Survey of Recent Halakhic Periodical Literature

TORAH READING ON FAST DAYS

In the Nisan-Tammuz 5757 issue of *Or ha-Mizrah*, Rabbi Sholom Rivkin, Chief Rabbi of St. Louis, Missouri, presents an interesting query addressed to him by a resident of a home for senior citizens. The aged and infirm residents did not anticipate success in mustering the requisite quorum of persons who would refrain from food on the approaching Fast of Esther and realized they would be unable to read the Torah section designated for fast days. But, since the fast occurred on a Monday, they sought guidance with regard to whether they should proceed with the usual reading of the initial section of the forthcoming weekly portion. Rabbi Rivkin reports that, despite difficulties he had with the position, he hesitated to respond in the affirmative because of the view of R. Meir Arak, *Teshuvot Imrei Yosher*, II, no. 124, sec. 2, who rules that under such circumstances there should be no Torah reading. The identical question arises with some frequency in small congregations in which several worshippers are feeble or sickly. In a responsum describing such a situation, R. Abraham David Horowitz of Strasbourg, *Kinyan Torah be-Halakhah*, I, no. 119, also finds it difficult to rule contra the decision of *Imrei Yosher*.[1]

Imrei Yosher maintains that "since the reading of *Va-yehal* was ordained [for such occasions], when there are no fasters, there is no [Torah] reading." *Imrei Yosher* advances another consideration based upon the comments of *Teshuvot Hatam Sofer*, *Orah Hayyim*, no. 184, in support of his ruling. *Hatam Sofer* expresses reservations with regard to the basic premise that *Va-yehal* is not read on public fast days in the absence of a quorum of six persons fasting. *Hatam Sofer* suggests that this rule may apply only to fasts voluntarily undertaken by a group of individuals but that Torah reading on a public fast day is ordained for all by virtue of rabbinic decree. Hence, argues *Imrei Yosher*, even though this view was not definitively held even by *Hatam Sofer*, it nevertheless serves to generate significant doubt with regard to whether, in the absence of persons fasting, the appropriate reading on occasions on which the fast occurs on a Monday or Thursday is *Va-yehal* or the weekly section. Public reading of the Torah is accompanied by prononce-

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ment of blessings. Accordingly, since the section to be read is a matter of doubt, argues *Imrei Yosher*, the blessings may not be pronounced for fear that they may be prounounced in vain.

Left unexamined by *Imrei Yosher* is why both Torah sections should not be read in order to satisfy the doubt, but without the accompanying blessings. In a responsum devoted to an entirely different matter, R. Naphtali Zevi Yehudah Berlin (Netziv), *Teshuvot Meshiv Davar*, I, no. 16, marshals evidence showing that, as opposed to the Babylonian Talmud, the Palestinian Talmud maintains that rabbinic decree forbids any public reading of the Torah in the absence of the accompanying blessings.[2]

Nevertheless, *Imrei Yosher*'s view is contradicted by numerous other authorities. The earliest explicit reference to this question seems to be by the eighteenth-century Sephardic authority, R. Ishmael ben Abraham Isaac ha-Kohen, *Teshuvot Zera Emet*, *Orah Hayyim*, no. 86, s.v. *ve-gam*, who asserts that, under such circumstances, the appropriate section of the weekly portion should be read. R. Betzalel Stern, *Teshuvot be-Zel ha-Hokhmah*, I, no. 2, sec. 5, infers from the comment of a much earlier work, *Eliyahu Rabbah* 566:4, that this position was espoused by the author of that compendium. Unlike other authorities who require only six or seven fasting persons for the reading of *Va-yehal*, *Eliyahu Rabbah* asserts that the requisite quorum is ten such individuals. Nevertheless, he agrees that, for the morning reading on a fast day that occurs on a Monday or Thursday, six fasting individuals suffice "for there is no additional blessing" in supplanting the usual reading with the reading for a fast day. Rabbi Stern deduces that *Eliyahu Rabbah* must maintain that, absent a quorum of persons fasting, the weekly section must be read because, otherwise, there would indeed be an "additional blessing." A similar ruling is recorded by R. Abraham Argo'iti, *Yerekh Ya'akov*, *Orah Hayyim*, no. 45, in the name of earlier Sephardic scholars.

