

How Can One Draft a Will That is Binding Legally and According to Halacha?

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Question: Someone wants to prepare a will that is valid both according to halacha and secular law. What would be the way to prepare such a will?

Answer: Halacha doesn't really include a native mechanism for doing a will.

One can give away assets as gifts while he is alive but the problem with that is that gifts are not revocable and he can't change his mind. Additionally, one can't give away property that doesn't yet exist, so it wouldn't be possible to allocate assets that one hasn't acquired yet. There are complicated solutions to these problems but, at the end of the day, halacha does not really have a natural mechanism for what we would call a will.

One mechanism that is used involves a slightly convoluted way of doing it called a *shtar chatzi zachar*, which is done by creating a unilateral debt obligation to someone to whom he intends to give his assets. For example, if someone wants to bequeath some of his property to his daughters, he creates an obligation to give them a large sum of money that is more than the value of his entire estate. He then stipulates that this debt will remain against his estate after he dies unless the sons agree to abide by the terms of his will. If they do follow the will, the debt is voided. He then writes a will that says that some of his assets should go to his daughters.

The sons now have to keep the terms of the will if they don't want the daughters to collect the debt and get the entire estate. Thus, this is an indirect mechanism to force the sons to uphold the terms of a will.

In practice, the father can have one will drafted by a lawyer which says how he wants his assets to be divided. He then creates a halachic will that references the document that describes how he wants his estate divided and stipulates that if the halachic heirs honor his wishes, that is great, and if they don't then the debt that he has committed to will allow the daughters to seize the estate.