

על פי התורה אשר יורוך
Yorucha
weekly overview

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY OVERVIEW VIDEO

Kinyanim Part III

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THE NEED FOR INTENT:

An important concept in *kinyanim* is the need for *da'as*, intent, as a prerequisite for a *kinyan* to work.

This leads us to ask how a simple transaction in a modern-day store works. When a shopper takes an item off a shelf, places it in his cart, takes it to the register, pays for it and leaves the store, he most likely never stopped to explicitly have intent to be making a *kinyan* on the item. So, when does the actual transfer of ownership take place?

To answer this question, we can quote the Chasam Sofer, cited by the Pischei Choshen in detail, who explains that the concept of *da'as* in regards to a *kinyan* is fundamentally different than the concept of *kavanah* in regards to a mitzvah.

When one performs a mitzvah, such as shaking a lulav or hearing shofar, he needs *kavanah*, meaning he needs conscious intent to fulfill the mitzvah. When it comes to transactions, however, a general intent to buy and sell is sufficient. In fact, sometimes the *da'as* that is needed can be subconscious, like if there is no other possible reason for the transaction aside from a sale. 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 in time.

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 intent of both the seller and the buyer is for the transfer of ownership to take place. This subliminal *da'as* is sufficient for a *kinyan* to be made and for the buyer to become the owner.

The Pischei Choshen says that this intuitive type of intent is the essence of today's *kinyanim*. We see the act and can judge from what is occurring that the nature of the transaction constitutes a *kinyan*.

We also find a concept known as *da'as acheres makneh*, someone else's *da'as* can work for you to make a *kinyan*. For

example, if someone is digging in an ownerless field, with no intention of making a *kinyan*, he is not *koneh*. However, if he is digging in a field that has an owner, and the owner intends to give it to him as a gift, he would be *koneh* based on the intent of the giver, even though he himself was unaware.

This teaches us that *da'as kinyan* can be separated from the *maaseh kinyan*, a truly fascinating aspect of *kinyanim*. This has a common application - when gifting to a child. The giver of the present can provide the necessary *daas* for the *kinyan*, while the action can be performed by the child.

FOUR TYPES OF KINYAN:

In various places in Shas, Chazal enumerate the many types of *kinyanim*. The Acharonim divide these *kinyanim* into four basic categories.

1. **Temurah:** The first category of *kinyanim* can be called a *temurah*, exchange. This means that one item is exchanged for another, for example the *kinyan* known as *chalipin*. As we said previously, cash does work as a *kinyan* when one is buying land. In such cases, the ownership of land is transferred in exchange for the money. This will also fall under this category.
2. **Reshus:** The second category of *kinyanim* can be called "reshus", domain. An example would be if something is placed in someone's protected field or house. By being on his property, he is *koneh* the item. This can also be connected to the *kinyan* of *meshichah*, when one drags an item into a domain where he is able to gain possession of it. Yet another example would be a *Kinyan daled amos*, when an item is placed within four *amos* of someone, in a place where this suffices to be considered his personal property.
3. **Proof of Ownership:** The third category would be making a *kinyan* by showing proof of ownership. The classic example of this would be when a *shtar*, halachic document, is written, which attests to the completion of

a transaction. In many instances, the *shtar* alone works as the *kinyan*. Another example would be "*odisa*", a case where the seller admits that he sold an item to the buyer. The admission itself serves as the proof that the sale took place and, therefore, suffices as a *kinyan*.

4. Chazakah: The fourth category of *kinyan* would be "*chazakah*", the performance of an action that shows ownership. Examples of this would be if someone places a lock on a house or builds a fence around a property. Such actions display ownership, and, therefore, are valid *kinyanim*.

an action that shows ownership. If the seller handed over the keys to the house to the buyer, the Shulchan Aruch rules that although this alone is not a sufficient act to serve as a *kinyan* of *chazakah*, it does serve to demonstrate intent of the seller, allowing the buyer to then perform the *kinyan*. According to some Poskim, if the buyer were to use the key to *lock* the door it is equivalent to placing a lock on the door, and would suffice as a *kinyan*.

In today's times however, the common custom is that a sale of a home is not completed until the deed is recorded; therefore, locking the door with the key provided by the seller, or any other *chazakah* for that matter, would not work as a *kinyan* until the deed is finalized.

MAKING A KINYAN ON REAL ESTATE:

As we said, Chazal allowed for a cash payment to work as a *kinyan* when one is purchasing land. That would seem to mean that if one would buy real estate with cash, he would become the owner of the property or house as soon as he hands over the payment.

The Poskim, however, issue a caveat on this rule. They note that the common custom in many places is for a sale to not be considered final until it is written up and documented. The Shulchan Aruch states that when the custom is for a deal to not be considered concluded until a *shtar* is written, ownership cannot be transferred with a *kinyan* before the document is finalized. This would mean that if one is purchasing real estate in a place where the custom is that a deed must be written to transfer the ownership, a cash payment would not count as a *kinyan* and ownership would not transfer before the deed is written and recorded.

Similarly, one of the *kinyanim* we mentioned was performing



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