

Rabbi Y D Hool

Reintroducing the “Shtar Chatzi Zochor”

A Halachic Method of Bequeathing to a Daughter

In this article we shall discuss some of the Halachos of inheritance, with particular reference to the questions that arise when someone wishes to ensure that his daughter will receive a share of his estate after his demise in a way that is Halachically acceptable.

Before going any further, it should be emphasised that any property taken by a daughter, against the will of her brothers, that is not due her according to the Halachah is regarded as stolen property. As we shall explain shortly, in the absence of a Halachically valid will, a man's sons inherit all his estate, with the daughters receiving nothing. Even if the father wrote a legally valid will, if the Halacha does not recognise it the estate goes automatically to the sons. Of course, the sons are at liberty to respect their father's wishes and give a share of the estate to the daughters if they want. However, if they do not do so, the estate belongs to them. Should a daughter seize any part of the estate, even in a legally valid manner such as through the courts, the Torah regards her as being a *gazlanit* – a thief – and the property in her possession is stolen property. (It remains as such even when she dies and it passes to her descendants, and must be returned to her brothers, or their descendants if they are no longer living.)

A daughter does not inherit her father if the father leaves sons

The Torah¹ tells us that if someone dies and leaves one or more daughters and no sons, then the daughters inherit all of his possessions. If,

however, he leaves even one son, the son inherits all and the daughters receive nothing. Even if the deceased would leave a will instructing that his daughter should inherit him, it would have no validity in *Halacha*. As the Rambam² says, “A person cannot make inherit someone who is not due to inherit him, nor can he prevent from inheriting someone who is due to inherit... as it says³, ‘And it shall be for the Children of Israel as a statute of judgement,” which teaches that this is a statute that cannot be changed and is unconditional. It makes no difference if one is well or on one’s deathbed, nor if one writes this instruction or gives it orally.”

Moreover, not only can a person not cause someone else to inherit him, seeing as the inheritance automatically passes to whom the Torah defines as the nearest relative, but a person also cannot give away his possessions as a present after his death⁴. This is because only a live person can effect an act of giving or receiving. After death, a person cannot effect anything, even if he left instructions beforehand.

There are, however, a number of ways that a person can use to ensure that his daughters also benefit from his inheritance. This topic has been dealt with comprehensively in the previous article, by Rabbi Joseph Pearlman. In this article we shall discuss in more detail the last method mentioned there, that of the *Shtar Chatzi Zochor*

Shtar Chatzi Zochor

In order to facilitate a daughter receiving a portion of the inheritance together with the sons, a method known as a *Shtar Chatzi Zochor* was devised. A man would give to his daughter a *Shtar* (promissory note)

declaring that he already owes his daughter a huge sum of money, with two conditions attached. Firstly, the debt cannot be claimed until a moment before the father's demise. (This condition was attached to ensure that the daughter would not be able to claim this debt whilst her father was still alive.) Secondly, if the man's sons agree to give their sister a portion of their father's inheritance - equivalent to half of the share that each one of them receivesⁱ - the daughter agrees to forgo the debt and cancel it.

After the father's demise, the sons would be forced to give their sister a half-portion of the inheritance, or else pay up the entire debt, which would normally be more than the entire inheritance.

As such the father is not actually giving away a portion of his inheritance; he is merely stipulating that his debt will be cancelled if a portion of his inheritance is given away to his daughter. In this way, he can ensure that even property that will come into his possession from the date of this arrangement until the day of his death will be included in the portion given to his daughter. By defining this portion as a *condition* that enables cancellation of the debt, rather than attempting to give the actual portion as a present, he avoids the problem of not being able to give away things that he does not yet own. Furthermore, by defining this portion as a percentage of the final inheritance, he avoids defining precisely the possessions to be divided, and thus can include everything that will be in his possession at the time of his demise, without even knowing at the time of writing the *shtar*

ⁱ The reason that the daughter receives only a half of that which each of the sons receives will be explained later.

what his inheritance will consist of. Also, by stipulating that the condition applies only to whatever is in his possession at the time of his demise, he allows himself to continue doing with his possessions as he sees fit, for the entire duration of his lifetime.

The *Shtar Chatzi Zochor* is mentioned by the Remo”h in several places in Shulchan Aruch, and the reasoning behind it is discussed in the Remo”h’s glosses to the Tur, “Darkei Moshe.”⁵

As will become evident from our discussion, the *Shtar Chatzi Zochor* was very common in Europe from at least the fourteenth century, and was discussed many times by the great Halachic authorities. It appears that the *Shtar Chatzi Zochor* was commonly given to daughters on the occasion of their marriage, as part of the dowry, although the *shtar* was usually made out to the daughter rather than the son-in-law, for reasons that will be explained later.

The permissibility of the *Shtar Chatzi Zochor*

A problem arises. The Gemora⁶ teaches that one should not change around one’s inheritance to favour even a good son over a bad son, and all the more so not to give a daughter in place of a son. How then was the *Shtar Chatzi Zochor* permitted?

(i) This question was posed by the Mahara”m Mintz⁷, who points out that the Gemora itself asks a similar question concerning the *takanah* (Rabbinical enactment) of *Kesubas B’nin Dichrin*. At the time of marriage,

every man must give his wife a *kesubah* – marriage contract - in which he takes upon himself various obligations to his wife, the principle amongst them being the obligation to pay his wife a certain sum of money should he divorce her; if he dies before her, the sum of the *kesubah* will be paid to her from his estate. In addition to this, Chazal decreed that in the event that the wife dies before her husband, any sons born to her from this husband would be entitled to the sum of the *kesubah* from his estate (when he eventually dies), before the estate is divided up between them and any other sons that he may have had from another marriage.

Surely, asks the Gemora⁸, Chazal frowned upon the redistribution of one's estate, and so how did they encourage a man to give a large dowry to his daughter if it meant that his sons would lose out?

The Gemora answers that there was an overriding concern here that forced Chazal to make this enactment. People became reluctant to give their daughters large dowries, because since the Halachah is that a husband inherits his wife, they feared that their daughter might die before her husband and all of her possessions would pass to her husband, including the dowry. When he in turn died, the property would pass to his sons, who may include sons from another marriage, and the property given as a dowry would thus pass out of the woman's father's family. As a result, dowries became small or non-existent, causing men to become reluctant to get married, and Chazal realised the need to help the girls to get married and settle down. They therefore instituted that if a woman dies before her husband, when he subsequently dies her sons from this marriage would

inherit her *kesubah*, which included the dowry that she brought into the marriage. In this way, the property would not pass out of her father's family because his own grandsons would inherit it. As such, fathers were happy to give increased dowries, and girls found it easier to find husbands.

This necessity to help girls to get married overrode the general rule of avoiding changing one's inheritance to benefit a daughter at the expense of a son.

In that case, says the Mahara'm Mintz, the *Shtar Chatzi Zochor* is also permitted, seeing as the idea was also to enable girls to get married. Men were more likely to marry a girl if they knew that they would be considered like a son to their fathers-in-law, to the extent that they would receive a half-share of his estate when he died.

Moreover, adds the Chasam Sofer⁹, the institution of *Kesubas Bnin Dichrin* was abandoned in the time of the Ge'onim, as the Ro"sh writes, because it was evident that on the contrary, people were giving all their money to their daughters and leaving nothing for the sons! If so, perhaps the *Shtar Chatzi Zochor* was instituted as some sort of replacement to the original institution of *Kesubas Bnin Dichrin*, to ensure that people would continue to provide for their daughters.ⁱⁱ

ⁱⁱ The Mahara'm Mintz himself suggests that the *Shtar Chatzi Zochor* was not instituted to replace the *Kesubas B'nin Dichrin* but rather to replace the *takanah* of *Parnasas Habas*, which will be explained later.

Others add that the *Shtar Chatzi Zochor* was not merely intended to help the girls to get married – it was also intended to ensure that women became beloved in the eyes of their husbands!¹⁰

(ii) The Tashba”tz¹¹ writes that as long as one leaves a respectable amount for the original inheritors, there would be no problem with redistributing the rest of one’s estate. The prohibition applies only if little or nothing is left for the original inheritors.

The Chasam Sofer¹², whilst disagreeing with the proofs that the Tashba”tz brings, nonetheless writes that he cannot dispute the actual ruling.ⁱⁱⁱ

(iii) The Chasam Sofer¹³ suggests that the prohibition of redistributing one’s estate may only apply to a person on his deathbed, because at that point he is specifically negating the Halachos of inheritance. If, however, he wished in his lifetime to give large portions of his wealth to his daughters, he would be entitled to do so.

