

**This document has been reviewed for halachic accuracy by  
Rabbi Mordechai Willig, shlit"א, Av Beis Din of the Beth Din of America.**

## Introduction

After someone passes away, formal Torah law includes a clear order of heirs who receive the default inheritance rights, including a double portion for a firstborn son, immediately upon death ("Torah heirs"). This means that at the moment of death, the money automatically transfers to the ownership of the Torah heirs, who are usually male descendants or relatives. However, the long-standing practice over many centuries in the Jewish community is to utilize appropriate Jewish law mechanisms to allow assets to be distributed upon one's death to other beneficiaries, such as one's spouse, all children (e.g. daughters, adopted or step children), other relatives, and charities. Throughout this document, we'll refer to these potential beneficiaries as "non-Torah heirs." This practice was affirmed in the 20th century by a range of rabbinic figures and continues to be affirmed by legal rabbinic scholars and rabbinic courts such as the Beth Din of America.<sup>1</sup>

This practice allows the testator (i.e., the person creating the will) to fully respect Jewish law while issuing financial grants for their desired beneficiaries through legal documents binding under local civil law, such as beneficiary designation forms, wills, or revocable trusts. Throughout this introduction, such legal directives will be referred to as "civil wills." This approach has many benefits, including preserving family harmony, allowing for posthumous charitable distribution, and fulfilling the final wishes of the deceased, all of which are important mitzvot.

## Can I Give Away My Estate During My Lifetime?

Under Jewish law, it is permissible to gift any sum of money during one's lifetime (known under civil law as an *inter-vivos* or lifetime gift), even if that reduces the amount of inheritance significantly or completely. Technically speaking, this would allow for assets to be distributed in one's lifetime before the automatic redistribution of property occurs through *yerusha* (inheritance).

However, this is usually not an effective solution to the problem of inheritance. For starters, under Jewish law, these gifts can take into consideration current assets only at the time of the gift and not any assets subsequently accrued.<sup>2</sup> Furthermore, the testator usually desires to maintain control of much of their assets during their lifetime. For these and other reasons, this is not the recommended course of action.

## Can I Just "Let it Ride" and Make Do with my Civil Will?

This is not a good idea as it doesn't address significant halachic concerns. Through many centuries, poskim have vigorously debated whether a civil will, drafted under civil law and without any consideration to halacha, should nonetheless be respected, after the fact (*bedieved*) under Jewish law. These wills are problematic as they attempt to create "testamentary bequests" (i.e., posthumous gifts) when, under Jewish law of *yerusha*, the money has already transferred at the moment of death to the ownership of the halachic heirs. In cases when the Torah-heirs do not waive their entitlements, beneficiaries of the civil will may violate the laws of *gezel* (stealing) and the testator may violate the prohibition of illicitly transferring property rights (*issur ha'avarat nachalah*, *Choshen Mishpat* 281:4, based on *Devarim* 21:16). One can avoid the risk of violating these prohibitions with an appropriate solution to the *yerusha* problem which may be conveniently handled with your rabbi or lawyer, as presented below.

## What's the Best Solution?

The most effective method to ensure halachic compliance with one's desired distribution of resources is to first draft a legal civil will and then supplement it with a halachic document ("shtar") popularly known as a *shtar zachar shalem*, literally translated as a "full male-share inheritance document."<sup>3</sup> As indicated by its colloquial name, this historically was done to allow for equal distribution of the inheritance between sons and daughters alike, which is the default practice that is widely recommended to ensure family tranquility in appropriate circumstances. The document below helps ensure that any non-Torah heirs (e.g., daughters, other relatives, or charities) receive their designated share of an estate, whether equal or otherwise.

While this document should ideally be signed soon after the civil will is completed, it can technically be signed at any later date, provided that the testators are still competent. It is strongly recommended to sign this document as soon as possible after signing the civil will to avoid this important halachic step being overlooked.

## How Does It Work?

By signing the shtar, the testator (i.e., the person writing the will) creates an outsized, quantifiable obligated sum (*chov*) to one or multiple of the non-Torah heirs (e.g., wife or daughters), set to fall due "one moment before death" (i.e., in his or her lifetime, before the default inheritance laws would kick in).<sup>4</sup> The sum is secured, under Jewish law alone, by the whole estate.

