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"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

Inheritance Bechor, Husband/Wife

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Inheritance, Bechor, Husband and Wife | **Matos-Masei 5780**

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Bechor's Inheritance – Double Share

Bechor Takes a Double Share

1. A boy who is his father's firstborn takes a double share of his father's property (שו"ע חו"מ סי' רע"ז ס"א), i.e., the inheritance is divided as if there is another son, and the bechor takes "two sons' shares." E.g., if there is a bechor and a regular son, the inheritance is divided in three, and the bechor takes two shares. If there are five sons, the inheritance is divided in six: the bechor takes two shares – a third of the entire inheritance – and the other sons each take a sixth (שם).
2. **Daughter or wife does not diminish the bechor's share.** A daughter does not diminish the bechor's share since mideoraisa, she does not inherit, as we discussed at length (Issue 185). Even if the father wrote a "shtar chatzi zachar" for her, it would seem that her share does not diminish the bechor's (תופעת ראם חו"מ סי' ל). It also could be that if a husband gave his wife a share of the inheritance, it does not diminish the bechor's share (ועי' משפט הצוואה ח"ב סי' ט"ו).

Who Is a Bechor?

3. **Father's firstborn.** A bechor is a firstborn to his father. Thus, if a man married a woman and had a son and then married another woman and had a son with her, even if the second wife's son was a firstborn to his mother and had a pidyon haben, the first wife's son is the bechor for the purposes of inheriting from the father (שו"ע סי' רע"ז ס"ח).
4. **Born after a miscarriage.** If a man either had a stillborn child, a considerably premature baby or a sick son, who was not able to survive r"l [even if he lived for a bit and then died], lo aleinu, his next surviving son is a bechor for the inheritance. In describing the bechor, the posuk says "ראשית אונו" – a son whose father becomes an aveil and grieves over him; a stillborn child's father does not mourn over him. Thus, the second son is considered a bechor for the inheritance (שו"ע סי' רע"ז ס"ו).
5. **C-section.** A boy who was born through a C-section is not a bechor for the inheritance, as the posuk says "וילדו" [the verb for giving birth], which halachically does not include a C-section. But since the first son is able to survive ["bar kayama"], a subsequent son born normally is also not a bechor since he is not "ראשית אונו" (שו"ע סי' רע"ז ס"ז).

Bechor's Double Share Only from "Muchzak," Not "Ro'ui"

"Ro'ui" and "Muchzak"

6. A bechor takes a double share of property that is intact and came into his father's possession in his father's life (called "muchzak") (שו"ע סי' רע"ח ס"ג). Money that his father was expecting to get but was not in his possession when he died is called "ro'ui," and a bechor does not take a double share of it when it comes after the father's death.
7. **Received an inheritance posthumously.** If the father received an inheritance after he died, e.g., first the bechor's father died and then his grandfather died, the bechor gets a double share of his father's property but not of his grandfather's property because his father died before his grandfather (שו"ע סי' רע"ח ס"ג).

Loan

8. If the father lent money to someone else – even if a contract was written – or sold merchandise on credit and is owed money (ערוה"ש, מו"ר בפתחי חושן פ"ב הע' נ"ו), the bechor does not get a double share of the money repaid after the father's death. That money is considered ro'ui, not muchzak, since a loan is meant to be spent and the money was not physically in the father's possession when he died; it is considered completely the borrower's (שו"ע סי' רע"ח ס"ג וס"ז). Even if he ended up repaying his debt with real estate, which was in existence when the father died, the land is still considered ro'ui.
9. **Movable collateral.** If the borrower gave the father/lender movable property as collateral on the debt, whether at the time of the loan or later (ש"ך סק"ז), when the borrower repays the debt after the father's death, the bechor gets a double share (שו"ע שם ס"ז), even if he ended up paying with money.
10. **Real estate as collateral.** If the borrower provided the lender with real estate as collateral or put a freeze on a certain piece of real estate for the lender and ended up paying money, the money is considered ro'ui and the bechor does not get a double share. However, if the land ultimately went to the heirs to repay the debt, the bechor gets a double share of it (טור שם בשם הראב"ד).