However, the Chasam Sofer points out that the Gemora seems to rule out this distinction. He refers to the very same Gemora that we quoted

ⁱⁱⁱ In the Chasam Sofer’s case, a man who had no sons wished to leave all his belongings in a trust fund to be distributed to charity. As this was commonly accepted practice, the Chasam Sofer suggests a justification. The whole prohibition of redistributing one’s estate, he suggests, is only with regard to one’s inheritors. However, to give to charity benefits one’s own soul, and a person himself takes precedence over his inheritors. At any rate, the Chasam Sofer allowed it in the case of a man who has no sons (although he had other relatives) as long as he leaves a respectable amount for his inheritors.

earlier, which, after explaining that the institution of *Kesubas Bnin Dichrin* was made to encourage fathers to give their daughters large dowries, asks why this is not considered to be forbidden under the prohibition of redistributing one's estate^{iv}. It is clear then that the prohibition applies even during one's lifetime.^v

(iv) In a different responsum¹⁴, the Chasam Sofer expands on the suggestion that the *Shtar Chatzi Zochor* was permitted because it, like the *Kesubas B'nin Dichrin*, enables girls to get married more easily. Nonetheless, he adds, they added various terms and conditions into the *Shtar Chatzi Zochor* in order to limit the extent of redistribution of inheritance.

Firstly, they allowed a daughter to receive only *a half* of what the sons receive. In this way it would be similar to the Torah's rules of inheritance, where we find that a firstborn receives double that of each of the other sons.^{vi}

^{iv} As we mentioned before, the Gemora answers that the vital concern of marrying off girls overrode the rule not to redistribute one's estate.

^v This Gemora seems to indicate that no person may give away any of his property in his lifetime because it will lead to his sons losing from his estate after his death. Surely, though, one is free to do with one's property as one wishes, including giving presents to whomever one wants! (See also commentary of the Levush to Rashi (Bereishis 24:36) who asks how Avrohom was able to give everything he owned to Yitzchok, thus removing Yishmoel and the sons of Keturah from his estate; he answers that this prohibition applies only for after one's demise, that it only applies to land, and that Avrohom was told specifically by Hashem that only Yitzchok would be considered his descendant.) This subject is dealt with at length in the *Poskim* [Sdei Chemed (Klallim 30:3), Minchas Yitzchok (3:135) et al] and is beyond the scope of our present discussion

^{vi} Nonetheless, we do find references in the *Poskim* of a *Shtar Zochor Sholeim*, in which the daughter receives a full portion in the estate, as if she were a son. See for example Shvus Yaakov Vol. III: 174, Noda Beyehudah Vol. I: Choshen Mishpot 26, and the Chasam Sofer himself (Vol V: 91 and 173). See also Shitta Mekubetzes (Kesubos 68a) quoting the Rivosh in the name of R' Yeshaya of Trani as saying that a man may give to his daughter up to the

Furthermore, the standard text of the *Shtar Chatzi Zochor* contains a clause that excludes the daughters from receiving a portion in any real estate or books. The exclusion of real estate, suggests the Chasam Sofer, was added because when the Torah discusses the laws of inheritance, it refers specifically to land (the *parshah* was taught in response to the request from the daughters of Zelophchod to inherit their father's portion in the land of Israel). True, the fact that all a man's possessions, and not just real estate, are inherited is also a Torah law (*Mid'Orayssu*). Nevertheless, when Chazal created a loophole that enables daughters to receive a portion of their father's estate, they nonetheless excluded her from real estate in order to avoid going against that which is *explicit* in the Torah.^{vii}

The idea to exclude daughters from taking a share in their father's *seforim* (Torah books) comes from the Gemora that states that a son has more of a right to inherit because he has the obligation to learn Torah. If so, suggests the Chasam Sofer, although the *Shtar Chatzi Zochor* allows the daughter to receive a share in the inheritance, at least in the Torah books themselves Chazal ensured that the sons would retain their rights.

We shall return to the reasons for the exclusion of real estate and *seforim* later.

equivalent of his son and no more. This, he says, is evident from the Gemora quoted above which explains the idea of *Kesubas Bnin Dichrin* as being in order that a man "Should give his daughter *as his sons*," implying that that is the limit.

^{vii} This is in line with the Ta"z, who writes (Orach Chaim ch. 588) that even when Chazal instituted mechanisms that would have the result of negating a Torah law, they limited themselves to laws that, although learned from the Torah, were nonetheless not stated explicitly. Chazal were unable to negate anything that is written explicitly in the Torah.

(v) The Nachalas Shivoh¹⁵ implies that the prohibition of redistribution of one's estate applies only if it is given away using an expression of inheritance, whereas the *Shtar Chatzi Zochor* is arranged as a debt with a condition, as explained above. This explanation is difficult, however, because this prohibition cannot apply only when one gives away property via a mechanism of inheritance, since, as we have pointed out at the very outset, it is anyway not within a person's power to redistribute his estate by redefining who his inheritors should be, and any attempt to do so is null and void.

(vi) If the father gives his daughter a *Shtar Chatzi Zochor* in order to avoid family feuds after his death, this itself may be reason enough to permit it.¹⁶

(vii) If the daughter is poor, a bequest may count as *Tzedokoh*, charity, which may override the prohibition against redistributing one's estate. Likewise, if the son-in-law were a *Talmid Chochom*, the mitzvah of supporting Torah study would apply.

(viii) Finally, if the father gives his daughter a portion of his estate in return for a favour that she has done him, such as attending to him in his old age, it would seem that this would be permissible. In such a case, the bequest could be considered to be a repayment of a debt owed rather than a simple gift. For this reason, the *Da'as Zekenim Miba'alei Hatosfos*¹⁷ writes that Yaakov was able to bequeath to Yosef more than to his other sons, because he provided for him in his old age.

How much does the daughter actually receive?

The standard text of the *Shtar Chatzi Zochor* states that the daughter should receive the equivalent of “A half-share of a standard son.” This expression was used because if there are several sons, the eldest is entitled to a double portion, and the *Shtar Chatzi Zochor* awards the daughter only a half-portion of other sons. If, for example, a man left two sons and a daughter, the estate would be divided into seven. The younger son would get two portions, the firstborn son would get four portions (double the younger son) and the daughter would receive one portion – a half of that which the younger son receives.^{viii}

What if the man leaves only a firstborn son and one daughter?

The Shvus Yaakov¹⁸ quotes a certain *Dayan* as ruling that the daughter is given a third of the estate, in order that she receives half of that which her brother receives. However, he also quotes several *dayanim* as disagreeing with this, and the Shvus Yaakov himself concurs with them. If the daughter had been awarded a portion *equivalent* to the son, she would surely only get a third of the estate, with the firstborn getting two thirds, because she cannot be any better than another son who would have got only a third with two thirds going to the firstborn. If so, it would seem that where she has been promised a half-portion of a regular son, she would be given a fifth of the estate, with the firstborn receiving four fifths – two fifths as a regular son and the extra two fifths because he is a firstborn.

^{viii} However, as we shall see, according to the Haflo'oh in the event that there is a firstborn son the division of the estate is worked out differently, because the firstborn receives his extra portion before we begin considering the daughter's share.

The Shvus Yaakov adds that this is undoubtedly the correct way to distribute the estate in such a case, and the only reason it is not found in the earlier authorities is because it is so obvious that they felt no need to discuss it.

However, it would seem from the Haflo'oh that he disagrees. In a case where a man instructed to give his widow a portion from his estate equivalent to his son, the Haflo'oh¹⁹ quotes the Mordechai as ruling that this would mean that she gets the equivalent of an ordinary son, and he goes on to say that if he left only one son, she would receive *half* of the estate. It follows that had he instructed to give a half-portion (as in the case of a *Shtar Chatzi Zochor*) she would receive a third, just like the first opinion quoted in the Shvus Yaakov. In other words, if a man leaves only one son, he is not considered to have the advantages of a firstborn as far as inheritance is concerned, even if part of the estate goes to another person.