Imrei Yosher's position is clearly contradicted by the ruling of *Sha'arei Efrayim* 8:106, followed by *Kaf ha-Hayyim*, *Orah Hayyim* 666:8, and R. Chaim Pelaggi, *Sefer Hayyim* 36:7, with regard to a congregation of fasting individuals who, on a fast day that occurred on a Monday or Thursday, read the weekly section in error. Those authorities rule that, once the incorrect reading is begun, it need not be interrupted in order to read *Va-yehal*. Thus, they clearly maintain that the rabbinic ordinance concerning Torah reading on Monday and Thursday is not totally abrogated by virtue of the fast. Rather, rabbinic authorities simply allowed substitution of *Va-yehal* for the usual reading. That

analysis of the rabbinic enactment is clearly enunciated by R. Naphtali Zevi Yehudah Berlin, *Ha'amak She'elah*, *Parashat va-Yishlah*, sec. 33.[3] Hence those who are exempt from fasting or who do not read *Va-yehal* for any other reason remain obligated to read the otherwise designated section. Indeed, *Sha'arei Efrayim* draws attention to the fact that, as cited by *Tur Shulhan Arukh*, some authorities maintain that the weekly portion must always be read in conjunction with morning services on a Monday or Thursday. *Sha'arei Efrayim* describes the accepted practice of substituting *Va-yehal* as simply a custom with the result that the reading of the weekly portion suffices to satisfy the rabbinic requirement.

Rabbi Rivkin cites R. Shabbetai Lipshitz, in his commentary on *Sha'arei Efrayim*, *Sha'arei Rahamim* 8:67; *Avodat ha-Gershuni*,[4] quoted by R. Simchah ha-Levi Bamberger, *Zekher Simhah*, no. 70; and R. Abraham Chaim Noe, *Shenot Hayyim* (Jerusalem, 5781), chap. 21, sec. 6, who similarly espouse a position contrary to that of *Imrei Yosher*. *Imrei Yosher*'s position is also rejected by R. Chaim Pinchas Luria, *Meshiv Halakhah*, II, no. 14. Thus, in the absence of a quorum of fasters, the weight of authority requires the reading of the weekly Torah section when the fast day occurs on a Monday or Thursday.[5]

NOTES

1. Rabbi Horowitz cites *Teshuvot Maharam Shik*, *Orah Hayyim*, no. 290, who rules that a person who has eaten food less than the size of a dried date may be counted toward the necessary quorum for the purpose of Torah reading. He accordingly suggests that, if possible, such persons be advised to eat and drink small amounts during the early hours of the fast, with requisite intervals between each small portion of food and drink, so that *Va-yehal* may be read. That advice contradicts the well known view of R. Chaim Soloveitchik, recorded in *Hiddushei ha-Grah ve'ha-Griz al ha-Shas*, no. 45, who maintains that the sick are entirely excluded from the rabbinic decree regarding fasting and that a sick person who does fast has fulfilled no *mizvah* whatsoever. It follows from R. Chaim's position that a sick person, even though he may be fasting, cannot be counted toward the requisite quorum for reading *Va-yehal*. That view is not necesarily contradicted by *Maharam Shik* who addresses a situation involving, not a sick person, but persons in a locale in which cholera was prevalent. It was the accepted medical wisdom of the day that a person debilitated as the result of fasting was at an increased risk of contracting the disease. (See, for example, R. Shlomo Kluger, *Ha-Elef Lekha Shlomoh*, *Orah Hayyim*, no. 351.) A person who suffers from no malady but eats on a fast day in order to ward off disease, although he may certainly do so, is exempt by reason of *force majeure* rather than by virtue of total exclusion from the rabbinic decree. A similar distinction between a person actually ill and a person who must take prophylactic action to avert danger was made by R. Chaim in a different context. See R. Moshe Sternbuch, *Mo'adim*

u-Zemanim, I, no. 60. It should also be noted that, with regard to calling only a fasting person to the reading of the Torah, *Mishnah Berurah* 567:20 declares that a person who intends to break his fast later in the day is not considered to be fasting. *Bi'ur Halakhah* 565:3 makes the same observation with regard to a quorum for recitation of the *anenu* prayer.

