BETH DIN ZEDEK
ECCLESISTICAL JUDICATURE OF THE
CHICAGO RABBINICAL COUNCIL

בית דין צדק דק"ק שיקגו והגליל
דמועצת הרבנים דשיקגו
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בס"ד

HALACHIC (JEWISH LAW) WILL

Introduction

According to the Torah's laws of inheritance, a husband generally inherits his wife's property, and a person's sons– if he has any– are his sole heirs, each getting an equal share, except for the *b'chor* (male firstborn) who gets a double share.[1] It is a common practice to leave a will by which a person's estate is divided according to his or her own wishes, and not in accordance with the *halacha*. However, a secular will has no *halachic* validity since it takes effect after death, at which time a person has no *halachic* power to transfer his or her possessions.[2]

Our rabbis, therefore, devised a method to enable one to arrange that a person who is not a *halachic* heir will receive a part of their estate. The procedure is as follows: the person writes a note of obligation in the amount of an enormous sum of money, payable to certain non-*halachic* beneficiaries. Upon the death of the person who signed the note, the *halachic* heirs will perforce give the entire estate to the non-*halachic* beneficiaries. It is stipulated, however, that if the *halachic* heirs will distribute the estate in accordance with the wishes of the deceased, typically as expressed in a separate last will and testament, then the obligation is null and void.[3]

The obligation becomes effective when the form below is executed and delivered to a beneficiary or any other party (e.g. a rabbi or a Jewish attorney) who receives it on behalf of the named beneficiaries, even without their knowledge.[4]

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[1] *Shulchan Aruch* (CM 276:1 and 277:1)

[2] See *Tosfos* (Bava Basra 152a) and *Sma* (*Shulchan Aruch CM* 252:41) and *Kuntres Midor Lidor* (chapter 1 section 1). Furthermore, the *Shulchan Aruch* (CM 281:1), based on the *mishna* in *Bava Basra* (130a), states that a stipulation to divide inheritance in a manner inconsistent with the Torah principles of inheritance, is not *halachically* binding. Even the concept of *dina dimalchusa dina* does not allow for inheritance to be distributed in accordance with the stipulations of the will based on the *Shut Rashba* (6:254) cited by the *Rama* (*CM* 369:11) that *dina dimalchusa dina* only applies to matters outside of Jewish law pertaining to the functioning of the government. [Rav Moshe Feinstein (*EH* 1:104) in a novel ruling, argues that the binding nature of the will under the law of the land would create a *halachically* recognizable vehicle to distribute the assets in the estate accordingly. This ruling is subject of debate amongst contemporary authorities.]

[3] This practice originated when, as part of a daughter's dowry, the father obligated himself to a debt of this nature to ensure that his daughter would receive a portion of his estate. Commonly referred to as a *shtar chatzi zachar*, it indebted the entirety father's estate to his daughter(s) unless they would receive half of a share of the inheritance (see *Rama CM* 281:7). The debt remained in place and passed to his Torah heirs unless they abided by the provisions articulated by the father – namely, that the daughters also receive a portion of the inheritance. Today we apply this method whenever the deceased wishes for their non-*halachic* heirs to inherit a portion of the estate. Typically, daughters receive a share of the inheritance equal to that of the sons (other than the specified amount described below in the text infra and accompanying footnote 14).

[4] See footnote 11.

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Halachic Will Addendum

The Obligation – שטר התחייבות

By way of this Halachic Will Addendum ("Addendum"), I, the undersigned, hereby obligate myself,[5] effective immediately (*me'achshav*),[6] to my wife[7]/husband[8]_____, if she/he survives me, or if not,[9] to _____[10] (as the case may be, "Obligee"), in equal shares, in the sum of $_____, but not payable until one minute before my death,[11] on the condition that I do not retract this obligation at any time prior to my death (the "Obligation"). All the property which is mine at that time, including property that I may acquire,[12] both real and personal, shall serve as security for payment of the Obligation.

I hereby stipulate that my heirs as defined by the Torah (my "Torah heirs") shall be given the option of paying the Obligation, or, in lieu thereof, carrying out the terms of (i) my Last Will and Testament (including all codicils and/or amendments), (ii) any and all Trusts (including all amendments and restatements) whose assets are considered part of my estate and (iii) all transfers of property upon my death which are considered "non-testamentary transfers" in accordance with the laws of the State in which my estate is being administered (collectively, my "Directives"). If my Torah heirs abide by the terms of my Directives then the

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[5] See *Kesuvos* 101b and *Chidushei HaRan* (ibid.) that one has the authority to obligate oneself to a monetary debt if a *kinyan* is performed.

[6] When the indebted amount is too great, the validity of the document may be challenged as an *asmachta* or conditional obligation accepted under the assumption that it would never be fulfilled (see *Nedarim* 27b, *Bava Metziah* 66a, 73b). By indicating that the obligation takes effect immediately, the testator shows that he or she takes the obligation seriously as one that he or she may have to pay (*Shulchan Aruch CM* 207:14). See footnote 13 regarding the additional inclusion of *beis din chashuv* to obviate concerns of *asmachta*.

[7] A husband inherits the property that is *muchzak* (held) in his wife's possession at the time of her death (*Shulchan Aruch EH* 90:1). For portions of the estate considered *ra'oy* (owed in the future), signing a *shtar chov* would be necessary to ensure her financial wishes are followed. *Ra'oy* property would include (but is not limited to) outstanding loans (*Rama EH* 90:1) and according to some authorities, money deposited in a bank (this is the opinion of Rav Hershel Schachter and Rav Mordechai Willig).