The Haflo'oh adds an interesting point. If, for example the man left twelve gold coins (and he left instructions to give his widow a full portion equivalent to a son), the son would receive half and the widow half, i.e. six coins each. If an extra son were to be born, the firstborn would now actually gain, because in order to determine the extra portion due him as a firstborn, we would consider only those who are due to inherit *min haTorah*, i.e. him and his brother. Thus the extra portion would be four coins. The remaining eight coins would be divided between the three, the firstborn, the other son and the widow, with each receiving two and two thirds. Thus the oldest son would now end up with six and two thirds!

It is evident then that the Haflo'oh disagrees with the Shvus Yaakov on two accounts. Firstly, when no son other than the firstborn exists, the Shvus Yaakov holds that we still consider this son to have the advantages of a firstborn, and this is taken into account when dividing the estate between him and anyone else added by his father, whereas the Haflo'oh holds that in the absence of any other children the firstborn is to be considered like an ordinary child.

Secondly, when there is another child present, when calculating the extra portion awarded to a firstborn, the Haflo'oh takes into account only those who inherit this man *min haTorah*, whereas the Shvus Yaakov includes for the sake of this calculation all the parties who will receive a portion in this man's estate, and the firstborn's extra portion will thus be reduced accordingly.^{ix}

The exclusion of land and seforim

We have mentioned earlier that the standard text of the *Shtar Chatzi Zochor* included a clause that excluded the daughter from any rights to land and *seforim*.

The clause that excludes land uses the word “*karka'os*” – literally lands. R' Akiva Eiger²⁰ quotes his brother-in-law R' Shimon of Ragzani as saying that this refers only to land and not to houses. This is because in

^{ix} This question of whether an only son receives his inheritance as if he were a firstborn is discussed comprehensively in the Dvar Avrohom (Vol. I ch. 27) where he quotes the Shvus Yaakov as saying that he does, with the Shev Yaakov (Choshen Mishpot 19) ruling that he does not. He further discusses possible proofs to this question from the commentaries of the Rashbam and the Rema"h to the Gemora Bava Basra 127a.

general there is a difference of opinion in the earlier authorities as to whether things uprooted from the land and subsequently reattached have the same Halachic rules as land or not. A building could well be regarded as being made up of things that were originally part of the ground that were detached and subsequently reattached to the earth. Although in general with any doubt that arises as to the interpretation of the text of a *shtar*, we rule against the beneficiary of the *shtar*, in the case of *Shtar Chatzi Zochor* the standard text includes a clause that specifically calls for any doubts to be decided in favour of the daughter. In that case, the daughter will get a portion of any houses in the estate, because since it is unclear whether houses are included in the expression “*Karka’os*”, we would rule in favour of the daughter to say that they are not included in the clause that excludes the daughter from land.

R’ Akiva Eiger himself, however, disagrees. The general rule²¹ with inconclusive expressions in *shtaros* is to follow the accepted custom. Since it was universally accepted that the daughter does not get any portion in her father’s houses, it is clear that when he wrote that she should not receive any *Karka’os* he intended to include in this houses, whatever their Halachic status in other contexts. In interpreting the text of a *shtar* we generally follow the colloquial sense of the word, regardless of the fact that in another Halachic context it could be interpreted otherwise.

Teshuvos Chinuch Beis Yehudah adds another point. The clause that excludes real estate only refers to the home where the father lived; the daughter does, however, receive a part of any other property owned by the

father. So too the *seforim* that are excluded refer only to the ones that he used himself. This must be so, reasons the Shev Yaakov, because otherwise the daughter of a man who was a *seforim* dealer, whose entire estate is in the form of *seforim*, will receive nothing! It is therefore reasonable to assume that only the father's home and his own *seforim* are excluded; any other property or *seforim* are included in the *Shtar Chatzi Zochor*. With this they add a reason behind this exclusionary clause. A man's primary bequest, they say, is his home and his private *seforim*. If we were to award these to the daughters, we would be uprooting his primary inheritance; furthermore this would disturb him most because these are the things that he would be most keen to ensure stay in the family^x, whereas if the daughter gets them, they will eventually pass on to her husband and his children. This reasoning does not apply to any other property, and thus the daughter would get a share of any other property left by her father other than his home.

R' Akiva Eiger, whilst agreeing with the reason for the exclusionary clause, nonetheless points out that although the daughter may thus receive part of any property that was intended by the father for buying and selling, it does not follow that she should receive also receive a share of any property that the father owned as a long-term investment; such real estate might well be considered too as the primary inheritance of the father, and not just his home, if we apply the aforementioned determining criteria. Yet the *Poskim* quoted in *Chinuch Beis Yehudah* allow the daughters a share even in property owned by the father for the long-term that he rented to others, and

^x Because this is the reason, the *Poskim* include, together with his home, the father's place in the synagogue.

exclude her only from the father's actual home.^{xi} Despite his objections, R' Akiva Eiger adds that he does not wish to overrule the aforementioned *Poskim*, and he would advise the *Dayanim* to arrange some sort of compromise agreeable to all involved.

Based on the aforementioned reason for the exclusionary clause from land and *seforim*, namely that these are a man's primary possessions and it would upset him if they would not stay in the family, the Chasam Sofer²² suggest that the clause referring to *seforim* was only applicable centuries ago, when *seforim* were individually written and were very valuable. Nowadays, however, when books are printed en masse, there is nothing particularly sentimental about a man's *seforim* and there should be no reason why the daughter who has a *Shtar Chatzi Zochor* should not take a share in them. Nonetheless, the Chasam Sofer refused to deviate from the accepted practice of giving the daughter no part of any *seforim*.

The Shev Yaakov²³ gives a different reason for the exclusion of *seforim*, namely that these belong only to the sons since they were purchased in order to learn Torah, which is a mitzvah that applies exclusively to males. A Sefer Torah, however, is not used to learn from directly, but is used for reading aloud in the synagogue. As such, it could be

^{xi} See also Responsa of R' Akiva Eiger Vol. II: 89, where he makes a similar point, and adds that even though the *shtar* includes a clause that gives the daughter the benefit of any doubts in the text of the *shtar*, in this case the text itself is clear – she does not receive *any* real estate – and it is up to her to prove that her father had any intention to award her property other than the family home.

argued that the daughters may receive a part of it as part of their *Shtar Chatzi Zochor*.^{xii}

Nonetheless, because the Sefer Torah is technically included in the term “*seforim*,” he did not wish to take it away from the sons. Still, the silver bells, the mantle and even the *Atzei Chaim* (wooden handles) of the Sefer Torah may be regarded independently of the Sefer Torah itself, and as such there is no reason why the daughter should not receive some part of them.

Nowadays, R’ Zalman Nechemiah Goldberg shlit”a²⁴ writes that it is permissible to write a shtar that gives daughters a share of the deceased’s house as well. Firstly, he argues, nowadays a man’s house usually counts for most if not all of his possessions, and as such without this the daughter would end up with nothing. Furthermore, as mentioned earlier the main reason for the exclusion of houses was because this was a man’s primary inheritance, which he would not wish to pass out of his family. Nowadays, though, the heirs would rarely live on in their parents’ home – more often than not they live elsewhere and end up selling this property, and so this reason does not apply.

Although R’ Moshe Feinstein²⁵ seems to disapprove of giving the daughters a share of the property, R’ Zalman Nechemiah²⁶ suggests that this may be true in the case of a wealthy man who leaves other possessions in

^{xii} In fact, he adds, it could be argued that they actually have more of a right than the sons in a Sefer Torah, since they do not learn Torah, and by allowing the congregation to read from their Sefer Torah they would also be able to share in the great merit of learning Torah!

his estate, whereas one whose main estate consists of his home may give his daughters a share of it.

As such, R' Goldberg advises that one should write explicitly in the *Shtar Chatzi Zochor* that the daughters receive a share in the house too. In the event that this phrase was omitted, R' Moshe writes that we can assume that his intent was to exclude houses, as per the usual text of the *Shtar Chatzi Zochor*. However, R' Zalman Nechemiah disagrees, pointing out that at present the whole idea of the *Shtar Chatzi Zochor* is unusual, and so there is no need to assume that the benefactor had intended to follow any particular text.

In this context, it is worthwhile noting that this particular point was discussed centuries ago by the Mahari"l²⁷. Although the accepted custom was to write this exclusionary clause in the *Shtar Chatzi Zochor*, if the father omitted it he ruled that the daughter receives part of the real estate and *seforim*; there is no reason to assume that the omission was not deliberate.

“Ro'uy” – If the father died in his father's lifetime

What if the father died in his own father's lifetime? Does the daughter also receive a share in the estate of her grandfather when it is divided up amongst his grandsons, even though her father never actually received it in his lifetime?

