

## **Last instructions**

*Harav Yehoshua Pfeffer*

One of the trickiest areas of Torah monetary law is the writing of a *tzavaah*. Unlike secular Wills and Testaments, the writing of a Torah *tzavaah* should not consist merely of instructions, but should incorporate a range of *kinyanim*, halachic transfers that actually transfer the property of the testator to the beneficiaries listed in the Will.

A famous case in which a testator relied on instructions alone is that of the Rebbe of Sadigor. Although the Rebbe expressed his confidence that the instructions of the will would be carried out to the letter by his righteous sons, part of the Will was challenged after the Rebbe's passing, leading to a furious debate among *poskim* over whether the instructions were binding on the Torah inheritors.

In this article, we will not discuss the intricacies of how to use *kinyanim* in writing a *tzavaah*, and the many pitfalls that might be chanced upon. Rather, we will focus on the nature of instructions that are not backed up by halachic transfers. Can instructions, with regard to financial matters or otherwise, be binding, and how should they be made?

The Gemara states that it is a *mitzvah* to heed the instructions of the deceased (*Gittin* 15a). With regard to financial assets, several *rishonim* maintain that this obligation is rendered binding only by the deposit of the possessions in question with a third party (see *Shulchan Aruch* 250:23; 252:2). According to *Achiezer* (3:34), legal validity in the secular courts is also sufficient to make its instructions binding, though other authorities dispute this position (see *Minchas Yitzchak* 6:165).

Yet, even when a deposit is not made—which is always the case concerning instructions that have no bearing to fiscal matters—and the instructions of the deceased are not fully binding, heeding them remains a *mitzvah* (*Mahari Ha-Levi* sec. 88). The following considerations should be borne in mind.

Instructions must be given as *commands*—not as items of advice or "wishes" (*Ramban, Bava Basra* 148). In the case of the Sadigor *tzavaah*, one of the issues brought up by *poskim* is that the Rebbe only "expressed confidence" in his inheritors' following his instructions, without mentioning an explicit command. *Maharsham* (2:224) writes that the confidence expressed by the Rebbe amounts to a "command"—yet, to avoid any doubt, the word "command" or a reasonable equivalent should be used.

Another point to bear in mind is that the instruction should be given directly to inheritors. According to *Shach* (*CM* 252:4, based on *Ritva*, as cited by *Beis Yosef*), an instruction directly addressed to inheritors is legally binding. Other authorities take issue with this ruling (see responsa of Rabbi Akiva Eiger 150; see also *Maharsham, loc. cit.*, who applies the ruling specifically to a *shechiv mera*, unless other conditions are met), but the need for instructions to be addressed to inheritors is important according to all opinions.

The principle behind the concept is that an instruction loses its significance when it is given to somebody who cannot fulfil it. It is meaningful only when issued to inheritors, who are in a position to carry it out.

Rabbi Akiva Eiger extends this principle to questions over written instructions. A letter to inheritors, according to Rabbi Akiva Eiger, is as good as a verbal instruction only insofar as the letter is received and opened in the lifetime of the deceased. If the deceased left an unopened letter, to be read only after his death, the instructions lose their halachic weight.

An added limitation on the obligation to carry out instructions of the deceased is that the instructions should relate specifically to the property of the deceased. This qualification is mentioned in *Shevus Yaakov* (1:168; cited in *Pischei Teshuvah CM 252:1*), who addressed a case in which a woman commanded her children that in any case of dispute, the dispute should be resolved by the arbitration of a particular individual. The children, who wished to honour their mother's wishes, made a *tekias kaf* (a form of oath) to abide by the arbitrator's rulings.

Of course, after the woman's death a dispute broke out among the inheritors. One of the inheritors, moreover, decided that the selected arbitrator was not worthy of his title, and claimed that his mother's instructions concerning arbitration are not binding. *Shevus Yaakov* upholds the claim in principle: only instructions concerning the mother's own property can be binding, and not general instructions unrelated to the property itself. Nonetheless, by means of combining an obligation *lifnim mishuras hadin* to perform the instructions with the oath made by the inheritors, *Shevus Yaakov* ruled that the instructions appointing an arbitrator remain binding.

Another question of similar nature is raised by *Noda be-Yehudah* (EH 45), this time concerning a man who left instructions that his daughter should not be wed to a particular man. In addition, he instructed that should his instructions were disobeyed, and the daughter marry the individual, his wife should give no dowry to the daughter in question.

Of course, the daughter wished to proceed with the "forbidden wedding", and the question of the late father's instructions was sent to *Noda Be-Yehudah*. His response was that because the instruction does not pertain to the deceased's property, it is not binding. Furthermore, even the instruction concerning the dowry is not binding, because it pertains to money that now belongs to the wife (mother), and not to the late father. The deceased's instructions can only be binding concerning his own possessions, and not concerning somebody else's—even when the other person received his possessions from the deceased.

A further point to bear in mind in the matter of oaths. Even when a child makes an oath to obey a parent's instruction, *Machaneh Efraim* (*Shevuos* 1) writes that the oath is not binding. It is comparable to an oath made to an ill person, whose intention is only to calm the ill person and allow him to recover, which is not binding (*Shulchan Aruch, YD 232:17*).

In summary, we have seen that it is not easy for a person to ensure that his instructions will be fulfilled by inheritors. In issuing instructions, the following points should be borne in mind:

1. Instructions should be made with language that implies a command, rather than a mere wish or desire.

2. Instructions should be directed specifically at inheritors, and inheritors should receive the instruction during the lifetime of the deceased (not in closed letters).
3. Only instructions pertaining to possessions of the deceased have halachic significance. Instructions concerning other issues may be made, but they do not have binding force.
4. Even if a child makes an oath to obey a parent's instructions, the oath might not be binding according to Torah law.

We should stress that to ensure that instruction of a *tzavaah* are fully binding (as far as possible), a competent expert in the field should always be consulted.