בס"ד

ליקוטי ופסקי הלכות

"חוקי חיים"

ותלמדם "חוקי חיים" לעשות רצונך בלבב שלם

חוקי חיים

שע"י "חדר הוראה" שכונת מנחת יצחק פעיה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

Halochos compiled by HaRav Chaim Bleier – Translated from the Hebrew edition by R' Zerachya Shicker

Halochos of

Daughter's Inheritance

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Halachos of Inheritance

Knowing the Basics of the Halachos of Inheritance

1. **Delicate topic.** It is necessary for everyone to know at least the basics and principles of the halachos of inheritance. People are very sensitive about this topic: they don't want to think about the time after their long years are up, and children don't want to raise the topic of inheritance to their parents for obvious reasons. Even people who understand the importance of this topic postpone dealing with it until an unspecified time since it is not too relevant before then. Often, the topic ends up getting completely ignored. Sadly, we have seen thousands of cases recently of people who passed away suddenly, lo aleinu, without time to prepare properly and correctly.
2. **Causes arguments.** When nothing is written and arranged, there are many consequences. Many families – including some of the most esteemed ones – have been divided by arguments and conflicts, sometimes for several generations, that started from an inheritance that was not distributed to their satisfaction. In these cases, the deceased turns in his grave and cannot rest knowing that his descendants are not at peace with each other.
3. **In accordance with the Torah.** The halachos of inheritance according to the Torah are different than secular inheritance law. This too causes many uncertainties. A person can write a legal will with a lawyer and think everything is perfectly in order when his will is sometimes meaningless according to the Torah, and most of the time also contrary to halachah. Then, when the descendants go to beis din for a decision, they leave with a psak that is completely at odds with the text of the will. As a result, one side always leaves disappointed and embittered.
4. **Writing a will.** The sefarim hakedoshim say that writing a will is actually a segulah for a long life. [It is also a segulah for one's children to dance happily together at their children's weddings…] It is therefore advisable for everyone who is 50 (הגר"ש קלוגר הובא במקור חיים, שפירא) and above to sit down with a rav who specializes in this area, beis din, or a lawyer who knows how to write halachic wills; seek advice to find out what the right thing is to do; and write a clear will. A person who does this helps himself and his descendants, saves his children from much anguish, and saves his neshamah from anguish in the Next World. [If someone is concerned people will be surprised that he is suddenly writing a will, he can always blame it on the fact that he saw in this week's Chukai Chaim that one should write a will…]
5. Thus, we are presenting to the general public some background, concepts, and important halachos about inheritances. Even for people to whom this is not relevant whatsoever, to whom it is potentially relevant but we daven that it will not be relevant in practice, learning these halachos fulfills the mitzvah to learn and know the Torah. If it will prevent just one argument in Klal Yisroel, we will have benefited.

Daughter's Inheritance According to Halachah

Daughter Does Not Inherit When There Are Sons

6. According to the Torah, a daughter does not inherit when there are sons. I.e., if there is a son, sons, or offspring of a son or sons, the daughter or daughters do not inherit anything. This is derived from a posuk in the episode of the daughters of Tzlofchad in Parshas Pinchas (כ"ז, ח): "When a man dies and does not have a son, you shall transfer his inheritance to his daughter." This shows that if the deceased has a son, his daughter doesn't inherit anything (כתובות נ"ב:, חו"מ רע"ו ס"א).
7. **Son's son/daughter vs. a daughter.** Thus, if the deceased's son died in his lifetime, lo aleinu, the son's son or daughter inherits their grandfather's estate in place of their father and takes precedence over the deceased's daughter (שם ס"ב). If the grandfather also left behind sons, the late son's son or daughter takes their father's place and divides the grandfather's estate evenly with the rest of his sons.
8. **Sons, bechor, daughters.** If someone left behind multiple sons, they divide the inheritance equally among themselves; the daughters get nothing. If there is a bechor, he gets twice as much as each of the other sons. E.g., if there are 4 sons, one of them a bechor, and 3 daughters, only the sons inherit. They divide the estate into 5 parts: the bechor gets $^2/_5$, the other sons get $^1/_5$ each, and the daughters get nothing.