2. Parenthetically, it should be noted that this responsum addresses an issue presented by a benevolent society in Cincinnati whose members wished to engage in such public Torah reading in conjunction with festivites marking the dedication of a new Holy Ark. *Meshiv Davar* declares that, even absent a formal prohibition, such public reading is "foolishness and hubris (*shetut ve-gasut ruah*)." The implication of Netziv's comment for Torah reading by women's prayer groups is self-evident.
3. *Ha'amek She'elah*, in stating that reading the portion of the following week is not an asolute obligation (*le-ikuva*), seems to advance the view that, unlike the earlier ordinance requiring consecutive readings on each *Shabbat*, Ezra's ordinance recorded in *Bava Kamma* 82a, amplifying a still earlier edict requiring Torah reading on Monday and Thursday so that a three-day period not elapse without Torah, did not mandate the reading of any particular section. Accordingly, the reading of a section of the weekly portion is simply a customary practice. The reading of *Va-yehal* on communal fast days is a later practice based upon *Masekhet Soferim* 17:7. Hence the "custom" that arose with regard to reading *Va-yehal* on all fast days, including those that occur on Monday and Thursday, as the practice is categorized by *Sha'arei Efrayim*, is readily understandable. Otherwise, it is difficult to comprehend how the earlier ordinance could have been abrogated without nullification by a *Bet Din* "greater in wisdom and number" and supplanted by a different practice. Cf., however, *Teshuvot Zera Emet*, *Orah Hayyim*, no. 86, s.v. *ibra*, who explicitly declares that the original ordinance required reading from the portion of the following *Shabbat*.
4. The reference seems to be to *Teshuvot Avodat ha-Gershuni*, no. 57. If so, the citation by R. Simchah Bamberger in a separate brief responsum that was appended to *Zekher Simhah* by his grandson is presented out of context. *Avodat Gershuni*'s ruling was formulated with regard to the voluntary fasts of *Bahab* (Monday and Thursday) subsequent to *Sukkot* and *Pesah*. In that context, *Avodat ha-Gershuni* states unexceptionably that, in the absence of a quorum of persons fasting, the usual section of the week should be read rather than *Va-yehal*. The reason that one might think otherwise is presumably the consideration presented *supra*, note 3, i.e., that the basic ordinance allows for the reading of any Torah section. *Avodat ha-Gershuni* does not necessarily disagree with that thesis; his ruling may simply reflect the fact that there exists no custom to supplant the usual reading of the weekly portion on a fast that is not talmudically ordained unless there is a quorum of ten persons fasting.
5. Yet another, but rather strange, opinion was advanced by a Tunisian scholar, R. Moshe Satrug, *Yashiv Mosheh* (Djerba, 5684), no. 149. *Yashiv Mosheh* rules that, if there is no quorum of fasters, the selection from the weekly portion should be read. However, if *Va-yehal* is read with a proper quorum in another synagogue in the same city then, on a Monday or Thursday, all synagogues should read *Va-yehal* in order that they not transgress the injunction against establishing separate assemblies (*lo titgodedu*).

LIFE INSURANCE AND THE KETUBAH

In our society it is commonplace for husbands to purchase life insurance policies and to name their wives as beneficiaries. The laudable motivation is to provide funds for the support of a wife who becomes bereft of her husband and at the same time loses her source of financial support. The halakhic question that arises is whether a wife who is the beneficiary of a life insurance policy of significant value may also claim payment from her husband's estate of the obligations arising from her *ketubah* or whether that claim is to be deemed to have been satisfied by the proceeds of the insurance policy.

Although the issue may elude the attention of the parties, it is present in a number of cases, particularly in instances of second marriages, in which financial disputes arise between the widow and the husband's heirs. Surprisingly, there appears to be but a single published discussion of this question. That analysis, authored by a Sephardic scholar, R. Yehudah Chaim ha-Kohen Masalton, is included in his *Ve-Zot le-Yehudah* (Cairo, 5697), *Even ha-Ezer*, no. 8.

