

Making a Kinyan Subconsciously

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Question: When someone shops in a grocery store, he probably doesn't have any sort of intent to make a *kinyan*. This leads us to the question of when exactly the *kinyan* and transfer of ownership on the items one is purchasing happens.

Answer: Usually, intent is needed when one is making a *kinyan*. Even if one would do an act that technically would constitute a *kinyan* (such as picking something up) if he has no intention to acquire it, the *kinyan* is not valid. However, when one buys something from a store, even if he has no conscious intention to make a *kinyan*, his subconscious intent may suffice. The Chasam Sofer in *Teshuvos Even Ha'ezer* explains that when we see someone picking up an item, paying for it, and carrying it home with him, we can assume that he has subconscious intent to take possession of it, even if he had no conscious thoughts of assuming ownership at any specific point. Since going to a store and buying an item is a normal transaction, and this transaction includes transferring ownership from seller to buyer, we can assume that the unspoken and subconscious intention of both seller and buyer is for the transfer of ownership to take place. This subconscious intent is sufficient for a *kinyan* to be made and for the buyer to become the owner.

Rav Akiva Eiger writes similarly that if two parties intend to make a certain transaction and they perform a number of acts that could qualify as a *kinyan*, even if they have no specific intention for any of those actions to serve as a *kinyan*, these actions still serve as a valid transfer of ownership. We use their general intentions to be considered as if they performed one of those acts as the valid *kinyan*.

The Pischei Choshen explains that the *kavanah* needed to make a *kinyan* is not the same as the *kavanah* needed to perform a mitzvah. When one does a mitzvah, he needs to have *kavanah* for the act he is doing to serve as the mitzvah, yet in contrast, when making a *kinyan* one only needs general intention to buy and sell, so a subconscious intention would be sufficient.