"Tenth of Nechasim"

9. Although mideoraisa a daughter does not inherit, Chazal decreed that when one leaves behind one or more unmarried daughters, his sons must provide dowry money from the inheritance after subtracting the father's debts so that their sister(s) will be able to get married (שו"ע אהע"ז סי' קי"ג ס"ו). This is called "parnassah" (כתובות דף ס"ח ע"א), "parnassas habas" (טור ריש סי' קי"ג), or "isur nechasim."
10. If there are multiple unmarried daughters, the first one gets 1/10 of the estate, the next one gets 1/10 of what is left, and so forth (שו"ע שם ס"ד).
11. The amount of parnassas habas depends on the father's property at the time of his death and on an estimate of how much the father would pay to marry off his daughter (שו"ע סי' קי"ד ס"א), e.g., if he already married off a daughter when he was alive (ט"ז סק"א). The estimate could be more than 1/10 the value of his property (רמ"א שם ס"ב דיעה שניה), or at least up to 1/10 the value of the property he left behind (רמ"א בדיעה ראשונה).

Ways to Give to a Daughter

Reasons to Also Give to Daughters

12. Although mideoraisa a daughter does not inherit when there is a son, different factors in earlier generations created a need to give a daughter a share of the inheritance, either so that people would be willing to marry her (שו"ת מהר"ם מינץ סי' מ"ז); to make her beloved to her husband (נחלת שבעה כ"א ס"ד אות ב'); because a daughter works harder than a son to meet the father's needs, especially in his old age, and he wants to express his gratitude to her (דעזר"ק לבעלי תוס' כי תצא כ"א ט"ז, בית דוד סי' קל"ז); or other reasons. The main reason, which is very relevant nowadays, is so that the sons and daughters don't fight after their father's passing (כמבואר ברמ"א חו"מ סי' רנ"ז ס"ב).

Worded as an Inheritance

13. If one wants to leave something for his daughters and writes in his will that they should also inherit, his words are meaningless since he stipulated against the Torah, which says that only sons inherit. Thus, he must transfer property to them while he is alive with halachically valid kinyanim since a kinyan cannot take effect after his death.

Gift While He Is Alive

14. If a man would give his daughters property as a gift in his lifetime, that property would immediately and entirely belong to them, and there is always a concern that he will need it but no longer own it. Also, if the property is entirely theirs, they also get all future yields ["peiros"], and most of the time the father doesn't want that to happen yet. Furthermore, a general gift he gives now doesn't do anything for property he receives or buys later. Therefore, Chazal set up multiple valid ways for a father to benefit his daughters, as will be explained.
15. **Take effect after death.** Even if a father says he is giving something to his daughters with a kinyan now that should not take effect until after his death, that doesn't work. Even when a kinyan is made with money or a shtar, which are still around later, the giver must be alive and sane at the time the kinyan takes effect (תוס' ב"ב קל"ז:). Also, after his death the property isn't his to give to his daughters – it belongs to the heirs.

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16. **Main kinyan now, yields after death.** There was a time when people would give their daughters property with a kinyan that took effect on the property right then but on its yields only after their death. I.e., the daughters owned the physical property from the moment it was given, but the father retained the rights to the property's yields until the day of his death. He would also limit the kinyan to properties that would remain in his possession at the time of his death, allowing himself to sell or transfer properties as he wished while alive. He also retained the right to retract the gift until his death (רמ"א חו"מ רנ"ז ס"א).
17. However, even this method only includes property a person had when he gave the gift, not property he receives later, which was nonexistent at the time of the gift ["lo ba le'olam"] (רמ"א חו"מ סי' רפ"א ס"ז). It also does not include debts, money in the bank, and the like.

