

על פי התורה אשר יורוך  
Yorucha  
weekly overview

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY OVERVIEW VIDEO

## Kinyanim Part I

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### THE FUNDAMENTAL LESSON OF KINYANIM:

The laws of *kinyanim* are an important area of halacha, primarily because of the underlying, fundamental lessons we can discern about our interpersonal dealings. Even more central than the act of acquisition itself, are the lessons of how one is expected to keep to his words and commitments.

Unfortunately, in today's business world, many people don't put much value on their word. They don't think committing to a deal is all that serious, and have no problem reneging on an agreement. From the laws of *kinyanim*, we learn that this is not the way the Torah expects us to act in the marketplace. We see that one must be faithful to his commitment and one should not flippantly express an intention to make a deal if he is not sure that he will ultimately go through with it.

### THE FOUR LEVELS OF COMMITMENT:

Commitments can be divided into four basic categories, each of which increases in severity as the commitment gets stronger.

**1. Internal Commitment:** The lowest level of commitment is when one agrees in his mind to accept an offer, without expressing any intention verbally. Keeping such an intention is a *midas chasidus*, an extra pious level of behavior. It is not an absolute requirement, but one who wishes to behave piously and be on the highest level of integrity should follow through with his intentions.

The source for this level of commitment is found in the Gemara in Makkos, which relates that Rav Safra fulfilled the verse of "*dover emes b'livavo*", speaking the truth in his heart. The Gemara relates that Rav Safra was once sitting in his store when a customer walked in and offered him a price for some merchandise. Rav Safra did not respond because he was in the middle of reciting Kriyas Shema at that moment. The customer, thinking he was rejecting the offer, offered a higher

price. When Rav Safra still did not respond, the customer raised his price again. This happened several times, until Rav Safra finished saying Kriyas Shema and was able to talk. He turned to the customer and told him that he would have been willing to accept the first price he offered, and he, therefore, would not charge him more than that. The Gemara concludes that this incredible level of integrity is known as "*dover emes b'livavo*."

A practical illustration of this would be if someone has a house on the market and receives an email from his agent saying that an offer has come in for \$400,000. The seller intends to accept the offer, but does not get a chance to respond to the email right away. In the interim, the potential buyer, thinking the delay was because the seller wanted a better price, raised his offer to \$450,000. If the seller wants to be on the level of "*dover emes b'livavo*", he will admit that he was willing to accept the first offer, and will not force the buyer to pay the higher price.

A similar case would be if one has a car for sale and meets his friend while he's on the way to a *shiur*, and the friend offers him \$4,000 for his used car. He tells his friend that he is hurrying to *shiur* and will discuss it with him afterward. During the *shiur*, he decides to accept the offer. Later, his friend corners him and says that he would be willing to pay \$4,500. If the seller wants to be on the highest level of integrity, he will not ask for more than \$4,000.

**2. Verbal Commitment:** Once the two sides agree on a price and verbally accept the deal, neither side should back out. Chazal say that anyone who reneges on the deal at this point is labeled a *mechusar amanah*, untrustworthy person. This is a very unfavorable title to bear. Rav Chaim Kanievsky stresses that when Chazal give someone a label, that title remains with him in this world and in the world to come; therefore, one certainly would not want to be burdened with the label of "untrustworthy."

The Gemara learns this from the verse "*hin tzedek*", which it explains to mean "*hin*", when one says yes, "*tzedek*", it should be true. This means that a verbal commitment is a serious

matter, and one should always try to keep his commitment and never obligate himself to a deal if he is not sure he will follow through with it.

3. The third level of commitment is after money has been handed over from the buyer to the seller. Most people would assume that once payment has been made, the transaction has been finalized, and the buyer has taken possession of the item. According to Halacha this is not necessarily the case. The Gemara in Bava Metzia relates that being that one can't backout after monies were received, Chazal were worried that a seller who received payment will stop caring about the item and won't take responsibility to protect and care for it. If, for example, a fire would break out in his warehouse, he would only trouble himself to save his own possessions, and would not try to save the items he had already received payment for. Because of this, they enacted that moveable items still belong to the seller as long as it has not been given over to the buyer through an act of acquisition, even if he already received payment for it. Nonetheless, they enacted a curse for one that retracts after receiving payment, although the acquisition wasn't fully finalized. (See further in the shiur).

