



## Is it a Halachic Problem for Parents to Will Each of Their Children to Inherit Equally?

### How Can the Torah Exclude Daughters from Inheriting?

The matter of firstborn rights is the red thread of *Parashat Toldot*. The Torah law of bequeathing a double portion to the first-born son, and even more so, that of excluding daughters from inheriting when there are sons, clearly goes against our sense of fairness and justice. In our time, and even centuries back, it has long been the custom of parents to divide their possessions equally among their children, whether they be sons or daughters, firstborn or not. I was a bit shocked to discover that Torah law, even today, obligates the father to bestow a twofold inheritance to his firstborn son. What if the younger son is poor and needs the money more? And what about the daughters? Not receiving a full part of the parents' inheritance could cause resentment, family strife and reduce a young woman to poverty. Furthermore, according to Torah law, a wife does not inherit from her husband; only the sons do. However, most husbands and fathers today rather than leaving their inheritance to their sons – who may be too young to take care of financial matters – would want their wife to inherit all their possessions and let the children inherit from her at the appropriate time when they become mature adults. In practical terms, this implies that, for example, if a husband and father of three sons and three daughters dies, and leaves possessions worth \$100,000, he bequeaths his firstborn \$50,000, his additional sons \$25,000 each, but leaves nothing for his widow and daughters. Why would the Torah have such seemingly unfair laws? Is there no way today according to halacha to allow each of the children to share equally in the inheritance of their parents?

### Legal Transactions Overriding Torah Laws of Inheritance

The first person who actually amended the Torah law of inheritance is no other than Ya'acov, who fashioned a legal transaction which transferred the law of the firstborn to the younger son, in exchange for a bowl of lentil soup:

**ספר בראשית פרק כה פסוק לג** וַיֹּאמֶר יַעֲקֹב הִשָּׁבְעָה לִּי כִּי־זֶה יוֹם וַיִּשָּׁבַע לוֹ וַיִּמָּכֶר אֶת בְּכֹרְתּוֹ לְיַעֲקֹב:  
 “And Ya'acov said, ‘Swear to me as of this day;’ so he swore to him, and he sold his birthright to Ya'acov (*Bereishit* 25:33).

From Ya'acov, we learn that it is possible to make specific agreements in order to determine who inherits what. Perhaps Job learned this principle from Ya'acov when he bequeathed his daughters with an inheritance along with his sons:

**ספר איוב פרק מב פסוק טו** וְלֹא נִמְצָא נָשִׁים יְפוֹת כְּבָנוֹת אִיּוֹב בְּכָל הָאָרֶץ וַיִּתֵּן לָהֶם אֲבִיהֶם נַחֲלָה בְּתוֹךְ אֶחְיָיהֶם:  
 “Nowhere in the land were women as beautiful as the daughters of Iyuv to be found, and their father gave them an inheritance among their brothers” (*Iyuv* 42:15).

I haven't found any commentaries that criticize Job for overriding the Torah laws of inheritance. On the contrary, Rashi explains, “Because of (their esteem and) their beauty, he gave them an inheritance with their brothers.” Perhaps, we can say that today all women are esteemed, along the lines of the Rama in *Shulchan Aruch*, “All our women are important,” regarding whether women should lean during the Pesach Seder (*Orach Chayim* 472).

## Dynamic Torah Adapts to Changes in Society

The Torah is a Tree of Life. It is dynamic and adaptable to various situations throughout the ages. As history and time unfolds, there are epic shifts in society. The daughters of Tzelafchad were the first to point out the injustice that daughters were unable to inherit, when there are no sons. Hashem responded in their favor:

במדבר פרק כז פסוק ז... כֵּן בָּנוֹת צִלְפַּחַד דְּבָרָת נָתַן תִּתֵּן לָהֶם אֲחֻזַּת נַחֲלָה בְּתוֹךְ אֶחָי אֲבֵיהֶם וְהִעֲבַרְתָּ אֶת נַחֲלַת אֲבֵיהֶן לָהֶן:

“Hashem spoke to Moshe, saying, ‘the daughters of Tzelafchad speak properly. You shall certainly give them a portion of inheritance along with their father’s brothers, and you shall transfer their father’s inheritance to them’” (*Bamidbar 27:7*).

The dynamic features of Chazal deal with real-world problems. When situations arise that could introduce strife into families or leave vulnerable people impoverished, the rabbis must figure out and tinker with the system in a way that is consistent with halacha and Torah values, while taking into account the realities of society. The way wealth is passed from generation to generation changes over time. Likewise, the way people organize their economic affairs in an agricultural economy is vastly different from how the economy works in a mercantile society. “Indeed, the rabbis must always be on their toes to balance the changing times with Torah law” (Rabbi Shlomo Weissman, Director of the Beth Din of America).

## Torah Laws Consider the Wellbeing and Security of Women

Just because certain Torah laws are at odds with the modern Western way of thought, doesn’t make them unfair. These laws need to be understood in their proper context. When discussing the Torah law regarding inheritance, we must realize that according to the Torah, the man is exclusively responsible for the financial welfare of the family. The Jewish marriage contract (*ketuba*) obligates the husband to financially support his wife, while the wife is not required to contribute financially to the family. Until recently, it was no different even in the Western World. The Talmud considers first and foremost the wellbeing and security of the women, ensuring that men support them adequately: “One who dies and leaves sons and daughters – when the possessions are abundant, the sons shall inherit, and the daughters shall be maintained. If the possessions are sparse, the daughters shall be maintained, but the sons shall beg [for support] from door-to-door” (*Bava Batra 139b*). The primary duty was to ensure that the women be taken care of. The men – more easily than the women – can go to work. If that is not feasible, sad as it may be, it is still better for a man to beg than for a woman. So even if according to Torah law the wife and the daughters do not inherit when there are sons, the sons are required to ensure that they receive an adequate stipend that supports them according to their customary standard of living.

## How Can a Daughter Inherit Her Parents According to Halacha Today? – Writing a Will

As we approach the final redemption, the woman’s role is shifting and the curse of, “...To your husband shall be your dependence, and he shall rule over you” (*Bereishit 3:16*) is being undone. Today, the need for independence overrides the need for security for most women. Along with women’s financial independence comes the natural requirement for daughters to inherit equally with their brothers. Although we may not transgress the Torah’s command, there are ways of choosing one’s beneficiaries which are both religiously and legally legitimate. There is an age-old custom among many, that while the father is still alive, he drafts a document referred to by Halacha as *Chatzi-Zachar* for his daughters, thus entitling them to a portion of his estate. This is especially a worthy thing to do if one’s daughter has built her household on the tenets of Torah

and Mitzvah observance, and her family is going through a difficult financial time, in which case it is a Mitzvah to help one's daughter and son-in-law to continue in their service of Hashem with some financial respite (Maran Rabbeinu Ovadia Yosef zt"l, *Halacha Yomit*). The laws of inheritance according to the Torah are quite complex and when wishing to choose our beneficiaries it is advisable to consult with a prominent Torah scholar or a religious lawyer who deals with estate planning. However, it is good to know that with proper guidance in the process of transferring inheritance, it is possible to grant a portion of our estate to the wife, daughters and younger sons.