Is there halakhic validity [hereafter: validity] to a transaction that is concluded with a handshake, a toast or saying the words “mazal and brakhah”? What is the halakhic status of signing a contract, registering real estate at the Land Registry Office, transactions in future goods, auctions, and online sales transactions?

This book addresses these and similar issues. The subject of the book is the validity of commercial customs (practices) involving the transfer of ownership and the creation of an obligation. It examines the fascinating encounter between property law and monetary customs, and more generally, the interaction between Jewish law (halakhah) and custom. The focus is on the gap which exists between Jewish law and the dynamic practices of merchants [minhag hasoharim] as well as the ways in which halakhic decisors [hereafter: decisors] deal with this gap.

In order for the transfer of ownership and the creation of an obligation to have legal validity according to Jewish law, a physical act, referred to as a “method of acquisition” (ma’aseh kinyan or derekh kinyan) is generally required, in addition to intention (gemirut da’at) on the part of the parties. The laws of acquisition recorded in the Mishnah and Talmud are formalistic. If a method of acquisition was not executed in accordance with the law, the transfer of ownership and the creation of obligation is invalid (Chapter 1). Moreover, methods of acquisition are not given to stipulation, and the parties may not modify them even upon mutual agreement (Chapter 2).

In the post-Talmudic era, new methods of effecting ownership and creating obligation arose based on the governing civil laws and local practices, and it was necessary for decisors to determine whether or not they were halakhically valid. For hundreds of years, a method of acquisition known as acquisition by situmta (kinyan situmta) served and still serves as the main basis for conferring validity on these new practices.

ABSTRACT
The source of acquisition by *situmta* is a brief passage in the Babylonian Talmud (BM 74a) in which the amora Rava (d. 352) establishes: “this *situmta* gives possession” ([*hai situmta kanya*](https://www.jewishencyclopedia.com/articles/35388-situmta)). Philological and historical research reveals that the Aramaic word *situmta* means “seal,” and Rava was referring to a seal that the purchaser stamped on the merchandise that he bought in order to assert ownership of it from that moment onward (Chapter 3).

Medieval rabbinic authorities interpreted the word *situmta* in three ways: a seal, a handshake and the giving of an unstamped coin. These interpretations, to a large extent, reflect medieval merchant practices in the locales in which these rabbinic authorities resided (Chapter 5).

A *situmta* acquisition could have been interpreted as a specific method of acquisition that was in practice in Babylonia in Rava’s day. However, decisors have interpreted the principle of *situmta* broadly, conferring validity on any method of acquisition that reflects local practice, even if that method of acquisition is not mentioned in the Mishnah or Talmud.

In effect, the broad interpretation which decisors from the twelfth century onwards have given to the law of *situmta* applies on three levels: (1) all customary methods of acquisition have validity, not only the method of the *situmta* (seal) practiced in Babylonia; (2) custom overrides Mishnaic or Talmudic law not only with regard to methods of acquisition but also with regard to other property laws, such as the sale of future goods ([*davar she-lo ba la’olam*](https://www.jewishencyclopedia.com/articles/35396-davar)), which has been accorded validity despite the Talmudic law; (3) the law of *situmta* constitutes the basis for conferring validity not only in the case of property laws but for all monetary customs (Chapter 6).

As a result of the broad interpretation which was accorded the law of *situmta* – from the twelfth century onwards, and particularly by later rabbinic authorities – this law has become the main source for establishing the validity of commercial customs which effect the transfer of ownership and the creation of an obligation. This is evidenced in thousands of Responsa of medieval and later rabbis and in many rulings of rabbinical courts, some of which are discussed in this book.

Given that a *situmta* acquisition is not a method of acquisition recognized by the Mishnah and Talmud, medieval and later halakhic authorities have addressed the question of the legal basis of a *situmta* acquisition ([*kinyan situmta*](https://www.jewishencyclopedia.com/articles/35397-kinyan)). We
encounter two main approaches: (a) It is an implied condition of the parties that they conduct an acquisition in accordance with the local practice (*kinyan situmta*), and in monetary laws any condition stipulated by the parties has validity; (b) Acquisition by *situmta* is subsumed under the category of a rabbinic enactment, according to which there is validity to a method of acquisition that is the local practice. Later rabbinic authorities have suggested other ways of understanding the law of *situmta* (Chapter 7).

Part VI – the primary section of the book – is devoted to an examination of the application of the law of *situmta* to practices effecting transfer of ownership and creation of obligation (Chapters 8-13). Some of the practices analyzed are: handing over the key of a warehouse to the buyer, thus effecting transfer of ownership of the merchandise stored in it; a handshake; an earnest money deposit; drinking a toast; saying “*mazel and brakhah*”; lotteries; transactions in future goods at a rate of exchange agreed upon in advance (in modern terms: transactions in the commodities market), such as leasing of monopolistic rights to the sale of liquor and to collecting taxes and customs duty; verbal transactions, such as auctions, selling of *aliyot* (a call to the Torah reading) in the synagogue, and trading in stocks.

The following are some of the conclusions that may be drawn from Part VI:

**Real Estate Transactions** (Chapter 9). Many contemporary decisors are of the opinion that the registration of real estate in the Land Registry Office has validity by virtue of the law of *situmta* and the doctrine of “the law of the State is law” (*dina de-malkhuta dina*). This is also the accepted opinion in Israel’s State Rabbinical Courts. According to this position, a real estate transaction that was conducted according to Jewish law but was not registered as prescribed by civil law, is not halakhically valid.