The details of the case brought before Rabbi Masalton and the *Bet Din* of Cairo are rather complex. The policy in question was for the sum of five hundred guineas payable to the policyholder twenty years after the date of issue or, in the event of his death in the interim, to the insured's wife immediately upon his death.

In Ashkenazic communities, the amount of the *tosefet ketubah*, i.e., the sum to which the groom obligates himself in addition to the amount prescribed by statute, is standard.[1] In the case of a virgin bride, standard practice is to place a value of one hundred silver *zekukim* upon the property brought to the marriage by the bride as a dowry. That sum is returnable to the bride upon termination of the marriage either by death of the husband or divorce. The groom customarily assumes an obligation to return that sum together with an additional one hundred silver *zekukim* for a total of two hundred silver *zekukim* in addition[2] to the statutory two hundred *zuzim*.[3] In many Sephardic communities, the groom's assumption of an obligation in the form of *tosefet ketubah* is subject to voluntary adjustment and/or negotiation with the result that the value of the obligation represented by the *ketubah* may vary from case to case.

Coincidentally or by design, in the case under discussion, the widow's *ketubah* declared an obligation in the sum of five hundred guineas — precisely the face value of the insurance policy. That sum was promptly paid to the widow by the insurance company. The matter was

further complicated by a local custom that was acknowledged by Rabbi Masalton as an implied condition of the agreement memorialized in the *ketubah*. Local custom denied recovery of the *tosefet ketubah* in whole or in part unless an equal amount remained in the estate for distribution to the heirs.[4] In the case under discussion, the total value of the estate was two hundred and fifty guineas.

The heirs contended that the insurance policy did not represent a gift to the wife but was designed to assure payment of the *ketubah*. But, they further claimed, since the total value of the estate, including the insurance proceeds, totaled seven hundred and fifty guineas, the widow was entitled to no more than fifty percent, i.e., three hundred and seventy-five guineas. Accordingly, not only did they decline to make any additional payment to the widow, but they also demanded that the widow turn over to them the sum of one hundred and twenty-five guineas, representing the difference between fifty percent of the estate (inclusive of the proceeds of the insurance policy) and the amount she had collected from the insurance company.

Rabbi Masalton correctly notes that designation of a beneficiary on an insurance policy could not constitute a valid conveyance of the value of the policy for the obvious reason that the policy does not acquire that value until the death of the insured. Hence, any such conveyance would fail by reason of the fact that the property to be conveyed is not yet in existence at the time of the conveyance (*davar she-lo ba le-olam*).[5] However, Rabbi Masalton notes that although immediate transfer of title is not possible, a person can validly obligate himself to deliver an object of value that is not yet in existence.[6] Nevertheless, citing *Teshuvot R. Akiva Eger*, no. 141,[7] Rabbi Masalton argues that if a person has obligated himself to deliver property not yet in existence, e.g., the fruit of a tree, but dies before the fruit comes into existence, his heirs are under no obligation to transfer the property to the decedent's designee. Two theories have been advanced in explanation of why heirs are not bound to consummate the conveyance of the title even though the decedent, were he alive, would be obligated to do so: (1) since transfer of title has not been consummated, the obligation is personal in nature and, in effect, dies together with the obligee; or (2) even if a lien attaches upon the property when the property comes into existence, such a lien cannot be generated in cases of inheritance since absolute title vests in the heirs prior to attachment of the transferee's lien upon the fruit and thereby preempts such attachment. Applying that principle, Rabbi Masalton argues that, since the policy acquires the nature of property only upon the death of the insured, the property

does not vest in the policyholders but in the heirs who are not bound by the policyholder's undertaking.

Rabbi Masalton's characterization of an insurance contract as an undertaking by the policyholder obligating himself to deliver the proceeds to the beneficiary is not borne out by the facts. In actuality, the policyholder does not bind himself to the beneficiary in any way. Indeed, a policyholder is usually at liberty to change beneficiaries or even to surrender the policy.

