

על פי התורה אשר יורוך

Yorucha

weekly overview

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY OVERVIEW VIDEO

Kinyanim Part IV

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THE KINYAN OF SITUMTA:

One of the most important factors in *kinyanim* is the current market policies in every time and place. Contemporary business practices have a tremendous effect on how halachic transactions are established, and, in fact, are the *kinyanim* most commonly used in today's society.

We find this concept in the Shulchan Aruch (Choshen Mishpat 201) where it discusses a case of a warehouse that sells barrels of wine to stores and retailers. When an order came in, the common custom was to mark the barrels that had been set aside for that particular retailer with a specific symbol. Once the symbol has been marked on a barrel, according to common business practice of the time, that barrel now belonged to the retailer that had ordered it. The Shulchan Aruch rules that since this was the common practice, it also works as a halachic *kinyan*, and the ownership of the barrel is transferred to the retailer as soon as the mark is made.

This concept of accepting common business practices as valid *kinyanim* is known as "*situmta*".

In today's society, this would apply to purchases made with checks, credit cards, and through online sales, amongst other contemporary business practices. Since these are all recognized by common business customs of today's society as acceptable forms of purchase, they would also work according to halacha to transfer ownership as a valid *kinyan*.

As we mentioned in a previous segment, according to Chazal a cash payment is not a valid *kinyan* for movable objects. Rav Elyashiv and many other Poskim consider a check to be akin to cash, which would mean that according to Chazal it would not suffice to make a *kinyan*; however, because a check is accepted as a way to transfer ownership according to contemporary business norms, it would be a good *kinyan* according to the laws of *situmta*. From this ruling, we see how powerful *situmta* can be – to the extent that common practice can even override a decree of Chazal (since they allowed it).

The Mishnas Shalom says an even greater *chiddush*. He states

that even though Chazal decreed that a cash payment does not constitute a *kinyan*, if the common business practice of a certain industry is for cash to be used as a means of transferring ownership, it will work as a good *kinyan*. According to his words, *situmta* is so strong that it can work even against the cash limitation of Chazal.

This concept is actually already mentioned in the Sm"a (Choshen Mishpat 201), who says that a first payment of a token amount is enough to serve as a valid *kinyan* of *situmta*. However, the Mishnas Shalom is adding that even a full payment could serve as a valid *kinyan* of *situmta*.

THE STATUS OF A CHECK:

We previously stated that without the concept of *situmta*, a check would be considered the same as cash; however, the truth is that this depends on a discussion in the Poskim, many of whom say that there are times when a check can be considered cash, and other times when it can be considered like an IOU, but not like an actual payment.

Some propose that there would be a difference between using a check in Israel and in America. In Israel, it is illegal to place a stop on a check once it has been issued. Accordingly, these Poskim suggest that a check has the strength of actual currency, and would have the exact same status as cash. In America, a stop can be put on a check until it is cashed; therefore, it cannot really be considered a form of cash and would have the status of a document that represents a debt, similar to an IOU.

D'OHRAYSA OR D'RABANAN:

The Pischei Teshuva (Choshen Mishpat 201) discusses whether *situmta* is recognized as *kinyan m'doraysa* or only *m'derabanan*. The relevance would be whether it works for a Biblical law, such as making a *Kiddushin* by giving a woman a check or credit card. Although the Pischei Teshuva cites sources that

say it only works *m'derbanan*, the Chasam Sofer rules that it works *m'doraysa*, meaning that it would suffice for a *Kiddushin*.

TRANSACTIONS WITH NON-JEWS, MINORS AND WOMEN:

A common usage of *situmta* is in the selling of chametz to a non-Jew. Through the rule of *situmta*, the sale can be made through any common form of acquisition, such as an online sale.

As to general transactions between Jews and non-Jews, there is a dispute between Rashi and Rabbeinu Tam whether one must use cash or *meshichah*. The Rema rules that because of this disagreement, when making a transaction with a non-Jew that is relevant to a Torah obligation, one should use both cash and *meshichah*.

The Pischei Teshuva (Yoreh Deah, Hilchos Bechor) rules that one may also use a *situmta* with a non-Jew, a ruling echoed in the Mishnah Berurah (Hilchos Pesach) as integral to the sale of chometz.

DAVAR SHELO BAH L'OLAM:

Another application of *situmta* is found regarding a *davar shelo bah l'olam*, an item that does not yet exist.

Halachically, one cannot purchase an item that is not yet in existence. For example, one cannot buy the crops of a field before they grow or the eggs of chickens before they are laid. The Pischei Teshuva quotes some opinions that if it is common practice in a certain land for merchants to buy next summer's crops or to purchase stocks in a company before they go up for sale, the sale is valid because of the rule of *situmta*.

Again, we see from this ruling that *situmta* can be even more effective than an actual *kinyan*.

MAZAL U'BRACHA:

In the diamond industry, it is common to seal a deal with the words *mazal u'bracha*. In fact, even non-Jews use this salutation as a signal that a deal has been concluded. Since this is accepted in the business community, it is a form of *situmta* and is recognized as a valid *kinyan*.

In an interesting application of *minhag hamedinah*, Rav Akiva

Eiger rules that one may go in front of the industry board to adjudicate matters between businessmen of that particular industry. Although it is forbidden to take monetary disputes before a secular court, in this instance it is permitted, as the board is only deciding whether a certain act is in compliance with their agreed upon methods of business and is not acting as a court of law issuing rulings that may be against the Torah.

DISAGREEMENTS BETWEEN BUYERS AND SELLERS

Common custom applies to other aspects of a transaction as well. For example, Sefer Mishpatei Hatorah discusses a case of a young child going into a store and buying a large amount of candy. This could lead to a dispute between the parents and the store owner, with the parents claiming their son had no right to purchase so much candy and, since he is a minor and not capable of making a *kinyan*, the sale is not valid. The store owner may claim that he simply treats children like any other customer and, as far as he is concerned, the sale is 100% valid. Sefer Mishpatei Hatorah rules that this sale would be valid. He explains that it is very common today for children to go shopping for their families and buy products from the store with their parents' money. Since it is understood that this is the common custom, the transaction would be valid.

HONESTY AND INTEGRITY NEVER CHANGE:

Despite the ability of the forms of *kinyanim* to change with time and place, the fundamental concept of *kinyanim* never changes. The main lesson of *kinyanim* is that a commitment is a serious matter and one must keep his word. There are various levels of commitment, as we detailed previously, and each one has consequences for one who backs out. The Torah's insistence on honesty and integrity remains unchanged, irrespective of which physical act of *kinyan* is used to finalize a transfer of ownership.

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