

## Key Facts Sefer Kinyan (Acquisition)

### HILCHOT MECHIRAH

- Land acquired by 3 methods
  - *Kesef* (money)
  - *Shtar* (contract)
  - *Chazakah* e.g. receives keys and locks and unlocks front door.
- *Eved Cnaani* acquired by
  - *Kesef*
  - *Shtar*
  - *Chazakah*
  - *Hagbahah* (lifting him up)
  - *Meshichah* (pushed or pulled by hand)
- Animals acquired by
  - *Kesef* followed by
  - *Meshichah* (pulling animals on a lead or riding it)

*Meshichah* does not usually apply to public domain unless one pulled object into one's own domain.

- Movable articles
  - *Kesef* followed by one of the following:
    - ◊ *Hagbahah*
    - ◊ *Meshichah*
    - ◊ *Mesirah* (handing over – when the item is too large to be pulled)

Even if money was paid, deal is not complete until finalised by these actions.

- To acquire an article, first the price must be established. This states that the seller wishes to transfer article and buyer agrees to pay the price. Only thereafter does the act of *hagbahah* etc confirm the acquisition.
- *Kinyan chatzer* and *kinyan agav* are cases where the property acquires movable articles therein.
- A container is like the private domain of the purchaser. But its status will depend on where it is found.
- Transactions can also be carried out by exchange of movable property. Transaction complete once one of the parties does *hagbahah* or *meshichah*.

There is also an indirect symbolic exchange procedure called *halifin* or *kinyan* or *kinyan chalifin*, which can be used for sale of land, servants, livestock and movable property. A handkerchief is normally used for this symbolic act and is called *kinyan sudar*.

- *Mi Shepara*

When money has exchanged hands, but no finalisation has taken place with *meshichah* etc, it is unethical to withdraw from the sale. If one of the parties do withdraw, they are subject

to a curse from the *Bet Din* called *mi shepara*.

Even where money has not exchanged hands it is unethical to withdraw from a sale after one's word has been given.

- An effective *tenai* (condition) attached to a transaction has to have the phrases *al menat* or *knei meachshav*, (these convey certainty).

An *asmachta* is a *tenai* with the word 'if' being used, and is ineffective (because it conveys doubt).

- Measure of *onaah* (unfair gain in a sale by either seller or purchaser) is  $\frac{1}{6}$  above or below correct price.
- $\frac{1}{6}$  is to do with value of object which can vary. However, when dealing with specific measures, weight or numbers, even the tiniest error comes into the category of *onaah*.
- *Onaah* does not apply to landed property, servants, promissory notes, *hekdesch* etc.
- *Onaah* in speech is even more serious than with objects, because financial wrongs can be repaid, but hurt feelings cannot.
- Deception is also not allowed, but sometimes certain measures are permitted e.g. mixing water into wine.
- When conflict arises, certain principles are applied which may result in an oath having to be taken. Where the situation is stricter a *shvuat hatorah* has to be taken, and otherwise a *shvuat hesset* (*Derananan*)

E.g. The burden of proof lies with person trying to expropriate property. If he cannot prove his claim, the defendant must support his claim with a *shvuat hesset*.

- Other Principles apply according to which domain the goods are found.
- In the purchase of an entity, it has to be considered what is included, and what is regarded as additional attachments and therefore not included e.g. core components of an olive press and the additional components.
- When purchasing land for sowing, pits and rocks **10 tefach or more** are regarded as unsowable and should be included free of charge.

Even if the pits are **less than 10 tefach**, if they cover the field extensively, they should also be given free of charge i.e. if they cover more than  $\frac{1}{5}$  of field