This type of property is referred to in Halachah as “*Ro’uy*” – property that was due to come to the father but never actually came in his lifetime. The standard text of the *Shtar Chatzi Zochor* contained a clause that expressly awarded the daughter a half-share in all of the property of the father, including *Ro’uy*, and so it would seem that this would enable the daughter to receive a share in her grandfather’s estate.

The She’eris Yosef, however, ruled that in this case, the daughter does not receive a share in her grandfather’s estate. He bases this ruling on the Gemora²⁸ that states that in certain respects a grandson can claim to inherit his grandfather directly (if his father predeceased his grandfather)^{xiii}; as such, the estate came directly to the grandchildren, and not via the father, in which case the daughters, whose claim is on the father’s estate, receive no share in the grandfather’s estate. Furthermore, Tosefos (in one opinion) explains that the aforementioned Gemora holds that a creditor may claim from *Ro’uy* – property that fell to his debtor after the latter’s death – and yet may still not claim from a debtor’s father’s estate if it falls directly to his grandson. If a creditor who is Halachically entitled to claim from *Ro’uy* nonetheless cannot claim from such property, there is no reason why a daughter who wishes to claim with a *Shtar Chatzi Zochor* should fare any better.

The Remo”h, in a Responsum²⁹, notes that there is a difference of opinion amongst the *Rishonim* as to how to explain this Gemora, and

^{xiii} The Gemora bases this on the verse (Tehillim 45:17) “In place of your fathers shall be your sons,” which implies that the grandsons inherit direct from their grandfathers, and not via their fathers.

according to some opinions, it comes out from the Gemora that those who are awarded *Ro'uy* would actually receive a share in the grandfather's estate. Seeing as there is a difference of opinion, we would have to rule in favour of the sons, for lack of the necessary proof to take away from their rightful inheritance.

Nonetheless, the Remo''h still awards the daughter a share in the grandfather's estate for the following reason^{xiv}. As we have explained, the *Shtar Chatzi Zochor* is actually a *shtar* concerning a very large debt, with the condition attached that if the sons give the daughter a half-share in the estate, they will be released from the debt. The fulfilment of this condition is a matter that concerns the sons and the daughters; any payment given to the daughters comes direct from the sons and not the father. Thus even if the grandfather's estate never came to the father in his lifetime and thus can be considered a weak form of *Ro'uy*, nonetheless, in order to fulfil the condition the sons would have to give the daughters a share. Even if the condition had specified giving their *own* money, they would have to give that as well, if they wished to avoid paying the debt! Since the *Shtar Chatzi Zochor* specified that the condition includes the daughter receiving a share of all the father's estate including *Ro'uy* – property due to come to him – they will get a share in the grandfather's estate too even though the father never received it himself. Even concerning something that the father never owned to give away, he can nonetheless make a condition that it must be given before the debt is annulled. (In fact, as we mentioned earlier, it is this

^{xiv} The Maharsha''l (Shu''t Maharsha''l Ch. 59) gives the identical explanation to a similar ruling.

mechanism that enables the father to give the half-share to his daughter in the first place, including even property that he did not own at the time of the writing of the *Shtar Chatzi Zochor* but that would come to him later.)

The Remo"h goes on to say that seeing as he has seen someone ruling contrary to the above (an apparent reference to his brother-in-law, the She'eris Yosef, mentioned above) he would add a number of points.

The She'eris Yosef had written that even though the *Shtar Chatzi Zochor* contained a clause specifically including *Ro'uy*, we could still interpret it to refer to better forms of *Ro'uy*, such as property that the father gained after writing the *Shtar Chatzi Zochor*, rather than interpret it to refer to even the grandfather's estate.

To this the Remo"h responded that it would appear from the Gemora elsewhere that this type of *Ro'uy* is actually considered more belonging to the father than other types (the reader is referred to the responsa of the She'eris Yosef and the Remo"h for a detailed discussion on this point.) Furthermore, even if we were to be in doubt as to what this clause was referring to, we would still rule in favour of the daughter. Although generally when in doubt as to the interpretation of a *shtar* we rule *against* the one who stands to gain from the *shtar*, the Remo"h writes that this is only when the expression in the *shtar* could be interpreted a number of ways. In this case, however, the phrase "*Ro'uy*" is all-inclusive in its simple interpretation, and there is no reason to limit it.

Furthermore, the doubt here is in the terms of the condition attached to the debt. In any such case it would be up to the sons to prove that they had fulfilled the condition. Until they have done so, the debt will stand, and they will be obliged to give the daughter the entire debt.^{xv}

Lastly, as we have pointed out, the *Shtar Chatzi Zochor* contained a clause specifically instructing that any doubts in the interpretation of the *shtar* should be determined in favour of the daughter.

[The She'eris Yosef added another reason to rule against the daughter. Although the father added specifically that the daughter should get a share also in *Ro'uy*, he surely did not refer to his own father's estate passing to his grandsons after his own demise, because he would surely not have imagined that he would die in his father's lifetime. The Mahara"m Padua wrote a response to the She'eris Yosef, and amongst the points raised, he noted that unfortunately all too often sons die in their father's lifetime. The She'eris Yosef responded that nonetheless, it is less likely to happen than the other way round, and so presumably the girl's father would not have had it in mind.^{xvi}]

^{xv} See, however, Sha"ch (Ch"m 281 note 7) who writes in reference to another case where there is a doubt as to whether something is included in the daughter's share, the rule that *hamotzei mechaveroh olov horayoh* applies, and the sons do not have to give it to her. Suggestions as to why the above very valid argument of the Remo"h might not apply in the Sha"ch's case are beyond the scope of the present discussion.

^{xvi} The She'eris Yosef ends that the Mahara"m Padua conceded that he could not rule definitively at the time, as he was not in possession of his *seforim*, since at the time there was a decree that any Torah *seforim* found would be burnt by the authorities.

The Mahara"m Lublin³⁰ also discusses this question at length, and rules that if the grandfather died only after the sons had paid the daughter her share in the father's estate, the daughter surely gets nothing from the grandfather's estate. The father intended only that the daughter receive a share in *Ro'uy* that could be accounted for at the time that the sons paid her, and not anything that would come afterwards. If, however, the grandfather died after the father died but *before* the father's estate was divided up, the daughter is entitled to a share in this property. (Nonetheless, the *debt* mentioned in the *Shtar Chatzi Zochor* is not paid from *Ro'uy*, and so if the father left only a small inheritance, the sons could choose the option of paying off whatever they could of the debt with the father's inheritance, keeping the grandfather's inheritance for themselves, rather than choosing the option of giving her the half-share in the estate, in which case they would have to give her from the grandfather's estate too.)

A final note on this point. If the *Shtar* specified that the daughter receive her share according to the value of the estate at the time the father dies (as the Chavos Ya'ir says – see below) this whole discussion would be redundant, because in that case the daughter cannot receive a share in anything falling to the father after his death. Presumably we would then interpret the inclusion of "*Ro'uy*" to refer to unclaimed debts owed to the father.

If the daughter dies in her father's lifetime and leaves children

The Remo"n³¹ considers a case of a *Shtar Chatzi Zochor* that was made out to the man's daughter, with the clause that it should go to her or

her descendants. In the event that she dies before her father, the Remo”h rules that although normally only sons inherit and not daughters, in this case all her children would share equally in the half-share of the grandfather’s estate that was due their mother. This is because the *Shtar Chatzi Zochor* says not that the share should pass to her “inheritors” (which would refer to sons only) but to her “descendants”, which includes all of her children.

The Ketzos Hachoshen³² writes that the Remo”h should have pointed out (as implies the Mahar”i Weil, the source of this ruling of the Remo”h) that this applies only if the daughter predeceased her father. If the father dies first, however, the daughter automatically receives her due and when she dies it passes by way of inheritance to her sons only.

However, the Ketzos goes on to question the whole ruling of the Remo”h. How can the father give over with this *shtar* something to his grandchildren who are not born at the time the *shtar* is written (bearing in mind that the Shtar was normally given to the daughter at the time of her marriage)? The Halachah states³³ that one cannot give something to someone who is not yet born! The only way, then that the grandchildren can get anything is by inheriting their mother, in which case only the grandsons get, and not the granddaughters.

