

Items Destroyed in Transit; Who is Responsible?

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Case: Reuven manufactures frying pans overseas and imports them to America. Shimon, a frying pan wholesaler, is one of his customers. He purchases pans from Reuven and then sells them to stores around the country. Shimon placed a large order with Reuven, and the ship was on the way to America when a hurricane hit, sinking the boat and causing all the merchandise to be lost.

Question: Who takes the loss?

Answer: It depends on how the pans were purchased and what type of *kinyan* was made.

For argument's sake, let's say this was a cash deal, meaning that Shimon already gave Reuven a cash payment for the shipment. As we have explained previously, a cash payment does not create a transfer of ownership (for we don't want the seller to stop caring for the merchandise after he receives payment); however, neither side is allowed to back out after the payment is made. If any side were to back out at this point, they would be liable to the severe curse known as *Mi Shepara*.

However, in this case of a loss of the merchandise, the halacha may be different. If Reuven heard that a hurricane was approaching and hurries to Shimon to say that he wants to renege on the deal before the product is destroyed, he is allowed to do so. Since he has a valid reason to retract his commitment, he will not be punished with the *Mi Shepara*. According to most opinions, and the way we pasken, the seller would take the loss even after the item is already damaged (in addition to if he backs out in advance). The Aruch Hashulchan states that this only applies if he sees a disaster approaching that will lead to a total loss of the merchandise, only then is he considered to have a valid enough reason to back out.

This leads us to a discussion about insurance. If the merchandise was insured, there is reason to believe that cash should be able to serve as a *kinyan* to transfer ownership. The logic behind this would be that the reason cash does not create a *kinyan* is because we are concerned that the seller won't protect the item once it no longer belongs to him, which could lead to it getting destroyed. When the merchandise is insured, however, this should not be a concern as even if it is destroyed there will be no loss.

The Pischei Teshuva, however, rules that when Chazal made the decree that a cash payment does not transfer ownership, they made no exceptions to the rule; therefore, cash is not a *kinyan* even if there is insurance.

The above is true **only** if the deal was made in cash. If an effective physical *kinyan* was made on the merchandise in a way that fully transfers ownership to the buyer, then the buyer would have to take the loss.