The *chov* is set to be greater than the anticipated future value of the estate. As a default, we recommend setting the amount as double or triple of the estimated value of your future estate, taking into account investments, real estate appreciation, and inflation. Example: If you estimate that the estate will be worth \$3,000,000, you create the obligation for \$6,000,000. (For reasons explained below, getting the number exactly right is not critical. A good estimate is perfectly fine).

The document provides that if, after the testator's passing, the Torah heirs consent to the designated distributions as designated in the civil will (i.e., what the testator wanted), the *chov* is automatically cancelled. This shtar becomes immaterial, and the estate is distributed in accordance with the civil will.

If the Torah heirs decide to challenge the civil will in a *beis din*, they will have to satisfy the massive obligation before receiving any funds under strict Torah law. Their challenge, then, has the effect of causing them to forfeit any potential benefits of the Torah-provided inheritance. Compliance with the wishes of the testator as set forth in the will, therefore, is virtually guaranteed for a simple reason: there is no incentive to suing in *beis din* for a greater portion of an estate (e.g., a bigger piece of the \$3 million) when the entire estate (and more) has been obligated to the non-Torah heirs.

To make this even clearer, let's give an example: A widower leaves an estate worth \$3 million. The will provides equal distribution so that Son #1, Son #2, and Daughter each receive \$1 million. Biblical law would require the following distribution: Son #1 - \$2 million, Son 2 - \$1 million, and the daughter receiving 'support and a dowry' from this estate. As noted, for many centuries, this has not been the desired practice of the Jewish community. To enable the desired distribution, the father will write a shtar creating a debt of \$6 million in favor of the Daughter. Son #1 can agree to the equal one-third allocations in fulfillment of his father's wishes and thereby receive \$1 million. Alternatively, he could challenge this distribution in *beis din* to secure his \$2 million inheritance, but then he would first need to make a payment of \$6 million to his sister, leaving no residual estate. The choice will be obvious. Since the heirs choose to waive the *chov* rather

than violate the civil will, the redistribution occurs within the bounds of Jewish financial law. This method is in consonance with both the letter and spirit of Jewish law, which calls upon a person to fulfill the wishes of the deceased (*mitzvah lekayem divrei ha-met*), especially when it is their parents (*kibud av ve-em*).

Many *poskim* advise carving out a modest sum to be divided under the Biblical laws so that the rules of Torah inheritance are not totally sidelined.<sup>5</sup> As such, this shtar designates \$1,000 (אלף דולר) to be divided under Biblical law to the Torah heirs. In practice, for the sake of convenience, the Torah heirs frequently decide to waive this entitlement and follow the civil will entirely.<sup>6</sup>

The shtar does not need to be witnessed to take effect and does not need to be signed before a *beis din*.<sup>7</sup>

### Who Should I Name as the Beneficiary in this Shtar?

Intuitively, the people named in this document should be the non-Torah heirs who are named in the civil will. Since they are the people whose inheritances are being protected, it makes sense to name them. This regularly includes a spouse alongside with daughters or relatives, for example. Based on the rationale of how this shtar works, however, one could theoretically name anyone (besides the non-Torah heirs) as beneficiaries of this obligation, provided that it provides an incentive to the Torah heirs to respect the civil will. Again, common practice is to name the primary non-Torah heirs who are intended as beneficiaries in the civil will. For convenience, we have provided two versions of the shtar: (a) cases in which you have a living spouse whom you wish to receive your entire estate if you predecease them, and (b) cases in which you either do not have a spouse or do not intend for your spouse to receive your entire estate if you predecease them.

### What To Do With This Shtar?

Before the testator signs the document, he or she should preferably lift a pen or a handkerchief as a symbolic acceptance to the terms of the shtar. The shtar should then be signed by the testator and handed to a beneficiary (i.e., one of the designated non-Torah heirs), or any other Jew (such as a rabbi or a Jewish attorney) who receives it on behalf of the named beneficiaries, even without their knowledge.

Afterward, the shtar should be kept with the named beneficiary and/or one's rabbi or attorney for safekeeping. The shtar only needs to be produced if the civil will is challenged in a *beis din*.

Even if a new or updated civil will is later drawn, this shtar does not need to be redrawn.