[8] In the case of the wife executing this *shtar chov*, the husband's monetary rights to his spouse's property may render the *shtar chov* ineffective by precluding her ability to mortgage these properties in order to secure the desired financial obligations (*Shulchan Aruch EH* 90:9). Therefore, Rabbi Feivel Cohen (*Kuntres Midor Lidor* chapter 1 section 6) recommends the husband sign an additional *shtar chov* in which he assumes a debt to become payable at the time of his wife's death to his wife's non-Torah heirs if the terms of his wife's will are not complied with (preventing him from nullifying her *shtar chov* in the event that he survives her). Alternatively, based on the *Shulchan Aruch* (*EH* 90:10), the husband can sign off on his wife's *shtar chov* granting his permission to mortgage the properties (sample clause can be found on the cRc website).

[9] In cases where the person's spouse is not the primary inheritor, the clause, "to my wife/husband __, if she/he survives me, or if not," should be stricken.

[10] Insert names of daughter(s) or, if none, other non-*halachic* heir(s).

[11] It is permissible to gift any sum of money during one's lifetime even if that reduces the amount of inheritance significantly or completely. However, doing so in order to bequeath to non-Torah heirs is usually not an effective solution. After all, these gifts can only take into consideration current assets because there is no ability to be *makneh davar shelo ba li'olam*, effect a transfer of ownership for an item not currently in one's possession (*Rama CM* 281:7). Furthermore, the testator usually desires to maintain control of his assets during his lifetime. However, making a *kinyan* that effects an obligation immediately but only becomes collectible moments before death, does generate a debt for the estate that will be collectible by non-Torah heirs after the testator's death.
There is an additional factor of *breyrah* on a Biblical transaction to consider here. Normally when a transaction is to take effect, but the details of said transaction will only become known at a later point in time, the *halacha* does not retroactively recognize that the matter took effect from the earlier point in time. Even though the exact timing of the time that the debt is payable will only become known at the time of the testator's death, this does not constitute *breyrah*. After all, the *Ran* (*Nedarim* 45b) explains that there is no concern for *breyrah* when only minor details remain to be determined retroactively. In this instance, the primary *chalos* (matter being effected) is the obligation of the debt and that is not subject to retroactive clarification.

[12] The *Shulchan Aruch* (*CM* 111:20) records a dispute whether property that is acquired after the time of obligation becomes subject to the obligation if not included explicitly through the phrase of *di'akni.* By including this clause, any future assets coming into the estate are also subsumed under the obligation.

Obligation is null and void.[13] If my Torah heirs contest or object to the disposition of my property made in my Directives, whether before a civil court or before a Jewish Court, then the Obligation shall be deemed to vest absolutely.

In the event that there are outstanding debts that are *halachically* payable from my estate, Obligee shall pay such debts in the amount necessary to ensure that no creditor will suffer any loss on account of this Addendum.

Notwithstanding anything to the contrary contained herein, I hereby bequeath all Jewish books and the sum of one thousand dollars exclusively to my Torah heirs according to the formula for inheritance prescribed in the Code of Jewish Law.[14]

This Addendum shall remain in full force and survive all future testamentary documents, unless such documents contain a superseding clause that specifically references this Addendum. The above Obligation is undertaken by a *kinyan sudar* in a *beis din chashuv* (a proper means of transaction in an important Jewish court).[15] No consideration was received by the Obligor in exchange for the Obligation. The above conditions are made in accordance with the laws of the Torah and Talmudic jurisprudence, in the manner of the conditions which were imposed on the Tribes of Gad and Reuven, as derived from Numbers Chapter 32. This document is intended to be, and is, binding, consistent with the binding nature of all agreements, documents, obligations and acquisitions that are properly effectuated in a Jewish court of law in accordance with the laws and rules established by rabbinical authorities.

THIS IS ALL VALID AND IN GOOD STANDING

I hereby affix my signature on this _____day of _____, 20_____.

Obligor Name: _____

Obligor Signature: _____

[13] Based on the principle of *zachin li'adam shelo bifanav* (*Gittin* 1:6), there is no need for the beneficiary of the debt to be a part of this stipulation. The sole purpose of the obligation is to influence compliance with the terms of the secular Will if the halachic heirs challenge the secular Will's distribution. However, in order for the principle of *zachin li'adam shelo bifanav* to trigger this debt, the document must be handed to someone other than the testator who can acquire the debt on behalf of the beneficiaries.

[14] To avoid the prohibition *a'avurei achsanta*, inappropriate transference of inheritance (*Bava Basra 133*b), the *poskim* suggest bequeathing a portion of the estate in accordance with the Torah's laws of inheritance (see *Shulchan Aruch CM* 276). Different suggestions have been made as to how much should be set aside for this purpose (see *Pischei Choshen* volume 9 chapter 4). Based on the rulings of Rav Hershel Schachter shlit"a and Rav Zalman Nechemia Goldberg zt"l (*Techumin* 4:349) it is advisable to bequeath *seforim* as well as $1,000 in accordance with the Torah's laws of inheritance. This provision should also be included in testamentary documents and/or trust documents if inheritance will be bequeathed through trust.

[15] A *kinyan sudar* is accomplished by having someone give the testator a pen or handkerchief on behalf of the beneficiaries. By lifting the *sudar*, the testator obligates himself according to the terms of this Addendum. One who performs a *kinyan* in a *Beis Din chashuv* solemnly commits to their action and therefore there is no concern of *asmachta* (*Shulchan Aruch CM* 207:15). The *Rama* points out that even if the *kinyan* is not actually implemented in front of a *Beis Din chasuv*, it is considered to have been duly performed based on the principle of *hodaas baal din kimeyah eidim dami* (see supra footnote 6).