Proper analysis of the halakhic issues depends upon correct understanding of the nature of life insurance policies. An insurance policy constitutes nothing more than a contract between the policyholder and the insurance company with payment due to the policyholder himself in form of the cash value of the policy upon surrender (or, for contemporary policies, payment of the face value upon survival to age 99) or, upon death of the insured, payment of the face value either to his estate or to a designated beneficiary. Thus, the original question remains: In directing the insurance company to make payment to his wife upon his demise, did the husband direct the insurance company to make an *ex gratia* payment on his behalf or did the husband direct the insurance company to tender payment in satisfaction of the claim represented by the *ketubah*?

Rabbi Masalton advances a second line of reasoning that is relevant even upon an accurate analysis of the character of an insurance policy. He argues that, if indeed it was the husband's intent to make a gift of the proceeds to his wife, the gift is governed by the halakhic provisions stemming from the principle "It is a *mizvah* to fulfill the words of the deceased" as recorded in *Shulhan Arukh*, *Hoshen Mishpat* 252:62 and *Even ha- Ezer* 54:1. In light of the many authorities who maintain that "It is a *mizvah* to fulfill the words of the deceased" even with regard to property that comes into possession of the estate after the testator's death, Rabbi Masalton argues that the heirs are under obligation to fulfill those wishes. However, in the case brought before him, he questions whether that was indeed the husband's intent since, under the terms of the policy, had the husband survived for a period of twenty years, payment would have been made to him rather than to the wife.[8] Accordingly, argues Rabbi Masalton, it is likely that the husband did not intend the policy to be a gift but to provide assurance of payment of the *ketubah*. Thus, Rabbi Masalton's reasoning would lead to the conclusion that a typical life insurance policy that provides for payment only upon death of the insured is to be construed as a gift to the wife. Nevertheless, in the concluding section of his responsum, Rabbi Masal-

ton asserts that in a city in which the claim for payment of the *tosefet ketubah* might entirely deplete an estate and effectively disinherit the heirs, it is unthinkable that a husband would intend his wife to be the beneficiary of his life insurance policy and collect her *ketubah* as well. Moreover, asserts Rabbi Masalton, many authorities maintain that the principle "It is a *mizvah* to fulfill the words of the deceased" is applicable only in situations in which funds have been deposited with a bailee with specific instructions for disbursement after death. He further cites authorities who, accordingly maintain that "It is a *mizvah* to fulfill the words of the deceased" does not apply to property not yet in existence when such a directive is issued.[9] Furthermore, *Mordekhai*, *Bava Batra*, sec. 592, rules that a deposit accompanied by an express declaration, "If I need the funds, return them to me; but if I die, give them to my son" does not qualify as a valid testament. The rationale underlying *Mordekhai*'s ruling is that "It is a *mizvah* to fulfill the words of the deceased" applies only to situations in which designation of a beneficiary is absolute. Rabbi Masalton argues that, even if the provision is not spelled out in the insurance contract, since it is commonly known that a policy can be surrendered for its cash value, every insurance policy, is, in effect, predicated upon a specific reservation allowing the policyholder to reclaim its cash value and hence the heirs are under no obligation to "fulfill the words of the deceased."

Rabbi Masalton reports that, because of the element of doubt involved, the *Bet Din* allowed the widow to retain the proceeds of the insurance policy that were already in her possession but disallowed any additional claim for satisfaction of the *ketubah*.

As is evident from the foregoing discussion, adjudication of this issue involves two separate questions: (1) Whether the intent of the husband in purchasing an insurance policy is to assure payment of the *ketubah* or whether it is intended as an entirely separate *ex gratia* provision for his wife. (2) If the latter, whether the heirs have a claim for recovery of the proceeds either from the insurance company or from the widow on the grounds that (a) there was no *inter vivos* gift and (b) they are for some reason not obligated to "fulfill the words of the deceased."

