

COMMITMENT AND CONTRACTS BASICS

RAV CHAIM KOHN SHLITA

TRANSFER OF OWNERSHIP

1. Halacha requires two conditions to consummate a sale of goods and thereby affect the transfer of ownership: a meeting of minds on all essential conditions of the deal, and a Halachically valid act of acquisition, known as the “kinyan”.
2. The kinyan is performed by the buyer.
3. Essential conditions include the price, quantity and quality of the goods, and a timely delivery of the goods, if time is of the essence.
4. Although the seller and buyer agreed in principle to sell and buy, they must also agree to perform a kinyan. A kinyan performed in absence of such an agreement is not valid.
5. The agreement to the conditions of the deal, and the execution of the sale, may be agreed upon by a written document or orally, or even by a commonly accepted act like a nod of heads or the shaking of hands.
6. Goods that are publicly offered for sale at a set price can be acquired by the buyer without the explicit consent of the seller.

GUIDELINES OF CONTRACTUAL LAW AND TERMINATION OF CONTRACT

1. In secular law, the acceptance of a meeting of minds establishes a contract. It is an exchange of promises and can be done orally. In principle, Halacha does not consider this as a bona fide contractual binding agreement but, rather, as a moral commitment not to renege on a commitment.
2. Halacha requires a kinyan to validate a legal obligation. Signing a contract is a kinyan. A verbal commitment may serve as a kinyan because of the concept of situmta.
3. Loan vs. Investment. While in civil law force majeure may, in some cases, be asserted by a borrower, under Halacha the argument is completely rejected. The reason is that Halacha treats loans as non-commercial transactions (since charging interest is prohibited), while secular law takes the commercial aspect into consideration.
4. Unforeseen conditions can, in some cases, relieve the debtor from his obligations. i.e. Alimony or child support, termination of employment etc.



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