

# The Mosaic-Talmudic Right of Succession

*By Prof. Fritz Enderlein, Attorney-at-Law, Potsdam*

125 years ago, Rabbi Moses Bloch wrote the following in his book, *The Mosaic-Talmudic Right of inheritance*: "For Judaism, 'the law, the truth and the peace' represent the pillars of moral world creation. Therefore, Judaism recognizes – as the law in general – also the law of inheritance as divine and recommends that its confessors keep these religious rules holy."<sup>1</sup> This divine right of inheritance was revealed to Moses.<sup>2</sup> It corresponds to the intestate succession specified in the German Civil Code (apart from the fact that daughters are entitled to inherit only if there are no surviving sons). When there are no surviving children of the first or second order, the heirs of the third order take their place. These are the grandparents of the deceased and their descendants (§ 1926 German Civil Code/BGB), in other words, the grandnephews and nieces.

The Jewish Claims Conference (JCC) is a secular, not a religious organization. Nevertheless, one would expect that, as representatives of Jewish victims of Nazi persecution, the JCC should adhere to the principles of the Mosaic Right of inheritance. Unfortunately, this is not the case.

I have focused on these issues in two previous articles: "What the guidelines and deadlines of the JCC Goodwill Program are all about" (*Jüdische Zeitung*, August 2008) and "The Claims Conference and German inheritance law" (*Jüdische Zeitung*, September 2011). Both of these articles deal with the JCC Goodwill Program that ended in 2004.

In the meantime, the JCC has established new rules for its two-year "Late Applicants Fund" program.<sup>3</sup> Unfortunately, these rules do not change the situation for grandnephews and nieces.<sup>4</sup> Because, in addition to the immediate testamentary heirs, only the direct descendants of the testator, up to the great-grandchildren and their spouses and siblings of the testator and their children (including spouses), but not their grandchildren (grandnephews and nieces) are entitled to an inheritance.

It is important to point out that the JCC had originally promised to let all heirs participate in the Goodwill Fund who were entitled to file a claim under the Property Act (and under German inheritance law). This group would also include the successors of the testamentary heirs. Excluding these people leads to results that are incomprehensible to those concerned. The following is one example:

Mr. L. designated his wife R. as a testamentary heir. She was later murdered in a concentration camp. R. brought her daughter M. into the marriage. The girl was raised by L. like his own child. But as an heiress, M. does not qualify because she is not an immediate testamentary heir. There is little hope that the JCC will change its position and adhere to the divine Jewish Right of Inheritance. But there is a chance that it will be forced to do so. The exclusion of heirs of the third order plays a role in proceedings before the Federal Court of Justice (BGH, III ZR 99/15).

<sup>1</sup> The book was published in Budapest in 1890 and is available (in German) on Google <https://archive.org/stream/dasmosaischtalmOOhungoog>

<sup>2</sup> See Moses 4/27

<sup>3</sup> Only 25% for late applicants? *Jüdische Zeitung*, May 2013.

<sup>4</sup> <http://www.claimscon.org/?url=LAF>