It seems to this writer that the first issue may be resolved on the basis of the general halakhic principle that possession by a creditor of an instrument of indebtedness is *prima facia* evidence of non-payment of the debt. As expressed by the *Gemara*, *Bava Batra* 70a, if the debt has indeed been paid, "What is your note doing in my hand" (*shetarekha be-yadi ma'i ba'i*)? That presumption represents an assessment of hu-

man behavior. A debtor who has satisfied a debt simply does not allow a creditor to retain a promissory note that constitutes evidence of ongoing indebtedness. The debtor will decline to discharge the debt unless and until the promissory note is returned to him. A *ketubah* is simply a particular type of promissory note. A husband who makes provision for payment of the *ketubah* during his own lifetime is entitled to recover the *ketubah*. Indeed, in discussing what is to be done with a *ketubah* that originally belonged to a woman who is still married to the man named in that instrument but which has been lost and subsequently found by a stranger, the *Gemara*, *Bava Mezi'a* 7b, considers the possibility that the *ketubah* may have been lost by the husband who may have recovered the *ketubah* from his wife[10] upon delivery to her of a "bundle" of coins which she can later apply to payment of the *ketubah* when it becomes due. It would clearly be inappropriate for the wife to retain her *ketubah* once the debt it represents has been satisfied lest it be used to claim the debt a second time.

Assuredly, as noted by the commentaries on *Bava Mezi'a* 7b, a creditor may at times require a debtor to deposit a pledge as security for payment even if the creditor holds a promissory note. Accordingly, if the insurance policy is designed only as security in the event of failure of the heirs to pay the value of the *ketubah*, possession of that instrument by the wife does not constitute evidence of non-payment. Unlike a bundle of coins which are to be returned upon payment of the *ketubah*, the proceeds of an insurance policy would constitute actual payment of the *ketubah* rather than security for future payment. Thus it is certainly arguable that the husband would not name his wife as beneficiary and also permit her to retain her *ketubah* unless he intends the insurance proceeds to be a gift unrelated to payment of the *ketubah*.

It is of course true that, were the husband to recover the *ketubah* on the claim that the obligations of the *ketubah* have been satisfied by purchase of an insurance policy, the couple would be forbidden to engage in marital relations since, in the absence of an instrument demonstrating the husband's indebtedness, there is nothing to prevent him from acting precipitously in divorcing his wife.[11] However, that consideration does not defeat the underlying point, *viz.*, that a person does not allow a creditor to retain evidence of a debt that has been satisfied. Hence, a husband would not satisfy the obligations of which the *ketubah* serves as evidence so long as his wife retains the *ketubah* for any reason. However, since the wife must retain possession of the *ketubah* so that the couple may legitimately continue to engage in marital relations, the husband, if he intended the insurance proceeds to be in lieu

of payment of the *ketubah*, would perforce demand a receipt or acknowledgment of that arrangement upon naming his wife as beneficiary.[12] It therefore follows that, if the husband names his wife as beneficiary on an insurance policy and also allows her to retain possession of the *ketubah* without obtaining such an acknowledgment, he does not intend the insurance proceeds to serve as satisfaction of the claims represented by the *ketubah*. Contrary to Rabbi Masalton's contention, in our society there is certainly no contradictory presumption that a husband would refrain from any and all acts that would serve completely to deprive his heirs of any share of his estate.[13]

If the insurance policy is regarded as a gift to the wife, it seems to this writer that there is no reason to regard the proceeds available upon death of the insured as a deposit with the insurance company with accompanying instructions for delivery to the beneficiary. Were that the case, discussion of the applicability of the obligation to "fulfill the words of the deceased" would be relevant. But, in point of fact, the funds do not represent a deposit that is returned upon death of the insured but constitute payment of indebtedness incurred by the insurance company in consideration of the premiums paid. When a beneficiary is named at the time the policy is issued the indebtedness is assumed by the insurance company in a conditional manner, i.e., the indebtedness is incurred directly in favor of the beneficiary but is due and owing only upon death of the insured unless the policy is surrendered by the insured in which case the indebtedness is limited to the cash value and is in favor of the insured.[14] Since it is the insurance company that stands as a debtor vis-a-vis the beneficiary,[15] the heirs have no standing in the matter. Accordingly, in the view of this writer, the widow's claim for payment of her *ketubah* should be allowed.