Deposit

11. If the father entrusted items to someone, those items are called muchzak and the bechor gets a double share. Although it is not physically in his domain, a deposited item is viewed as if it is in its owner's possession, wherever it may be.
12. **Partnership.** If someone is a partner in a property or enterprise and the goods are tangible and intact, even if the goods or property is in the other partner's hands, it is considered muchzak with respect to a bechor; his part of the partnership is viewed as a deposit in the partner's hands (רמ"א סי' רע"ח ס"ז).

Iska

13. When someone gives another person money to do business and invest in order to profit, Chazal determined that unless otherwise stated, half has the status of a loan and the other half, a deposit. The poskim discuss the implications for a bechor's share in this enterprise: is it like a loan and therefore ro'ui, or is it like a deposit and muchzak, in which case he gets a double share (ראה מה שכתבנו בספר חוקי חיים רבית סי' קע"ז ס"ב אות ו').
14. Some say the entire enterprise, even the part that is a deposit, is considered ro'ui since it is yet to be collected (נתיבה"מ סק"ד ובשם דברי ריבות).
15. Others say the half that is a deposit is considered muchzak, while the half that is a loan has the status of ro'ui (שער המשפט בשם רדב"ז, שו"ת פני יהושע ח"ב סי' ק"ד).
16. Yet others say the entire enterprise is considered muchzak and the bechor gets a double share of the whole thing. This is because even the part that is a loan cannot be spent by the borrower on anything; it must be used for the business enterprise (שער המשפט, פתחה"ת סק"ו בשם שבו"י ח"א סי' קע"ב).
17. **Heter iska.** If someone lends money with a heter iska, which is based on, among other points, the iska arrangement above, whether or not the bechor gets a double share of the principal depends on the above machlokes about an iska. All poskim agree that the profit or interest that accrues after his death is ro'ui, and the bechor does not get a double portion of that (חוו"ד יו"ד ק"ע סק"ו).
18. **Bank account.** Money deposited in the father's bank account has the status of ro'ui, as the bank uses it as it sees fit and lends it at their liability. Thus, it has the status of a loan to the bank and, accordingly, it is ro'ui with respect to a bechor, and he does not get a double share.
19. **Jewish bank.** Money put in a Jewish-owned bank, even with a heter iska document, is all considered ro'ui, even the part that is a deposit, since the whole thing is done on condition that the money will be lent, not held in place (מו"ר בפתחי חושן פ"ב אות ל"ו). At the very least, it is difficult to extract it from the other heirs (שו"ת שבט הלוי ח"ד סי' רט"ו).
20. **Shares.** The poskim discuss whether shares in a business are called ro'ui or muchzak. This may be dependent on the type of business: if it is a factory or store that deals with merchandise, it could be that the merchandise – at least what was around when the father died – is called muchzak. However, it could be that shares in a bank or a business that provides a service instead of merchandise, e.g., a law firm, airline, etc., are considered ro'ui (מו"ר בפתחי חושן פ"ב הע' י"ב).

Inheritance of a Husband and Wife

Husband's Inheritance

21. A husband inherits all of his wife's property (שו"ע סי' צ' ס"א).
22. **Husband does not inherit ro'ui.** A husband only inherits the property of his wife's that is muchzak, not ro'ui (see 6 above for definitions). Thus, if she dies and then someone who she inherits from, e.g., her father, dies, her husband does not take her place as one of her father's heirs. Her heirs, e.g., her sons, inherit what she inherited from her father (שו"ע סי' צ' ס"א).
23. If her father died in her lifetime but the inheritance was not distributed or collected before she died, that property is muchzak and her husband inherits her share (רמ"א שם). However, if her father lent money to others and died, and it was not collected before she died; or if he deposited money in a bank account, which is considered money loaned to someone else (above, 18); that money is considered ro'ui and her heirs inherit it, not her husband.
24. If her father wrote a 'shtar chatzi zachar' for her benefit on everything he had (see Issue 185 for an explanation) and died in her lifetime, her husband does not inherit her share since it is considered ro'ui, which a husband does not inherit (כנה"ג סי' רע"ח הגה"ט אות י"ד). However, if, while her father was healthy, he gave her real estate as a gift with a kinyan to take effect on the land immediately and on the yields after his death, she got the rights to the land while she was alive, and the husband inherits from her (רמ"א שם) the land and its yields (חלקת מחוקק סק"ד, אבני מילואים סק"א).
25. **Life insurance.** If she had life insurance, her husband does not inherit that money. It is even weaker than ro'ui, as the obligation to pay only takes effect after her death, at which point he is no longer her husband. Rather, her heirs get the money even if he was the one who paid for the policy (מו"ר בפתחי חושן פ"י הע' פ"ו).

