

When Merchandise is Damaged After a Cash Payment

Rav Eliezer Cohen

Case: Reuven runs a bargain basement men's and boys' clothing store. He sells clothing to customers, as well as to other retailers. One of his steady customers, Shimon, made a large order for suits and paid Reuven in cash. The night before the merchandise was supposed to be delivered, there was a big storm, causing a flood in the store that damaged the suits.

Question: Who takes the loss?

Answer: This question touches on a very important aspect of *kinyanim*. In business, there is a saying that "cash is king". Accordingly, one would probably imagine that the buyer would gain ownership of an item as soon as he hands over cash for it. According to halacha, however, this is not the case. Chazal actually decreed that a cash payment does not constitute a valid *kinyan* to transfer ownership from the seller to the buyer. While a cash payment does create a deep level of commitment, the buyer does not actually become the owner of the item until he makes a physical *kinyan* on the item itself. Until then, the seller remains the owner.

The reason for this halacha is precisely because of such a case. Chazal were concerned that if the item would become the buyer's as soon as he pays, while still on the seller's property, the seller will no longer take responsibility for the merchandise and wouldn't care to protect or guard it. If a crisis-such as a fire or flood-were to occur, the seller would not make the effort to save the item as he isn't losing anything if it is destroyed. To avert this problem, Chazal decreed that the merchandise still belongs to the seller until the buyer makes an act of acquisition on the item itself. (It should be noted that this is only true in regards to movable objects. In regards to sales of land, the property does transfer ownership as soon as a cash payment is received.)

While Chazal said that a cash payment is not a valid *kinyan* for movable objects, they did put a strong deterrent in place to make sure neither side reneges on the commitment. They decreed that if either the buyer or seller backs out after the payment was made, they are subject to a very severe curse, known as a *mi shepara*. This curse declares that one who doesn't keep his word and stick to such a commitment will be punished with the same punishment as the *dor hambaul*, the generation of the flood.

While there is no way for a *bais din* to force the buyer in this case not to back out after the flood damage occurs, the fear of receiving such a terrible curse should be enough to discourage him from doing so.