"Shtar Chatzi Zachar"

18. To enable a father to give a gift while alive and avoid issues of things not yet in existence, they instituted in olden-day Europe a "shtar chatzi zachar," the contents of which were more or less as follows: the father obligated himself to gift a massive sum to his daughter, a sum that was much more than what the daughter deserved, with the payment time being one hour before his death. He made a condition that if, after his death, his sons would give his daughter half of one male's share of the property he owned at the time of his death, his debt to his daughters was null. To avoid having to give the massive sum the father committed, the heirs would give the daughter half of a male's share (רמ"א סי' רפ"א ס"ז).
19. **When was it written?** Some people made this shtar when their daughters became of marriageable age, based on the above reasons (שו"ת מהר"ם מינץ שם, מהרי"ק שורש י"ג). Others wrote the shtar chatzi zachar at a later point, but before they died (שו"ת גשר החיים פ"א אות ח', מנחת יצחק ח"ג סי' קל"ה); this is the minhag of those who write it today.
20. **Land.** When the shtar chatzi zachar was originally instituted, it said that the daughters accepted half of a male's share of everything other than land and sefarim. "Land" refers to the deceased's living quarters; the consensus of most poskim is that the daughters get a share of real estate and houses that were for business enterprises (שו"ת חינוך בית יהודה סי' ק"ב, ועי' שב יעקב חו"מ סי' י"ד, שו"ת רע"א ח"א סי' קכ"ט).
21. The reason they did not give daughters land was so that it would remain in the family and not get transferred to a different family (נחלת שבעה סי' כ"א ס"ד אות ו'), or because land inheritance is explicit in the Torah and Chazal did not want to uproot something that is explicit in the Torah; movable property is not explicitly mentioned in the Torah (חת"ס אהע"ז ח"א סי' קמ"ז). There are additional reasons as well.
22. When writing a shtar chatzi zachar today, one can include land since the main part of an inheritance is land and houses. However, the poskim argue whether it is enough to omit the words "besides for land" from the shtar, thereby including land in the obligation (הגרזנ"ג) or whether land needs to be listed explicitly to be included in the shtar (שו"ת אג"מ אהע"ז ח"א סי' ק"י). Therefore, it is best to list it explicitly.
23. **Half a share or the equivalent of a whole share.** The original institution of a shtar chatzi zachar gave daughters half of a male's share so each of the sons still got double what the daughters got. However, according to most of the reasons, a person can give his daughters the equivalent of a male's whole share. Based on the main reason we give a share to daughters – to avoid igniting the fire of conflict and fighting between sons and daughters – many people today give their daughters the equivalent of a male's share, and the estate is divided equally between the sons and daughters. If they would only give the daughters half of a male's share, it would still cause fights and conflicts, and Chazal's solution would be ineffective.

Modern-Day Wills

24. Most Halachic texts today are based on the above principles – whether a person wants to give to his daughters, someone else who is not an heir, or his wife – with the method of commitment described above.

Leaving a Share to Be Divided According to the Torah

25. Even if a person distributes his property to his sons and daughters equally, to his wife, or to others, it is proper for one asset to be divided 100% according to the Torah to fulfill the Torah's method of dividing an inheritance. Therefore, if a person writes a general shtar with valid kinyanim that gives out percentages of his estate, he should write, "besides for asset x, which will be divided only according to the Torah," i.e., only the sons will get a share, not the daughters or wife, and if there is a bechor, he will get a double share (see above, 8).

Inheritance According to Halachah or the Courts?

Only According to Halachah

26. The halachos of inheritance are determined by the Torah, not the courts. Dina demalchusa dina does not apply, whether with respect to a husband's inheritance (רמ"א רפ"א ס"ד), a bechor's double share, or a daughter's inheritance (שו"ת מנח"י ח"ב סי' צ"ה, שו"ת חשב האפוד ח"ג סי' נ').

