

VEBDE REBDE

Leaving Money for Tzedaka in a Will

Question: How much could or should one leave in a will for tzedaka before dividing the rest among the children?

Answer: First, realize that there is absolutely no requirement to leave anything in a will for tzedaka. The obligation to give tzedaka applies during and throughout one's lifetime. When one dies (may it be at 120), he is exempt from it like other mitzvot and does not have to make provisions before his death. It becomes the inheritors' obligation to give tzedaka from the money they inherit (Tzedaka uMishpat 5:4).

The question the poskim deal with is whether it is permitted to leave money for tzedaka. Chazal frowned upon (at least; perhaps, forbade!) giving money slated for his inheritors to others or giving the share of one inheritor to another (Bava Batra 133b). This is called *avurei achsanta* (=av-ach). This is even if there is a logical reason, e.g., one child is more "deserving" than another (ibid.). This certainly applies when it is done or takes effect at the end of his life, when the laws of inheritance were to apply. The gemara (Ketubot 53a) says that one who gives an exaggerated dowry for his daughter is considered *av-ach*. This indicates that giving at least an amount of money that is appropriate to serve as

an inheritance can be considered *av-ach* even during his lifetime.

The gemara in Bava Batra (ibid.) indicates that giving money as a mitzva (e.g., *hekdesh*) can still be forbidden as *av-ach*. It is thus hard to know where to draw the line. Could it be prohibited to give a nice present to anyone, including tzedaka (beyond the recommended amount)?! On the one hand, the gemara (Ketubot 50a) says that one may not give more than 20% of his property/earnings to tzedaka. However, the reason is concern that he might need the money, not because it deprives his inheritors, and it is permitted to give it "after he dies" and thus will not be needing the money (Ketubot 67b). We will present some of the distinctions raised to reconcile the sources.

Several poskim posit that if one leaves significant amounts of money for his inheritors, then he can give major tzedaka donations (see *Pitchei Teshuva*, *Choshen Mishpat* 282:1; *Yabia Omer* VIII:9). In fact, the gemara (ibid.) tells that Mar Ukva donated half of his assets to tzedaka soon before his death, after declaring it is prudent considering his insufficient merits (he was an Amora!!) for his judgment in Heaven. Some claim that since Mar Ukva was wealthy, his inheritors were anyway well provided for (see *Pitchei Choshen*, *Yerusha* 4:(9)).

Let us move to the related question of when it is appropriate to leave money

to tzedaka. The Chatam Sofer (CM 151) discussed one who was dying without children and wanted to leave huge amounts of money to tzedaka. He posits that while it is problematic to give to others (even tzedaka) so that his inheritor not receive much, there is justification to give to tzedaka if he feels, especially without the merit of leaving children, that he is need of the merit of tzedaka.

One should consider a few more things. Often one's children are very worthy recipients of all of the inheritance money by virtue of their needs (which can verge on tzedaka) and the good things they can do with it (e.g., pay day school tuition, afford to live in a religious neighborhood). Not only may tzedaka be given to the needy in the family, but they have precedence (Shulchan Aruch, Yoreh Deah 251:3). Also consider that while when the money one earned and saved through hard work goes to tzedaka, it is a significant posthumous merit, leaving it in a will is not the full mitzva of tzedaka (Tzedaka uMishpat 1:(7)). After all, a major part of the mitzva is to give to others rather than spend on oneself. Here, giving away to others money slated for one's children, when he cannot use it himself, does not have the full effect. Fortunate is one who can trust his children to use an appropriate amount of the money they inherit for tzedaka and mitzvot. One can seek the right balance for his situation with the help of a sensitive

rav who knows the family.

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