The Nesivos Hamishpot³⁴, however, answers this with the point that we have mentioned several times. The *Shtar Chatzi Zochor* contains two parts; firstly a huge debt to the daughter (which obviously only her sons would inherit) and secondly a condition to the debt that if her brothers wish

to give her a half-share in her father's estate, the entire debt is annulled. It is this latter part to which the Remo"n was referring. If the woman's brothers wish to avoid paying the large debt, they must pay her a half-share of their father's estate and it is this share that is divided up amongst all the woman's children. This they do not inherit from their mother (and thus the girls also take a share) nor do they receive it from their grandfather (and thus the problem of giving to one not yet born does not arise). Rather, they receive it as a payment from the woman's brothers, to fulfil the condition stated in the *shtar* in order to avoid paying the large debt.

As such, says the Nesivos Hamishpot, there would appear to be a mistake in the standard text of the *Shtar Chatzi Zochor* quoted in the Nachalas Shivoh. The clause that states that "it" should be given to her or her descendants should be appended to the clause that mentions the condition of paying a half-share in the estate, and not, as stated there, the clause that discusses the large debt that the father admits that he owes his daughter.

One difficulty remains to be resolved, though. If the Mahar"i Weil refers to the half-share in the father's estate, why does he imply, as the Ketzos notes, that the woman's daughters only get a share if she dies before her father? Even if the father were to die first, the daughter does not automatically get her share; it must be given to her from the estate by the sons, and until that point it belongs to them. If she were to die before receiving it, it would be paid by her brothers to all of her children just the

same as if she were to predecease her husband. (This question requires further investigation.)

If the daughter dies in her father's lifetime and leaves no children

The standard *Shtar Chatzi Zochor* contained a clause that stated if the daughter should die in her father's lifetime and leave no children of her own, the debt is cancelled. This was added because the father did not want to his estate to end up in the hands of anyone other than his direct descendants, and if the daughter would die without children, in the absence of the aforementioned clause her husband would inherit the right to claim the *Shtar Chatzi Zochor*.

If the woman did leave a son, who died before her father, the Remo"n³⁵ quotes the Mahar"i Weil as ruling that the woman's husband inherits the *Shtar Chatzi Zochor*. Although it is fairly certain that the father would not have admitted to the debt had he known that it would result in his property going to someone outside his immediate descendants, nonetheless we do not use the concept of *Umdenoh* – an assumption – if it contradicts a man's own admission.^{xvii} The Chelkas Mechokek³⁶ therefore advises that the *Shtar Chatzi Zochor* should state explicitly that the debt is annulled if the daughter should die in her father's lifetime and leave no children alive *at the time that her father should die*.^{xviii}

^{xvii} The reason for this is that even if we had witnesses who testified against a man's admission, the admission is still valid; *Umdenoh* is certainly not stronger than two witnesses!

^{xviii} This ruling of the Remo"n was the subject of considerable debate amongst the *Poskim*, who ultimately ruled almost unanimously as the Remo"n does. A comprehensive discussion

Fluctuations in the value of the estate

What if, before giving her her portion, the sons of the deceased worked with the estate and as a result it increased in value? Does the daughter take a share of the profits as well?

In general, if someone works on land belonging to someone else without being requested to, he may receive either his expenses or the amount of resulting profit, whichever is the smaller amount. In this case, though, writes the Mahara"m Padua³⁷, the daughter does not receive any of the profits. The reason is that she does not automatically own any of the estate when the father dies. The sons are obliged to either pay up the exorbitant debt or give her a portion of the estate, but until they actually do so it does not belong to her. As such, it was their property that increased in value, and not hers.

Furthermore, although at the time that they do give her her share, the estate is now worth more, she still receives no share in the increase seeing as the condition for cancelling the debt was that she should be given the equivalent of a half-share in the value of the estate at the time that the father died. What happens to the estate after that point is of no concern to her. [This is only with regard to changes to the estate itself; if however an inheritance subsequently falls to the father it may be regarded as a new estate of the father's in which the daughter also takes a share – see “*Ro'uy*” above.]

of the various responsa can be found in the Shu"t Chasam Sofer (Even Ha'ezer Vol. II, ch. 159).

The Chavos Ya'ir³⁸ comes to a similar conclusion, that the daughters get their share according to the value of the estate at the time that the father died, not at the time when they actually divide up the estate^{xix}, and says that this is the opinion of most *Poskim*. Even the Mahara"m Lublin³⁹, he adds, who appears to hold that we estimate her share according to the value of the estate at the time that we divide it up, only so rules because in his text of the *Shtar Chatzi Zochor* it says that she gets a half-share of the estate, without stating explicitly that this refers to the estate at the time of death. Nowadays, though, the standard text of the *Shtar Chatzi Zochor* is explicit, that her share is estimated according to the value of the estate at the moment that the father dies.

The father's creditors take precedence

Another *takanah* that Chazal made to aid girls in getting married was to award orphaned daughters an amount from their late father's estate at the time of their marriage. The amount given is estimated according to our knowledge of the man and how much we can assume that he would have been willing to give his daughter at the time of her marriage. If we do not know him well enough, and he has not yet married off any other children (from which we could have had an indication of how much he would be willing to give), we award her ten per cent of the estate. This arrangement is known as *Issur Nechasim Leparnasass Habass*.

^{xix} This may work to her advantage as well. In the case of the Chavos Ya'ir, the *Kehillah* appropriated a share of the estate in lieu of various taxes. Had the daughter received her share automatically, the money lost to the *Kehillah* would have been divided up proportionately amongst all the children, but seeing as the daughter does not actually inherit but rather gets paid a share of the estate, any additional taxes on the estate do not affect her share.

The Mahara”m Padua⁴⁰ was asked about the estate of a man who left a daughter to marry off, who had also given a *Shtar Chatzi Zochor* to another daughter. Does this daughter have to pay, from the share of the inheritance that she receives, a proportionate share of the *Issur Nechasim* to her sister, or does the burden of this obligation fall solely on the sons?

At first glance, he writes, the daughter need not pay anything. As we have already noted, she does not actually inherit her father. The sons are the sole inheritors, and the portion that daughter receives is given by them, not their father, in order to avoid paying the greater value of the debt. Sons who give away part of the estate cannot avoid paying the entire *Issur Nechasim* from the remainder of the estate.

However, the Mahara”m Padua notes that it is clear from the responsa of the Mahari”k⁴¹ that the daughters who receive a share of the inheritance via a *Shtar Chatzi Zochor* do actually have to contribute their share towards the *Issur Nechasim* of any unmarried sisters. The Mahara”m Padua therefore offers two explanations for this.

Firstly, the text of the *Shtar Chatzi Zochor* awards the daughter “*Chatzi chelek zochor* - A portion equivalent to half that of a male inheritor.” Even if, technically speaking, the daughter does not actually inherit her father, it is clear that the father does not intend for her to receive more than half of that of the sons, and so she would have to contribute a proportionate share towards the *Issur Nechasim*, because otherwise the sons

would have to pay it all and she would end up getting more than half of that which they received.

Secondly, although the *Issur Nechasim* is regarded as a debt on the estate, in certain respects it is to be regarded as a *Yerushah* – a part of the inheritance.^{xx} Just as if there was an extra son present, the daughter's half-share would fall proportionately, so too the unmarried daughter who receives *Issur Nechasim* is considered as one of the inheritors and the daughter who has a *Shtar Chatzi Zochor* will see her share fall accordingly; in effect, she will have to pay a proportionate share of the *Issur Nechasim*, as the Mahari"k says.

There is a difference between the two reasons given by the Mahara"m Padua. According to the first reason, the daughter would have to contribute not only to any *Issur Nechasim* but also to any other creditor who claims a part of the estate as payment for a debt left by the father, in order that she should not receive more than half that of the sons. According to the second reason, however, it is only *Issur Nechasim* that affects the daughter, because it is viewed as being in effect an extra inheritor. Any other debts on the estate, however, should be paid exclusively by the sons, who are the actual inheritors.

The Remo"h seems to hold like the first reason of the Mahara"m Padua, because he rules⁴² that a daughter who claims with a *Shtar Chatzi*

^{xx} The Mahara"m Padua brings proofs to this and explains in respect to what we consider it an inheritance or a debt.

Zochor must contribute proportionately to *all* creditors on the estate, and not just in the case of *Issur Nechasim*.