NOTES

1. See *Tur Shulhan Arukh*, *Even ha-Ezer*, end of section 66 and *Bah, ad locum.*
2. See *Drishah, Even ha-Ezer* 66:4. However, *Bah*, *Even ha-Ezer*, sec. 66, s.v. *ve-akhshav* and *ibid.*, *kuntres aharon*, maintains that the two hundred *zuzim* are included in the valuation of the dowry.
3. For a discussion of various opinions regarding the weight, and hence the value, of these coins see R. Judah Kelemer's excellent analysis of the text of the *ketubah* and the principles upon which it is based, *Tosefet Ketubah* (Jerusalem, 5750), pp. 13-16.
4. That custom has its origin in a *takkanah* promulgated in some Spanish communities, particularly Molina, during the medieval period. As reported

by *Teshuvot ha-Rosh, kelal* 55, no. 8, the widow was entitled to return of her dowry and, in addition, a maximum of fifty percent of the balance of the estate. Cf., *Encyclopedia Judaica* (Jerusalem, 1971), XV, 478.

5. See *Shulhan Arukh, Hoshen Mishpat* 209:4. Rabbi Masalton seems to be under the impression that designation of a beneficiary constitutes a conveyance for purposes of civil law. That assumption is inaccurate as evidenced in part by the fact that designation of a beneficiary is revocable. There is nothing in either the language or the nature of an insurance policy to indicate that it constitutes a revocable or conditional conveyance, particularly since the insured is generally described as the owner of the policy. It would be somewhat more cogent to construe the naming of a beneficiary as a conveyance to the beneficiary in situations in which the beneficiary is also designated as the owner of the policy. However, as will be shown later, even in that case, designation of a beneficiary does not constitute a conveyance by the insured but assumption of an obligation vis-a-vis the beneficiary on the part of the insurance company.

Assuming, *arguendo*, that the insurance contract contains language of conveyance to the owner rather than language of obligation, whether or not, for purposes of Jewish law, execution of such an instrument constitutes a valid conveyance, with regard to property not yet in existence is a matter of controversy. The *kinyan*, or mode of transfer represented by designation of a beneficiary, is not one of the forms of *kinyan* expressly recognized by Halakhah. Rather, it must be regarded as being in the nature of *situmta*, i.e., the custom and usage of merchants. Some authorities maintain that *situmta* is effective even with regard to property not yet in existence; others maintain that the limitation against conveying property not yet in one's possession applies to *situmta* as well. See sources cited by *Pithei Teshuvah, Hoshen Mishpat* 201:2 . That controversy appears to center upon the nature of *situmta*: Is *situmta* simply an additional mode of generating absolute determination (*gemirat da'at*) or evidence that such has occurred, or does *situmta* represent a rabbinic ordinance validating transfer of title even in the absence of formal *kinyan*? If the former, there are no grounds to assume that *situmta* is effective in situations in which ordinary modes of conveyance are not; if the latter, a rabbinic edict might give effect to a conveyance in the form of *situmta* even for the conveyance of property with regard to which biblical conveyance is impossible. Cf., *Teshuvot Rivash*, no. 308; *Teshuvot ha-Rosh, kelal*, 12, no. 3; *Teshuvot ha-Rashbash, Tikkun Soferim, din asmakhta*; *Teshuvot Maharshal*, no. 34; *Yam shel Shlomoh, Bava Kamma* 8:60; *Teshuvot Rema*, no. 134; *Ma'aseh Hiyyah*, no. 14; *Teshuvot Hatam Sofer*, *Hoshen Mishpat*, no. 66 sec. 2; and *Hukkat Mishpat*, *Hilkhot Mekhirah* 1:5 and *mekorot, ibid.*, sec. 11, as well as *addenda*, no.1.

However, as will be explained in the text, a life insurance policy is not a conveyance of property, but represents simply an obligation on the part of the insurance company to pay a sum of money at a certain time (i.e., upon the death of the insured) to the individual designated by the owner. Naming the beneficiary as the owner means only that the beneficiary alone has the power to designate an alternate beneficiary.