Wife's Inheritance

26. Mideoraisa, a woman does not inherit anything from her husband (רמב"ם פ"א נחלות ה"ח).
27. **Obligated to provide her sustenance.** Although a woman does not inherit anything from her husband, his heirs must provide her sustenance from their deceased father's property as long as she does not remarry or claim her kesubah money (שו"ע סי' צ"ג ס"ג). Although it is not written explicitly, this is a stipulation in the kesubah that the father committed to when they got married (שו"ע סי' ס"ט ס"א וב').
28. The heirs must give the widow they are supporting clothing, a place to live, and any items she needs that she used while her husband was alive and out of town (שו"ע ורמ"א אהע"ז סי' צ"ד ס"א) in accordance with her dignity (שם ס"ה). She can use household utensils, even silver and gold utensils, that she used when her husband was alive (חלקת מחוקק וב"ש שם). If she hosted guests or gave presents when other people celebrated simchas when her husband was alive, the heirs must give her enough to allow her to continue with these expenses. Everything must be in accordance with her dignity (מו"ר בפתחי חושן פי"א הע' צ"ו).
29. If she has children – young or older – who still rely on her financially, the heirs must also allow them to live in the house as it was when her husband was alive (מו"ר בפתחי חושן שם).
30. **Husband's house.** If her husband had a house that she can live in, the heirs can't force her out (שו"ע סי' צ"ד ס"א). However, they could limit her living quarters so that she can only use what she needs, in accordance with her dignity (רמ"א). See Shulchan Aruch for more details.

Some Differences between Halachah and Secular Law

31. There are several differences between halachah and, lehavdil, secular inheritance law. This is also a reason to write a detailed will and to address the differences so that it is prepared according to halachah. If necessary, it should be coordinated so that it is recognized by the courts and the authorities. We will discuss some differences here.
32. **Son, daughter.** According to the courts, a son and daughter inherit equally; according to halachah, a daughter does not inherit if there is a son (as we discussed in Issue 185 at length). Also, a bechor gets a double share only according to halachah.
33. **Husband, wife.** According to the courts, a person inherits half of their spouse's property, and the other half goes to the children. In other words, when a wife dies, her husband inherits half of her property and her heirs inherit the other half. Also, when a husband dies, his wife inherits half and the heirs inherit half; according to halachah, a husband inherits from his wife (above, 21), but a wife does not inherit anything from her husband (26).
34. **Shared property.** According to halachah, all property they accumulated in their married life belongs to the husband; according to property merging laws, it belongs to both of them equally. For example, if a wife dies and the house was registered under both of their names, 75% of the house goes to her husband – 50% was already his, and he inherits half of his wife's share – and the remaining 25% is divided among the heirs.

Will

Healthy Person's Will

35. A healthy man cannot change the order of inheritance set by the Torah by merely saying what should happen after his death. He must make a kinyan to give a gift that will take effect in his life (שו"ע סי' רפ"א ס"ה). Usually, this is done with a kinyan sudar, which works for almost anything other than coins and some other things. If a valid kinyan was not done, the will does not take effect and the heirs divide the inheritance according to the halachah (מו"ר בפתחי חושן פ"ד הע' י"ב).
36. There are several ways to give something while alive. One way is giving a gift with a valid kinyan to transfer ownership on the spot. This immediately places the item fully in the recipient's possession. Alternatively, one can give the recipient real estate with a kinyan that will take effect on the land immediately and on the yields after the giver's death. Another method is to give through a kinyan and commitment, much like a 'shtar chatzi zachar' (Issue 185, paragraph 18), whereby one commits to giving a large sum to the recipient, allowing the heirs to avoid the large debt by giving the recipient a share of the inheritance.
37. Giving a gift while alive does not violate the issur of transferring an inheritance to someone who is not a halachic heir since after all, it is just a gift, not an inheritance. The intent must be for a gift, though, not to minimize the heirs' inheritance (מו"ר בפתחי חושן פ"ד הע' ב). Thus, through a kinyan while alive, one may give an inheritance to his daughters or wife even though mideoraisa, they do not inherit (שו"ת מנחת יצחק ח"ב סי' קל"ה).