The Chavos Ya'ir⁴³ was asked about a case where the local *Kehillah* appropriated a part of a deceased man's estate in lieu of various taxes. As we mentioned earlier, he ruled that the daughter who had a *Shtar Chatzi Zochor* need not suffer any loss as a result, as we award her a share according to the value of the estate at the time that her father died. It would seem that this ruling goes contrary to that of the Remo"h who would hold that in order for her not to end up with more than half that of the males, she should also contribute a share. However, the Chavos Ya'ir himself notes that his case is different from that of the Mahara"m Padua for a number of reasons.

The first reason he gives is that the Mahara"m Padua himself (in his second explanation) explains that an unmarried daughter who receives *Issur Nechasim* is to be considered an extra inheritor at the time the father died, and as such the daughter with the *Shtar Chatzi Zochor* loses proportionately, whereas in this case the *Kehillah* only appropriated their funds at a later date, by which time the daughter had already had a right to claim her share.^{xxi} Furthermore, he adds, even if we were to consider the *Issur Nechasim* to be a debt on the estate, this case is still different because as we have said, the *Kehillah* claimed it only at a later date, by which time she had

^{xxi} This answer will not suffice to explain why the Remo"h might agree in this case, because as we have already noted, the Remo"h disagrees with the second explanation of the Mahara"m Padua, as is evident from the fact that he rules that *all* debts, and not just the *Issur Nechasim*, are deducted from the daughter's portion as well as the sons'.

already assumed a right to her share. (It is apparent from his reasoning that the *Kehillah* were not claiming money because they believed that the father owed it to them but rather were taxing the inheritor's property. This must be the case because otherwise there is no difference between this debt and the debt of *Issur Nechasim*.)

A further reason given by the Chavos Ya'ir is that, as we have mentioned, the Mahara"m Padua in his first explanation writes that in reality the daughter should not have to pay any part of any debts on the estate, seeing as she is not actually an inheritor, but rather receives a present, so to speak, in order that the sons need not pay the large debt owed to her. If she is not an inheritor, there should be no reason for her to pay off any debts on the estate. Nonetheless, she actually does lose proportionately, because it is clear to us (*Umdenoh*) that the father did not want her to receive any more than the equivalent of a half-portion of the sons, and that he intended, with this *Shtar Chatzi Zochor*, that she receive this after all debts on his estate have been paid off; otherwise she would end up with more than this amount. If so, says the Chavos Yair, this would only apply to debts that the father would have taken into account. In a case such as ours, however, when the *Kehillah* appropriated part of his estate, this was completely unexpected. Thus the father could not have taken it into account, and so we cannot say that the *Shtar Chatzi Zochor* implies that even in such a case the daughter should have to lose from the half-portion that was due her from his estate at the time he died.^{xxii}

^{xxii} Although we can surmise that the father would certainly have wanted her to take a proportionate cut in her share had he known what would happen, that does not change

The Mahara”m Lublin⁴⁴ discusses a case where the sons paid off the daughter her half-share, and several years later a creditor of the father’s came to claim his debt from the estate. By then there was nothing left in the hands of the sons so he claimed from the daughter. The Mahara”m Lublin ruled that even if they had paid her the debt rather than given her the half-share, and even if they had paid the debt with land rather than moveable property [in general if a later creditor came forward first and claimed moveable property he could keep it; this is not so in the case of land, with which the earlier creditor always gets priority] and the father’s creditor’s debt preceded the one written in the *Shtar Chatzi Zochor*, nonetheless, since at the time she received her payment she left enough property for the creditor to claim his debt, there is no reason for her to lose if the creditor delays in coming until the rest of the property gets destroyed.

The Beis Meir⁴⁵ quotes this Responsum of the Mahara”m Lublin, but disagrees with the ruling. Even if a later creditor left enough property for the earlier creditor to claim, nonetheless if when the earlier creditor arrives there is nothing left, he may still go to the later creditor and claim his debt from whatever the latter had already received from the estate.^{xxiii}

anything. A literal reading of the *Shtar Chatzi Zochor* allows her to take her full share regardless of any other debts. In order to oblige her with sharing the burden of any debts, we need to be able to say that the father obviously meant to include a proviso that she take her share only after all these other debts have been settled. With regard to unpredictable circumstances, we cannot say that it is as if he stated clearly to take them into account, since he had not thought about them. As such, the literal reading of the *shtar* stands.

^{xxiii} This fundamental difference of opinion between the Mahara”m Lublin and the Beis Meir is relevant not only for this case but for all cases of a later creditor claiming before an earlier creditor.

Furthermore, the Beis Meir discusses the actual mechanism of the *Shtar Chatzi Zochor*. It is clear, he states, that the father's real intention was for his daughter to receive a share of the inheritance, and the only reason that he wrote a bill of debt was because it was the only way to ensure that his daughter would receive her share in the inheritance. Certainly if they paid her her half-share, she would be obliged to contribute to paying off her father's creditors, just as the sons are obliged, but even if they actually paid her the debt specified in the *Shtar Chatzi Zochor*, she could not ignore the creditors. As soon as it becomes apparent that others will lose as a result of her claiming the debt, the sons no longer have the choice whether to pay her her debt or her half-share. Since the main intention of the father was that she should inherit like her brothers, in this case any payments received by her are automatically considered to be given as a share in the inheritance, as the father wished, and as such the creditor can claim his debt from her as much as from the other brothers.

The Beis Meir seems to be extending the reasoning of the Mahara'm Padua. Not only if the brothers give her a half-share do we say that the father intended her to be no better than her brothers, but even if they paid her off the large debt instead, if other creditors will lose out the father would not want her to be any better off than her brothers, and the money she received should be considered as an inheritance (rather than a payment of the debt) from which the father's creditors may claim their debts.

The Maharil⁴⁶ discusses a case where the sons did not actually give the daughter a half-portion, but rather came to a financial settlement, in

which they gave her a sum of money and she agreed to forgo any further claims. Subsequently the local ruler demanded a sum of money to pay for taxes that the father had not paid. The Maharil ruled that the daughter's portion remains unaffected by these payments to the ruler. This is not a contradiction to the *Poskim* quoted above, because in this case they did not actually give her the half-portion stipulated. The fact that they gave her a settlement *instead* of the *Shtar Chatzi Zochor* makes her no different from any other gift or transaction that they gave away from the estate, in which case the inheritors must pay any debts from whatever is left of the estate.

Paying the creditors so that the daughters lose everything

We have already mentioned that a daughter who claims with a *Shtar Chatzi Zochor* gets no share of any land left by her father. If the father left land and moveable property, and the sons wish to pay off their father's creditors with the moveable property, in order that they will be left only with land, and in this way the daughter will not be able to claim anything, they are entitled to do so.⁴⁷

The She'aris Yosef⁴⁸ goes a step further. What if there were several daughters, and the sons decided that rather than award each daughter a half-share in the estate, they would instead pay off the entire debt that was written in the *Shtar Chatzi Zochor* to one of the daughters? In this way, there would also be nothing left for the other daughters. (Although the sons would lose either way, they may be tempted to come to an agreement with this one daughter to award her the large debt, if she would agree to share it

with them afterwards, thus bypassing all the other daughters.) The She'eris Yosef⁴⁹ rules that they are entitled to do so.

The Chelkas Mechokek⁵⁰ quotes this ruling, but he adds that he finds it difficult to justify. In the first case, the creditors may be paid with either land or other goods, and it is certainly within the rights of the inheritors to decide which to pay. In the second case, however, the *Shtar Chatzi Zochor* includes a clause that allows the inheritors to pay a half-share of the estate in order to be released from the debt, and as such they should surely be obliged to make use of that option rather than cause the other daughters to lose their claim.

The Beis Shmuel⁵¹, however, concurs with the She'eris Yosef. The fact is that the *Shtar Chatzi Zochor* clearly gives the right to the inheritors to decide either to pay the huge debt or to give her a half-share, and there is no obligation upon them to choose one option over the other. (He also brings a proof to this from a similar ruling elsewhere in Shulchan Aruch.)

The Shvus Yaakov⁵² also discusses this case but concurs with the Chelkas Mechokek for the following reason. The other daughters can claim to the sons that any way that you look at it, they the daughters gain. If we are to be considered as creditors, they may say, then you have no right to give away the entire estate to our sister, who is no more a creditor than we are. If, on the other hand, we are to be considered as inheritors, then we are partners in this estate and you have no right to pay up the debt (rather than give her a half-portion) without our consent.