Rabbi Masalton also advances the argument that no *kinyan* in neces-

sary because, since the proceeds of the policy are expressly made payable only upon death of the policyholder, the gift can be construed as *mortis causa* (*mezaveh mahmat mitah*). To be sure, since the rabbinic enactment giving effect to such verbal gifts even in the absence of valid *kinyan* was born of a concern that aggravation caused by inability physically to consummate the transfer might hasten death, most authorities maintain that the rabbinic legislation is limited to gravely ill persons, and to persons making such gifts in actual contemplation of death, e.g., a person about to be executed or a person preparing to embark on a sea voyage or desert journey. However, *Mordekhai, Bava Mezi'a*, sec. 254, cites the opinion of Maharam who maintains that all gifts predicated upon death are governed by the rabbinic ordinance governing gifts *mortis causa*. Accordingly, Rabbi Masalton suggests that the widow who is in possession of the funds might rely upon the authorities who accept the ruling of Maharam. However, if, as must be assumed, an insurance policy is not a conveyance of property to the beneficiary but a directive concerning payment of a debt, that controversy is not relevant to the resolution of the issue.

6. See *Pithei Teshuvah, Hoshen Mishpat* 209:3.
7. For additional sources see *Hukkat Mishpat, Hilkhot Meikhirah* 30:4 and *ibid., bi'urim*, secs. 13 and 17. Opposing views, including that of *Teshuvot Mahara Sason,* no. 133, maintain that heirs are bound even in such circumstances. See *Hukkat Mishapt, bi'urim, loc.cit.*
8. Rabbi Masalton categorizes this as a "self-evident assessment" (*umdena demukhah*) of the husband's intention. He further contends that any ambiguity must be interpreted in favor of the heirs and cites *Teshuvot Maharashdam, Hoshen Mishpat*, no.337 and *Ozen Aharon*, p. 38, to that effect.
9. See *Knesset ha-Gedolah, Hoshen Mishpat* 252:32 and *Sedei Hemed, Kuntres ha-Kelalim, Ma'arekhet ha-Mem*, no. 219, s.v. *ve-od.*
10. Cf., however, Rashba and Ritva, in their commentaries *ad locum*, who understand the concern to be that the husband may have delivered the bundle of coins subsequent to loss of the *ketubah* so that the couple might be permitted to continue to engage in marital relations.
11. This is not a concern in a situation in which the husband deposits chattel to satisfy the claim of the *ketubah* since, under such circumstances, he retains the right of management as well as the right to usufruct. Both rights would be lost to him upon divorce and hence those interests serve to prevent precipitous divorce. See *Tosafot, Ketubot* 56b, s.v. *aval.* Moreover, deposit of chattel serves to permit marital relations only on a temporary basis. See Rema, *Even ha-Ezer* 66:2.
12. Since the insurance is payable only upon death of the husband, retention of the *ketubah* by the wife upon such acknowledgment serves its intended purpose, i.e., to discourage precipitous divorce by virtue of the fact that, in the event of divorce, payment of the *ketubah* would be claimed immediately.
13. Such a presumption is indeed reflected in the discussion of the Gemara, *Bava Batra* 131b, but is posited only in the context of construction of testamentary language.
14. According to this analysis, the halakhic validity of a change of beneficiary is

somewhat problematic. It is, in effect, a perfectly straightforward cancellation of the company's debt to the original beneficiary with resultant liability solely to the policyholder and his estate. The designation of a new beneficiary must then be viewed as a conditional assignment of the debt by the policyholder to the substituted beneficiary. That assignment requires a *kinyan*. Execution of the forms designed to achieve that end may be regarded as a *kinyan* in the from of *situmta*.

15. There is no reason to construe an insurance contract as an obligation solely to the policyholder but which gives rise to a debt on the part of the insurance company only upon the demise of the insured and to construe designation of a beneficiary as an assignment of that debt to a third party. Were that the case, such assignment, since it becomes effective only upon death, would be valid only as a gift *mortis causa*. Whether such a gift, predicated upon death but made by a person in good health, is valid as a gift *mortis causa* is a matter of controversy. See *supra*, note 5. Moreover, as Rabbi Masalton notes, most authorities maintain that heirs are not obligated to "fulfill the words of the deceased" with regard to property interests that do not vest during the life of the deceased. Furthermore, most insurance companies are owned by non-Jews. Rema, *Hoshen Mishpat* 253:20, rules that a debt owed by a non-Jew, even if secured by a pledge or promissory note, cannot be conveyed *mortis causa*.