### Does This Shtar Need to Be Completed with an Estate Attorney?

A person may consult with any legal advisors to ensure that this shtar has no repercussions on their civil will or for any tax purposes. As explicitly stated in the shtar's introduction, the intention is solely to ensure that Jewish ritual law is respected. Moreover, the shtar's enforceability in a civil court is highly questionable and likely unsupported; indeed, it is only meant to be utilized in a *beis din* under the limited circumstances that a Torah heir challenges the civil will in a *beis din*, as stated explicitly in the document. This document does not represent legal advice from Ematai.

### ENDNOTES

<sup>1</sup> See, for example, Rabbi Yechiel Michal Tukachinsky (*Gesher HaChaim* Vol 1, p. 41-42), Rabbi Yaakov Kaminetsky (*Emet LeYaakov: Choshen Mishpat*, Siman 282, p. 455), Rabbi Zalman Nechemiah Goldberg (*Techumin* 4, p. 342-353), Israeli Chief Rabbi Yaakov Herzog (*Techukah LeYisrael Al Pi HaTorah*, Vol. 2, Chapters 5-11), and Rabbi Shlomo Dichovsky (*Techumin* 18, p. 30). For further discussion of the topic, see Rabbi Mordechai Willig, *Am Mordechai al Arba Chelkei Shulchan Aruch*, p. 284-294; Rabbi Yaakov Blau, *Pischei Choshen* Vol. 9, Chapter 4; Rabbi Matiyahu Schwartz, *Mishpat Ha-Tzava'ah*, Vol. 1, Chapter 20; Rabbi Asher Weiss, *Minchas Asher: Bamidbar*, Simanim 80-82 (Pinchas). For further English explanations of the topic, see the relevant material on the websites of the Beth Din of America and the Chicago Rabbinical Council as well as Rabbi Chaim Jachter, *Gray Matter*, Vol 3 (also available online); Rabbi Yehuda Warburg, "The Propriety of a Civil Will" (*Hakirah* 15); and Rabbi Daniel Feldman, *Letter and Spirit* (Maggid, 2024), Chapter 8.

<sup>2</sup> Rama CM 281:7. Thus, signing transfer documents (e.g., a bill of sale for tangible property or an assigning of contract rights) today that would encompass all assets owned one minute prior to death would not suffice from a Halachic perspective. It is possible that under Jewish law, certain assets - such as money in joint bank accounts, joint investment funds, or revocable trusts - would not be automatically transferred under the rules of *yerusha* since they are already in the possession of others. This addendum ensures that even assets not jointly titled, such as solely owned property or accounts, are properly bequeathed under Jewish law.

<sup>3</sup> *Shu"t Maharsham* 2:224:29; *Ktzos Hachoshen* 33:3; *Igros Moshe*, EH 1:110

<sup>4</sup> On a technical level, by making a *kinyan* that affects an obligation immediately, but only becomes collectible moments before death, the *shtar* generates a debt for the estate that will be collectible by non-Torah heirs after the testator's death.

<sup>5</sup> According to many authorities, the Biblical prohibition of disinheritance is only violated when the Torah heirs are entirely excluded. See the extensive discussion in *Mishpat Ha-Tzava'ah*, p. 79-94.

<sup>6</sup> Alternatively, the \$1,000 distribution according to halachic *yerusha* can be done as a bequest in a will or revocable trust. A possible additional benefit of doing this is *chinuch*, in which all heirs will be aware of the Torah's requirements of *yerusha*.

<sup>7</sup> The *shtar* includes the statement that the obligation is undertaken by a *kinyan sudar* in a *beis din chashuv*, i.e., a proper means of transaction in an important Jewish court. This line is a way of expressing a *hoda'as ba'al din* (a legal admission) to that effect. Therefore, the document does not physically need to be signed before a *beis din* (Rama CM 207:15). In rare cases, when a testator has a fear that this document will be challenged in a *beis din*, it is suggested to have the document signed by witnesses to strengthen its enforceability in a *beis din*. The witnesses should be valid witnesses under Jewish law, should not be related to the testators, and should not be beneficiaries of the will. This is usually not necessary. If you'd like to add this to your *shtar*, here is a suggested text, which should be followed by their name and signature. "In front of us undersigned witnesses, we saw [insert name] sign this document. We hereby attest that [he or she] signed the above document in good faith without duress and in full control of their faculties. This is all valid and in good standing. On all this we affix our signature on this day of \_\_\_\_." To receive a version of Ematai's *shtar* with this option please email [office@ematai.org](mailto:office@ematai.org).