

There is a Way! | Business Halacha

By Rabbi Meir Orlian

(Continued from last week)

Rabbi Dayan, Mr. Berger, his daughter Bracha, and her husband Yehuda sat around the table as Mr. Berger began, "In my will, I bequeathed my house to Bracha and distributed the remaining assets equally among the sons. Bracha was concerned that perhaps she cannot accept the house, since daughters are not entitled to inherit with sons, according to Torah law."

"She is correct that according to halacha, daughters do not inherit," responded Rabbi Dayan. "Despite this, if the sons willingly agree to grant her the house when going through probate (the legal procedure of dividing an estate), she can accept it."

"Furthermore, some poskim have suggested reasons to validate secular wills de facto even if they do not conform to Torah laws of inheritance, although these reasons are subject to debate. In any case, you should prepare a halachically valid will."

"Do I have to redo my entire will?" asked Mr. Berger.

"Not at all," smiled Rabbi Dayan. "You can leave your will intact, but must fill out this additional document." He pointed to a paper sitting on the table in front of him. "It is based on a centuries-old practice called 'shtar chatzi zachar' - a document of a half-male."

"Sounds like bio-technology," Bracha remarked with a quizzical look.

"Not at all," Rabbi Dayan laughed. "Chatzi zachar does not mean biologically half-male, but rather half the inheritance rights of a male. Throughout the period of the Acharonim, it was common to award the daughter half the inheritance rights of a son as a dowry. For example, if there were two sons and a daughter, each son would get 40 percent of the estate, and the daughter 20 percent."

"But we said that daughters cannot be designated as inheritors," interjected Yehuda.

"True," responded Rabbi Dayan. "The shtar chatzi zachar did not declare the daughter an inheritor; the inheritance itself was defined according to Torah law. Nonetheless, the shtar chatzi zachar served as leverage forcing the sons to grant the designated share of the estate to the daughter."

"Fascinating," said Mr. Berger, "but how was this accomplished?"

Rabbi Dayan continued, "The father would obligate himself to leave the daughter a very large sum of money, payable one minute before death. However, this 'debt' was conditional; if the sons would agree to grant the daughter a halfshare of the estate, the debt would be null and void retroactively, and the daughter would have no further claim."

"Amazing!" Yehuda exclaimed. "After the father's death, the sons would have to pay the large debt to the daughter unless they agreed to grant her the designated share of the estate. Obviously, they would prefer to grant her the share, since otherwise she would collect everything anyway as payment of the debt. But why does she receive only a half-share?"

“This was to uphold the notion that daughters do not inherit equally with the sons,” explained Rabbi Dayan.

“Nonetheless, later poskim also mention a ‘full-male document,’ which stipulates that the daughter be granted a full share.”

“Still, how does this help me with my will?” asked Mr. Berger.

“We’re getting to that now,” responded Rabbi Dayan. “Current poskim have adapted shtar chatzi zachar as a halachic solution to modern wills.”

He picked up the document. “In this document, you declare that the inheritance itself should be in accordance with Torah law. However, you acknowledge a large conditional ‘debt,’ payable just before death, to various beneficiaries of your will. If the true Torah heirs grant each beneficiary the share outlined in the will, as will occur when going through probate, the debt will be retroactively void. Thus, your daughter will not take the house as an inheritance; the sons will have to grant it to her to avoid paying the large conditional debt.”

“Does this also solve the issue of the firstborn son?” asked Mr. Berger. “I am concerned that leaving him double might cause jealousy within the family.”

“Yes,” said Rabbi Dayan. “The inheritance itself is to follow Torah law, and the firstborn inherits in principle a double share. However, if he does not agree to grant the other brothers an equal share, as per the will, he will have to pay the debt.”

“So I can leave my will intact, and attach this document to grant it halachic validity?”

“Yes,” said Rabbi Dayan. “I should note that some poskim recommend designating a certain amount to be divided according to true Torah law.

“Come, take a pen, and let’s complete and sign the document.”