This second side of the argument, though, is surely debatable. As we have noted, the daughters are not inheritors, and therefore they cannot dictate to the sons what to do with the estate. The first part, too, does not necessarily follow. It is true that we consider the daughter to be a creditor, but that does not mean that the sons cannot first pay another daughter, who is also a creditor. Firstly, the Halachah is⁵³ that the one whose *shtar* is dated earliest is given first rights in claiming the debt, and so the sons could surely pay the oldest daughter the entire estate in lieu of her claim. Furthermore, this was only in the times of the Gemora, when debts on a deceased man's estate could only be claimed from land^{xxiv}. Nowadays (since a *Takanah* of the Geonic period) debts can also be claimed from any movable goods in the estate, and in that case the rule is that no one takes precedence. The Shulchan Aruch seems to be of the opinion⁵⁴ that in such a case, if any of the creditors came forward before the others and received all his dues, he could keep it regardless of whether there would be nothing left for anyone else. In that case, the sons could pick *any* daughter and pay her the entire sum!

However, the Sm"א⁵⁵ rules that even the Shulchan Aruch agrees that if all the creditors were to come together, the property should be divided out proportionately amongst the various different creditors. As such, the Shvus Yaakov may be justified in saying that the daughters could prevent the sons from giving all the estate to one daughter in lieu of her debt, but only with regard to the movable goods that the man left, and only if all the daughters

^{xxiv} Although the half-share is not paid out of land, if the sons instead pay the large debt rather than the half-portion, she receives payment as any other creditor, i.e. from any land in the estate.

were to make their claim before the sons awarded one of them the entire debt. If one of them came forward first, though, and in the case where he left land even if they all came together, the sons would seem to be justified in paying one daughter her entire debt, rather than giving her a half-share in the inheritance, and even if it meant that the other daughters would lose out entirely.

If the father intended to give a *Shtar Chatzi Zochor* but didn't actually do so

Let us consider a case where a man wrote that he intends to give his daughter a *Shtar Chatzi Zochor*, but died before he actually managed to write it and hand it over. Both the She'eris Yosef⁵⁶ and the Emunas Shmuel⁵⁷ write that if the *Shtar Chatzi Zochor* was not actually written, the daughter gets nothing. Even if the father performed a *Kinyan* (act of acquisition) to finalise his intentions, it is not binding. (This type of non-binding act is known as a *Kinyan Devorim*⁵⁸.)

It was pointed out to the Nodah Biyehudah⁵⁹, however, that it appears from the responsa of the Avodas Hagershuni⁶⁰ that the Mahara"m Mintz held that in such a case the daughter would get her share of the estate. The Nodah Biyehudah replied that in fact everyone agrees in principle that even if one intended to give something to another, nothing is valid until the object or *shtar* is actually handed over. In the case of the Mahara"m Mintz, however, the daughter gets her share for a different reason. We have already mentioned that every daughter gets ten per cent of her father's estate in order to finance her wedding and marriage (*Issur Nechasim*). We also

mentioned that if we can estimate how much this man would have given, we would give her accordingly. The Mahara"m Mintz ruled that the daughter gets her share in the estate not because of the *Shtar Chatzi Zochor* (seeing as it was never actually written) but because since the father indicated how much he wished to give her, she gets it as her *Issur Nechasim*. Even those who rule that we always give her ten per cent and cannot estimate how much the father would have given (even if he married off one daughter in his lifetime, these opinions hold that it is still no indication of how much he would have given this daughter) would agree here, because we need not rely on our estimation – the father himself expressed clearly how much he wanted to give!^{xxv}

Nonetheless, the Nodah Biyehudah expresses his reservations about this ruling. Firstly Rabbenu Yonah is of the opinion that daughters above the age of twelve and a half do not get *Issur Nechasim*. Furthermore, even though the father indicated that he wanted to give her a *Shtar Chatzi Zochor* at her wedding, he may well have intended to change his mind afterwards, especially bearing in mind that he must have known that even once he would have given her this he could always prevent her from getting anything from his estate by, for example, investing all his assets in land and *seforim*. As such, we have no absolute indication of how much the father actually would have given her for *Issur Nechasim*. With the lack of absolute proof, the Nodah Biyehudah concludes that we cannot uproot, so to speak,

^{xxv} There is an opinion that holds that the maximum we give the daughter is ten per cent, but here too the Mahara"m Mintz says that this applies only if we are relying on our own estimation. In this case, though, the father expressed clearly his desire to give more, and we award her accordingly.

the Torah-mandated inheritance from the sons, and thus we would not award her the *Shtar Chatzi Zochor* in this case.

If the deceased left only daughters

The Tzemach Tzedek⁶¹ writes that if a man wrote a *Shtar Chatzi Zochor* to his daughter assuming that he would have male inheritors, but died leaving only daughters, then all the daughters divide up the estate equally. We do not award one daughter a double portion on the basis of her *Shtar Chatzi Zochor*, because it is absolutely certain that her father only intended her to claim with this *Shtar Chatzi Zochor* if he had left sons who would otherwise have taken the entire estate. (Although we have mentioned earlier that we cannot use the concept of *Umdenoh* – assumptions – to annul an admission, the Tzemach Tzedek adds that in this case the assumption is inescapable – *Umdenoh De'muchach*.)

Selling a Shtar Chatzi Zochor

The Shvus Yaakov⁶² writes that a daughter may sell her *Shtar Chatzi Zochor* to someone else, even before she has claimed with it. Even if the *Shtar Chatzi Zochor* contained a clause that said that it may be claimed by her or her descendants after her (which could be compared to the case of someone who gave a present and said at the time “*Ve'acharecho leploni* – and after you it should pass to so-an-so” in which case the recipient cannot sell it for more than his lifetime, after which it automatically passes to the second recipient, as the giver specified, even if the first recipient sold it) in this case we interpret this clause to be merely a linguistic embellishment (*Shufra de'shtaroh*). The real intention was that it should be a genuine *Shtar*

Chatzi Zochor that can be claimed by her or her descendants after her; there was no intention to deny her the right to sell it if she so desires.^{xxvi}

The Shvus Yaakov further takes issue with the Ponim Me'iros who writes that she cannot sell it, and proves that she can. In this he was already preceded by the She'aris Yosef⁶³ who also writes that she is able to sell her *Shtar Chatzi Zochor*.

There is an additional point to this. A woman who possesses a *shtar* and gets married, can no longer sell or forgo this *shtar* without the agreement of her husband, seeing as a husband has certain rights in her property as long as they are married. Although the standard text of the *Shtar Chatzi Zochor* contains a clause that expressly disallows her from forgoing her debt without her husband's agreement, the Shvus Yaakov⁶⁴ writes that there is no need for this to be written in the *shtar*, and thus even if it were left out the rules would not change. If the daughter wished to either sell or forgo her *Shtar Chatzi Zochor*, she would be obliged to get her husband's consent.⁶⁵

Redistributing the estate after giving a *Shtar Chatzi Zochor*

The Maharil⁶⁶ rules that once a father gives a *Shtar Chatzi Zochor* to his daughter, he may not give away his property in his lifetime if it means that in effect the daughter will be left with nothing to claim after his death.

^{xxvi} We have noted earlier that the Nesivos Hamishpat points out that this phrase that indicates that her descendants may claim it in her place refers not to the actual debt – in which case this phrase would be redundant as the Shvus Yaakov writes – but rather to the option to give her a half-share in the estate. As such, it certainly will not affect her right to sell the actual debt to anyone else.

This ruling is quoted by the Remo”h⁶⁷ as being the Halachah. Nonetheless, he does imply that if the father nonetheless went ahead and gave away his property, the gift is valid, wrong though he was to do so.

The Binyan Tzion⁶⁸, however, notes that the Mordechai quotes a Responsum of the Mahara”m as saying that although a father may have given a *Shtar Chatzi Zochor* to his daughter, he may still do with his property in his lifetime as he sees fit, seeing as the *Shtar* states only that she will receive a share in whatever estate he leaves when he dies. This is also quoted by the Remo”h⁶⁹, and there is therefore an apparent contradiction.