Daughters' Obligation to Sign a Waiver for the Sons' Benefit

27. It often happens that a father did not write a will, in which case the sons and daughters really have to divide the estate according to halachah. According to secular law, however, a daughter inherits just like a son. In order to register the properties in the sons' names or to unfreeze the estate, bank accounts, and the like, they need to get an order of inheritance [or "probate/succession order"] signed by the courts. To get this, the daughters need to sign a statement that they legally forgo their share of the inheritance for the sons' benefit. The poskim discuss whether or not the daughters must sign this waiver.
28. **They must sign.** Some say the daughters must sign this waiver without any monetary claim due to the obligation of hashavas aveidah (מהרי"ט הובא בשו"ת מהרי"א הלוי ח"א סי' ד', חת"ס חו"מ סי' קמ"ב) or because of the principle of "כופין על מדת סדום" (מהרי"א הלוי ח"ב סי' קכ"ז).
29. **They do not need to sign.** Others say they do not need to sign a waiver for their brothers without monetary compensation (מהר"י בסאסאן, שו"ת פני משה ח"ב סי' ס"ו, שו"ת דברי חיים חו"מ ח"ב סי' ג').
30. **Bank vs. property.** Some poskim differentiate between a bank account and property. A bank account cannot be utilized by the sons at all without the daughters' signatures, so they must sign due to the halachos of hashavas aveidah. However, the daughters can keep properties in their names while allowing the sons to utilize them by collecting rent or even selling them. In this way, there is no loss that they need to return. However, a property is not worth as much when it is in someone else's name. If the sons want the daughters to sign a waiver to increase the property's value, the daughters can demand some money as a compromise (תשובות והנהגות ח"א סי' תתנ"ד).
31. **"Kim li."** Several poskim hold that the daughters can say "Kim li" ["We hold"] like the poskim who say daughters have the right to demand money in exchange for their signatures and cannot be forced to sign without a monetary settlement (שו"ת מנחת יצחק ח"ב סי' צ"ה).
32. **Compromise.** Due to all the above, many poskim suggest that the sons should concede something to the daughters to get their signatures (מו"ר בפתחי חושן פ"א אות ד'). Some suggest a sum up to 10% (רב פעלים ח"ב חו"מ סי'), but this is not something that is strictly followed; sometimes they only give something small. They should consult a dayan. This is another reason to write an organized will: to avoid all the uncertainty, fights, and unpleasantness that these matters cause between brothers and sisters (הגר"א היילפרין, שדה אלחנן סי' ל"ב).
33. **A claim in court.** It should be noted that all the above is only when the authorities freeze the estate until the daughters release it with their signatures. If, however, the properties are not frozen and do not need the daughters' signatures, it is completely assur for the daughters to submit a claim in court for the rights to a share of the estate or to use such a threat as leverage to force the sons to compromise.
34. Even if the courts notify the daughters that they have until a certain time to claim the estate, and if they do not claim it by then, it will automatically go to the sons, they may not submit a claim for their right to the inheritance (שו"ת מנחת יצחק ח"ב סי' פ"ה).

In a Daughter's Name during the Father's Life

35. Often, a father registers a property in his daughter's [or son's] name, not with intent to give them the property, but so that it is not in his name for various reasons... Thus, it is very important for the father to write and clarify within his will which properties are in someone else's name but really still belong to him according to halachah, and which properties he actually intended to give to the people whose names they are in, as this can also lead to misunderstandings, fights, etc.
36. If the father did not clarify, the poskim discuss whether or not the daughter whose name the property is in is considered in possession of the property ["muchzak"] (חת"ס חו"מ סי' קמ"ב, תשובות והנהגות ח"ה סי' שפ"א).

Will in Accordance with the Courts

37. The poskim discuss whether a will that was only written to be recognized by the courts but has no valid halachic kinyanim is also halachically valid. Some say it has no halachic validity whatsoever; one may not collect with it; and if someone collects with it, what he takes is stolen property (מו"ר בפתחי חושן פ"ד אות ל"ד).
38. Others say if it was already written, it is valid in the same way one can entrust his estate to a third party, who becomes responsible for the inheritance, and there is a mitzvah to fulfill the deceased's word (שו"ת אחיעזר ח"ג סי' ל"ד, שו"ת בנין ציון סי' כ"ד, שו"ת חשב האפוד ח"ג סי' נ').
39. Thus, some poskim suggest writing two wills: one that is halachically valid with legitimate kinyanim and one written with a lawyer that is valid in the courts (שו"ת מנח"י ח"ו סי' קסד), but they must be coordinated so that there are no contradictions between them. It should say in the halachic will that a legal will was also written and that it should not detract from the force of the halachic will (מפשט הצוואה ח"א פ"ט אות ב').

Next week's topics, b'ezras Hashem:
Inheritance, Bechor's Double Share, Husband's/Wife's Inheritance and More