4. The final level of commitment is after the actual *kinyan* has been made, at which point the item becomes the property of the buyer completely.

## FLUCTUATIONS IN THE MARKET:

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Markets are often volatile and can fluctuate rapidly. How do such fluctuations affect a commitment? If one would verbally commit to purchase a large amount of shares of a certain stock, and, before making a *kinyan*, the stock plummets and is now worth much less than the agreed upon price, would the buyer be allowed to retract without being labeled a "*mechusar amanah*"?

The Rema (Choshen Mishpat 204) rules that one is not permitted to back out of a verbal commitment if the market changes. He says that one must keep his word, even in such an instance. The Chasam Sofer (Choshen Mishpat 102), following other opinions mentioned in Sha"ch, however, rules that one would be allowed to renege on a verbal commitment under such a circumstance.

Although the common practice is to follow the ruling of the Chasam Sofer, the Aruch Hashulchan writes that there is still a *midas chasidus* to keep one's word and fulfill his commitment for the agreed upon price.

## IF YOU LIKE IT, YOU MUST BUY IT:

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We see from the above that *dover emes b'livavo* applies even in scenarios when it seems to be the opposite of today's business mindset. In contemporary business dealings, many people tend to think being cutthroat and ruthless is an advantage, and they are willing to do whatever it takes to make a dollar, even if it entails backtracking on their commitments. We

see that the way a Torah Jew does business must be just the opposite. Even when it seems there is good reason to retract a commitment, there still is a *midas chasidus* to stick to it.

An interesting application of this is found in the Tur (Choshen Mishpat 200), who discusses a case where someone asks a store owner if they can try out a product, and agrees that they will buy it if they like it. After trying out the product, the customer does in fact like it, but decides he no longer wants to purchase this type of item altogether. The Tur says that since he has tacitly agreed to purchase it if he likes it, he should go ahead and buy the item as he originally intended. It would be a lack of integrity to back out of the agreement and say that he no longer wants the item.

It is worth mentioning that the Shulchan Aruch Harav composed an abridged compilation of the laws of Choshen Mishpat. When he condenses the laws of *kinyanim*, he writes very little about the halachos of actual *kinyanim*, but he expounds at length about the guiding philosophy behind the concept of *kinyanim*. He stresses the importance of keeping one's word and even one's non-verbal commitments that he reached in his mind as integral aspects of the general concept of *kinyanim*.

It would seem that the reason he does not speak much about the actual acts of making *kinyanim* is because these can change based on the common customs of a society. Chazal will allow *Kinyanim* to change over time, but the importance of keeping one's word and honoring one's commitment never changes. In fact, the Pischei Teshuva discusses a case where local merchants made an agreement that they would compete with each other in a way that is contradictory to halacha. He invalidates such an arrangement entirely, even if everyone agreed to it. This is because the Torah's mandate of honesty and integrity cannot be changed or altered.

## MI SHEPARA:

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While we stated that one who pays cash for an item does not gain ownership of the item until he actually makes a valid *kinyan*, there is still something that deters him from renegeing on his commitment. Chazal instituted a special punishment known as *mi shepara*, which is a severe curse that one receives if he backs out of a deal at this point. Once the two sides have reached this stage, the commitment is very serious; therefore, it is a very grave transgression to retract, and if one does so he is liable for this frightening curse.

As we previously stated, if one only makes a mental or verbal commitment, he may be able to back out of the deal if there is a significant market fluctuation without being labeled a *mechusar amanah*; however, once payment has been handed over, if either side attempts to retract, they will receive this curse, even if the reason they want to back out is because of a market fluctuation. At this stage, they must go through with the commitment, or they face this severe penalty. The details of this Halacha will be discussed further in the next segment.