A Dying Man's Will

38. **Wording of an inheritance.** Chazal decreed that someone who is close to death, lo aleinu, can use wording of an inheritance to divide his property among his heirs as he wishes, whether to give certain heirs more or less, through speech alone. Even without a kinyan, his words stand unless he recovers from his illness. The reason for this is so that he does not become disturbed; in other words, so that he does not feel pained that he did not yet divide his property as he should have and ch"v die from the pain (סי' רפ"א ס"א). However, even someone who is about to die cannot give something to someone who is not his heir by merely speaking with wording of an inheritance. Thus, if one has sons, he cannot give property to his wife with wording of an inheritance since she does not inherit from him when there are sons (רדב"ז ח"א סי' תקמ"ג).
39. **Wording of a gift.** When someone close to death says wording that connotes a gift, including holding ["יחזיק"], dividing ["יחלוקו"] (שו"ע סי' דברי גאונים "עוזב"] or leaving ["מניח"] (סמ"ע סי' רנ"ג ס"ב) or setting ["מניח"] (רפ"א ס"ח), he can give property even to someone who is not his heir, or he can give more to one heir and less to another, and his spoken word alone takes effect even without a kinyan (שו"ע סי' רפ"א ס"ז).

Some Factors to Take into Account When Writing a Will

40. **With a rav.** It is always advisable to consult with a talmid chacham or rav for advice on how to divide an estate: whether to let it go according to the Torah inheritance or whether it is more worthwhile to give the daughters and sons equally to prevent jealousy and animosity among them, and the best way to execute it. One should also get similar advice regarding giving his wife property.
41. It is also worthwhile to write a will with a rav who knows the halachos and customs in this area. Give as much detail as possible about every item and asset to minimize future misunderstandings. If one just writes a list by himself without witnesses or a kinyan, many poskim hold fulfilling it is not even required by the mitzvah of kibbud av or the mitzvah to fulfill a deceased person's word.
42. **Explain.** If a person has sons and daughters who keep Torah and mitzvos, have yiras Shomayim, are sensible, and have mutual respect for each other, it is proper for him to also tell his heirs verbally what his intentions and desires are. He should explain his reasons and logic so that they accept his wishes. It will then be easier for them to honor his opinion among themselves without conflict. However, if he thinks they are not capable of this, it is better not to tell them (מו"ר בפתחי חושן סוף פ"ד, כללי עריכת צוואה).
43. **Inform them of the will and where it is.** If one wrote a will, it is best to tell a son or multiple sons that there is a will. It is also advisable to tell them where it is so that they don't only find it after the shloshim and then see that their father requested that they give money to tzedakah, say Tehillim at his funeral, give – or not give – a hesped over him…
44. One should write a date on the will. If he wants to change something in it, he must prepare it anew with valid kinyanim. If he erases, adds, or removes, he could nullify the whole shtar, and he will definitely cause misunderstandings, accusations, and fights.

The halachos of inheritances are very complex. We cannot write every last detail of the halacha, but we strove to enlighten others and arouse them due to the sensitivity of the matter and the unawareness of basic concepts; and to remind everyone that we do not live forever…

May we all be zocheh to a long life and to fill our days with Torah, mitzvos, and good deeds with a clear mind, healthy body, and Heavenly inspiration, until we are zocheh to techiyas hameisim and the geulah very soon, with the building of the Beis Hamikdash, bimheira veyameinu, amein.