For example, even if we accept parental obligation as one basis for inheritance, there may be an exception when dealing with cultural or religious customs. Perhaps the daughter lived by these customs all her life, and therefore can be construed as accepting it. Such difficulties require a discussion of the foundation of parental obligations in inheritance law. As a case study, I examine the *Prakash v. Singh* case from British Columbia [(2006) BCSC 154], where the court modified a will that prescribed only token amounts to daughters in favor of sons as a result of the giver's religious conviction.