

Does Halacha Require a Kinyan to Finalize an Agreement Even When Secular Law Does Not?

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Case: One area in which halacha clearly diverges from common law relates to the execution of transactions. According to common law, an agreement between parties is sufficient to finalize the transaction and render it binding upon both sides. According to halacha, though, we need a *kinyan* to finalize an agreement between two parties.

Question: Is it correct, then, to state that from a practical halachic standpoint, an agreement is not final unless a *kinyan* has been performed?

Answer: Although this is often the case in a theoretical halachic realm, in actuality, the situation is not nearly that simple. There are many cases where a deal would be halachically finalized even without a standard *kinyan*. For example, in the diamond district, *frum* Jews who exclaim “*mazal ubracha*” to each other (or send a message or screen shot with these words) indicates that the deal is final even without a *kinyan*.

In addition, in certain cultures, a handshake or signing a contract may also constitute a valid halachic *kinyan*. Thus, a valid halachic “*kinyan*” may have taken place in some cases finalizing the agreement even if one did not realize it.

Question: In the above examples, it seems that a *kinyan* was in fact effectuated even if it was not one of the standard *kinyanim*. Does this mean though that some form of *kinyan* is always necessary?

Answer: That is not always the case, and some transactions do not require any *kinyan*. For example, with regard to employment relationships, even the *haschalas melacha* (beginning of work) alone of the employee (and the same applies for an independent contractor) may constitute a halachic agreement without any other type of *kinyan*.

It is important to note though that determining the actual time of *haschalas melacha* can sometimes be tricky, since one may spend time preparing for the work beforehand. For instance, a contractor may conduct an elaborate estimate before beginning the job or spend time on a sales call, and it is not always entirely clear exactly which stage is defined as the *haschalas melacha*. In short, it may vary from case to case, depending upon the time, effort, and commitment of the person involved.

Another example where no *kinyan* is necessary is in a case of *shelichus* (messenger). For example, if Reuven asks Shimon to go to the store to purchase something for him and Shimon uses his money to do so, Reuven is obligated to reimburse him for the amount spent even though no explicit *kinyan* was performed. The halachic basis for this is similar to that of *arvus* (guarantor). In that case, where someone seeking to borrow money finds a guarantor who agrees at the time of the loan to repay the loan if the borrower defaults, no official *kinyan* is needed.