On the other hand, other decisors have ruled that real estate transactions have validity even if not registered in the Land Registry Office. Particular attention is devoted to examining the approach of Hazon Ish (in 1938) and Rabbi S.Z. Auerbach (in 1944), taking into account the civil laws and the circumstances of that time. Hazon Ish and Rabbi Auerbach ruled that real estate transactions conducted between Jews according to Jewish law have validity even if they were not officially registered, because the British Mandate authorities did not
insist on such registration and allowed Jews to adjudicate among themselves in a rabbinical court. A considerable number of today’s decisors have adopted this opinion, and it is also the accepted opinion in the rabbinical court for monetary matters conducted by the Jerusalem Rabbinate.

Contracts (Chapter 11). Most later halakhic authorities have recognized the validity of a written contract, based on custom and the law of *situmta*. Some contemporary rabbinical judges cast doubt on the validity of a declaration of intent in real estate transactions, and their reasons are discussed in this chapter. The validity of a fine in respect of a breach of contract (in modern legal terminology – liquidated damages) has been under dispute among decisors since the time of the Tosafists. In the opinion of some decisors, the fine has no validity because of the problem of *asmakhta* (an indication of the absence of a deliberate and unqualified intention to enter into a transaction), while others granted it validity based on the law of *situmta*. Rabbinical judges in Israel also differ on this matter.

The validity of transactions in future goods (*davar she-lo ba la’olam*) based on the law of *situmta*, has been in dispute dating back to the thirteenth century (Chapter 12). Transactions in future goods are very common in the modern era. Most later halakhic authorities, including contemporary decisors and rabbinical judges, are of the opinion that such transactions have validity by virtue of custom and the law of *situmta*. Rulings on this matter are based, *inter alia*, on understanding the legal basis of acquisition by *situmta* as well as the reasoning behind the halakhic rule that one cannot purchase future goods.

*Customs relating to methods of acquisition are to a large extent shaped by civil law, since transactions are usually conducted according to the laws in existence in a particular country. A halakhic decisor’s familiarity with civil law, combined with a careful investigation of the local custom, could influence his decision as to the validity of practices that effect a sales transaction or create an obligation. The effect that a decisor’s familiarity with civil law and local custom can have on a halakhic ruling is illustrated in credit card purchases (Chapter 10). Based on the law of acquisition by *situmta* and the doctrine “the law of the State is law,”
several Israeli decisors have ruled that the use of a credit card effects transfer of ownership \textit{(kinyan)} of the merchandise to the buyer. However, careful scrutiny of civil law and local custom in Israel leads to a different conclusion, according to which a credit card is only a means of payment, and using the credit card does not effect transfer of ownership; at most, it creates a \textit{contractual} obligation between the parties. Some of the halakhic rulings in this regard seem to reflect a lack of familiarity with the details of the civil laws and their distinction between the contractual and the acquisition stages in sales transactions.

The same holds true for \textbf{online sales transactions (e-commerce)} (Chapter 10). Several halakhic scholars in Israel are of the opinion that the execution of an online sales transaction effects transfer of ownership of the merchandise to the buyer by virtue of the law of \textit{situmta} or the doctrine “the law of the State is law”. An examination of both Israeli civil law and local custom leads to the conclusion that an online sales transaction creates only a \textit{contractual} obligation on the part of the vendor to supply the merchandise to the buyer, but it does not effect the transfer of ownership of the merchandise.

There have been cases in which the dispute among decisors over the validity of a particular commercial practice was not only with regard to the halakhic issues involved, but also with regard to factual issues: (1) Is the practice under discussion sufficiently widespread for it to be regarded as “custom”? (2) What is the intent of the parties with regard to the practice in question? Do they regard it as a method for transferring ownership of the merchandise or only as a method for creating an obligation?

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The book’s interdisciplinary approach to merchant customs combines a scrutiny of the rabbinic literature, of ancient, medieval and modern legal systems, of lexicons and of other historical sources. This approach has yielded contributions in several areas of scholarship:

\textbf{Halakhah}. In many instances it is impossible to understand the full meaning of a rabbinical text that deals with commercial customs without understanding the economic and legal background to the text. It is difficult to understand the discussion of this matter by a rabbi or halakhic authority without acquiring
familiarity with the commercial customs and state laws that prevailed in their locale. The economic and legal background is essential for deciphering the meaning of many of the non-Hebrew words used for the commercial customs which appear in the halakhic sources, particularly in the Responsa literature. This book researches words that were used to describe commercial customs in fifteen languages. A list of these terms appears separately at the end of the book.

**The history and economic background of commercial customs.** The period of time covered by the research in the book is particularly long, extending from the Mishnaic period (0-200 C.E.) to the beginning of the twenty-first century. This extensive period of time made it possible to follow the development of merchant customs over time and from place to place, and to fill in the gaps in information about commercial customs found in other historical sources, such as a handshake and drinking a toast.

**Lexicography.** The book presents a wealth of terms relating to commercial customs that are preserved in rabbinical literature but which have not been documented in other known historical sources. These terms were unknown to scholars, or were known but held a different meaning from that in Jewish sources.

In conclusion, it would not be an exaggeration to state that it is almost impossible to envisage the application and implementation of Jewish property laws in the post-Talmudic era without the law of acquisition by *situmta.*