The Binyan Tzion suggests an explanation. If he gave the present in his lifetime, he is entitled to do so, as the Mordechai says. The Maharil is discussing a case where he specified that the gift should only be valid after his death; in this case he clearly indicates that he is only giving the gift in order to make the daughter lose, and it is therefore forbidden.^{xxvii}

The Chasam Sofer⁷⁰ elaborates and writes that the outcome will differ depending on the circumstances. If the father genuinely gave presents to his wife or other people, and would have done so even if he had not written a *Shtar Chatzi Zochor* to his daughter, the gift is certainly valid and even permissible, because the father may do as he wishes with his property

^{xxvii} Another possible way to reconcile the two rulings, suggests the Binyan Tzion, is that it would only be forbidden if the *Shtar Chatzi Zochor* contained a specific clause forbidding the father from doing so, as indeed the standard text quoted in the Nachalas Shivoh states. Otherwise it would be permitted.

whilst he is alive, and the daughter only gets a share in what is left when he dies. If, on the other hand, it is clear that no actual gift was given, and any contract or act of acquisition was done purely for the purpose of ensuring that the daughter lose out, then the gifts are obviously not valid, and remain in the estate with the daughter receiving her share.

There is a third possibility, which is that the father genuinely gave a gift to his wife because he wanted her to have it, but nonetheless would not have done so if he had not previously written a *Shtar Chatzi Zochor* to his daughter. This is the case, says the Chasam Sofer in which we would say that although it is wrong to do so, the gift is nonetheless valid.

He adds that even though the standard text of the *Shtar Chatzi Zochor* includes a clause that the father accepts upon himself an oath not to retract or act in any way that will prevent the daughter from receiving her due share, the gift itself is not invalidated by the fact that he transgressed his oath^{xxviii}.

Conclusion

The Torah⁷¹ refers to the Halachos of inheritance as “A decree of *Mishpot* (justice).” In these Halachos, perhaps more than in any other, the Jew submits himself to the eternal wisdom of the Master of creation and His holy Torah.

^{xxviii} See, however, the marginal notes of R' Akiva Eiger to Shulchan Aruch Even Ha'ezer 108:3, and Shu't R' Akiva Eiger Vol. I:129

Those who give their daughters to inherit in any way that is Halachically invalid, not only declare that they are unwilling to follow the Torah's laws, but furthermore they are causing others to transgress, because any property taken by a daughter without the agreement of the sons is considered by the Torah as stolen property.

Throughout the generations, Chazal made various *takanos* in order to ensure that daughters are not left without anything after their father dies, starting with *Issur Nechasim Leparnassas Habass* and *Mezonos Habonos*, both mentioned in the Mishnah, and continuing with further *Takanos* of the *Rishonim* that ensured that women were provided for, such as *Takanas Shu"m* and *Takanas Toledo*, and the later *Takanos* of Slutzk, Damascus and Yerusholayim.

In particular, the device of the *Shtar Chatzi Zochor* was instituted specifically in order to allow a man to ensure that his daughters received an appropriate share of his estate. As is clear from all the above, this was universally practiced throughout the Ashkenazi communities for some centuries, and it is unclear when and why it fell into disuse. There seems to be no reason why it should not be reintroduced and widely practiced, in order to facilitate a Halachically acceptable transfer of property to a deceased's daughters.

In the merit of our adherence to the Halachos of inheritance, may we see the in our days the fulfillment of the verse, "*Tzion bemishpot tipodeh veshoveho bitzedokoh.*"

Appendix – A translation of the essence of the text of the *Shtar Chatzi***Zochor**

(as brought in the Nachalas Shivoh, chapter 21)

In front of us the undersigned, on the date ... in the city of ... Mr. Ploni Almoni came before us and said, “Be witness, undertake a *kinyan* from me and sign and give my daughter ... a testimony that I desire without being coerced and hereby admit that I have in my possession the sum of a half a million dollars as a loan from my aforementioned daughter to me and they are a debt upon me and my inheritors, and I am obliged to repay this debt to my aforementioned daughter or to her descendants according to all the conditions mentioned in this *shtar*. I made the following condition with her that the time of payment of this loan should not be until one hour before my death ... A further condition was agreed, that when my sons divide up my estate they will have the choice either to pay up the debt or to give her or her descendants a share of the estate equivalent to half of that of each of the sons, from the entire estate including, loans, movable goods and jewelry, with the exception of land and *seforim*. If they give the aforementioned share then they shall be freed from paying the debt, even if her half-share in the estate is less than the aforementioned debt. I have also accepted upon myself with an oath and ban that I will give no other *shtar* to any person that will in any way lessen the share of the estate due to my daughter ... Any doubts concerning the interpretation of the text of this *shtar* should be decided in favour of my daughter ...

We accepted a *kinyan* from Mr. Ploni Almoni on behalf of his daughter ... to finalise all that is written above.

Signed,(witness)

.....(witness)



¹ Bamidbor 27:8

² Hilchos Nachalos 6:1

³ Bamidbor 27:11

⁴ Shulchan Aruch, Choshen Mishpot 250:17

⁵ Even Ha'ezer, 90

⁶ Kesubos 52b

⁷ End of Responsum 47

⁸ Kesubos 52b

⁹ Vol. III (Even Ha'ezer) 147

¹⁰ Nachalas Shivoh 21:4

¹¹ Vol. III, 147

¹² Vol. V (Choshen Mishpot) 151

¹³ Ibid

¹⁴ Vol. III (Even Ha'ezer) 147

¹⁵ 21:6

¹⁶ cf. Remo"h Ch"m 257:2

¹⁷ Devorim 21:15; cf. Yefeh To'ar on Medrash Rabbah, Vayeishev ch.8

¹⁸ Vol. III: 174

¹⁹ Kesubos, Kuntras Acharon 108

²⁰ Shailos Uteshuvos Vol. I: 129

²¹ Shulchan Aruch, Choshen Mishpot 218:19

²² Vol. II (Even Ha'ezer) 168

²³ Choshen Mishpot 21

²⁴ "Techumim," vol. 4

²⁵ Igros Moshe, Even Ha'ezer vol. 1 chap. 110

²⁶ Mishpat Hatzavo'oh page 203

²⁷ Shu"t Mahari"l Hachadashos 164

²⁸ Bava Basra 159a

²⁹ Shu"t Remo"h Ch. 3

- ³⁰ Shu"t Mahara"m Lublin 14
³¹ Choshen Mishpot 281:7
³² 281:6
³³ Shulchan Aruch Choshen Mishpot 210:1
³⁴ 281:9
³⁵ Shulchan Aruch, Even Ha'ezer 90:1
³⁶ ibid, note 2
³⁷ Shu"t Mahara"m Padua : 51
³⁸ Shu"t Chavos Ya'ir : 63
³⁹ Shu"t Mahara"m Lublin: 14
⁴⁰ Shu"t Mahara"m Padua: 51
⁴¹ Shu"t Mahari"k 78
⁴² Choshen Mishpot 281:7
⁴³ Shu"t Chavos Ya'ir 63
⁴⁴ Shu"t Mahara"m Lublin ch. 4
⁴⁵ Beis Meir Even Ha'ezer 113:2 (p. 72)
⁴⁶ Shu"t Maharil Hachadashos 155
⁴⁷ Shulchan Aruch Even Ha'ezer 113:2
⁴⁸ Shu"t She'eris Yosef ch. 8
⁴⁹ Shu"t She'eris Yosef ch. 7
⁵⁰ Even Ha'ezer 113:13
⁵¹ Even Ha'ezer 113:11
⁵² Vol. II: 120
⁵³ Shulchan Aruch Choshen Mishpot 104:1
⁵⁴ ibid 104:3
⁵⁵ ibid note 9
⁵⁶ She'eris Yosef ch. 2
⁵⁷ Emunas Shmuel ch. 60
⁵⁸ Bava Basra 3a; Choshen Mishpot 203:1
⁵⁹ Nodah Biyehudah (I) Choshen Mishpot 33
⁶⁰ Avodas Hagershuni 124
⁶¹ Quoted by the Beis Shmuel, Even Ha'ezer 90:5
⁶² Shu"t Shvus Yaakov II: 122
⁶³ Shu"t She'eris Yosef 8
⁶⁴ Shu"t Shvus Yaakov II:120
⁶⁵ See also Shu"t Binyan Tzion 161
⁶⁶ Shu"t Maharil 88
⁶⁷ Shulchan Aruch Even Ha'ezer 108:3
⁶⁸ Shu"t Binyan Tzion 161
⁶⁹ Shulchan Aruch Choshen Mishpot 281:7
⁷⁰ Shu"t Chasam Sofer Vol. III (Even Ha'ezer) 147
⁷¹ Bamidbor 27:11