

Definition of Sales

Ref: *Sefer Kinyan, Hilchot Mechirah, Chapters 1–6*

🔗 LAWS OF SALES AND PURCHASES¹

🔔 Reminder:

Pack on Weights and Measures
Key facts *Sefer Kinyan*



For an article to be acquired, a physical act has to take place to confirm this.

If there is just an exchange of words, even with 2 witnesses, article is not acquired.

E.g. a person says in front of 2 witnesses ‘this article is sold to you’, no exchange takes place.

If however the purchase is completed through one of the established methods, no witnesses are needed and a non-retractable exchange takes place.

🔔 Reminder:

Pack on Witnesses



Land sales

LAND

🔔 Reminder:

Pack on Land



Landed property can be acquired in one of 3 ways

- *Kesef* (money transfer)
- *Shtar* (contract transfer)
- *Chazakah* (act of ownership)

KESEF

Where it is customary to make a written contract, for land sales, money alone would not be enough. Otherwise it would.

SHTAR

Seller declares in writing that the property is sold to the purchaser. When the deed reaches the purchaser’s hand, the property is sold. No witnesses needed.

But owner may not want to dispose of field until he also receives the payment.

CHAZAKAH

Here the purchaser does some act with the property which brings benefit in front of the seller, or if seller tells him to go and manifest possession. E.g.

- Locks entrance or front door and unlocks it
- Encloses the property with a fence
- Opens an irrigation channel to supply water to property etc.

When one sells landed property it includes items attached to that property e.g. produce. Rental of land is finalised in same way as purchase i.e. one of the 3 methods mentioned above.

SALE OF SERVANTS, ANIMALS

EVED CNAANI (SERVANTS)

An *eved Cnaani* is considered as landed property with regard to acquisition. Additionally, he can also be acquired by *meshichah* (pushing or pulling). i.e.

- *Kesef*
- *Shtar*
- *Chazakah* e.g. ties his new master's shoes in front of old master.
- *Meshichah* e.g. pushes or pulls servant towards him with his hands.
- [*Hagbahah* (lifting up) If it is possible to lift servant, it can be acquired as with movable articles].

Meshichah generally does not apply in *reshut harabim* (public domain) unless it involves pulling object into one's own domain.

Meshichah is however effective in the corner of the public domain called the *simta*.

Reminder:

Pack on Servants



ANIMALS

Deoraita acquired by money



Acquired by *meshichah* in presence of previous owner. *Derabanan*.

E.g. pulls animal with a lead or rides on it.

When purchasing land or animals, the terminologies used are important. The terminology has to imply that item is being acquired at the same time as the action i.e. 'perform *meshichah* and acquire it' and not 'perform *meshichah* and you will acquire it' (i.e. in the future).

SALE OF MOVABLE PROPERTY

MOVABLE PROPERTY

Deoraita acquired by money.



Derabanan acquired by

Hagbahah (lifting up)

Meshichah (pulling)

Mesirah (handing over) – where item is too large to be pulled e.g. a ship

Even if money was paid, the deal is not complete until one of the above finalises the transaction.

Kinyan chatzer refers to an article being acquired by the property i.e. if purchaser was renting property from the seller and then sold article was in that property, the property

would acquire without *hagbahah* etc. This acquisition results from items merely being located in the landed property.

Kinyan agav. Here a property and items are purchased in a contractual manner, and then any movable articles found, say at even another site, would become acquired, again without *hagbahah*. But this has to be specified by seller.

Another way of carrying out transaction is through *chalifin* [exchange of goods (movable property)] i.e. one can exchange a cow for a donkey.

Once one of the parties does *hagbahah* or *meshichah*, both parties acquire their goods.

If one article is exchanged for 2, *hagbahah* or *meshichah* has to be done on both the articles. Otherwise deal not complete.

Landed property, servants, livestock and other movable property can also be acquired through an indirect exchange called *chalifin*. Also known as *kinyan* because it is so commonly used or *kinyan chalifin*.

E.g. A property is being purchased. The purchaser gives the seller an article which does not even have to have the value of a *prutah*.

The purchaser tells the seller to acquire this article in exchange for the property. The seller then lifts the article, and even although the purchaser has not yet paid the money, the transaction is completed and neither party can retract.

The article must belong to the purchaser or third party.

Article is usually a handkerchief and is then called *kinyan sudar*. Article cannot be something of which benefit is forbidden, produce, or a coin.

No witnesses are needed.

It is a symbolic act of agreement between both parties.

Kinyan chalifin has a leniency which other *kinyanim* do not have i.e. even although *kinyan* has taken place, if the parties are still discussing the matter, both may still retract.

Connection with transfer of a loan:

There is an unusual law of exchange which our Sages instituted without basing it on any other formal law or explanation – *maamad shloshtan*.

I.e. if there are 3 people standing together – the lender, the borrower and third party, and lender instructs borrower to give the money that he is owed, to the third party, the third party acquires. Transaction is non-retractable. This cannot be done by borrower.