Can One Claim Mekach Ta’os After Using The Item?

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Case: Someone buys a used car, pays for it, and takes it home with plans to take his family on a Sunday trip. On the morning of the trip, he notices that something is wrong with the transmission. He knows that he has a claim of *mekach ta’os*, but since it’s Sunday the dealership is closed and he can’t return it until later. As he is stuck for the time being, and needs the car for his trip, he will use it f and return it on Monday.

Question: When he comes in on Monday, the dealer refuses to take it back, claiming that since the buyer used it for his personal use after noticing the problem, he no longer has the right to annul the sale. Who is correct?

Answer: The Shulchan Aruch says that the general rule is that if someone buys something, notices its flaws, and still uses the item anyway, that would be taken as a sign that he made peace with the sale and he would lose his right to nullify the deal. Thus, in a typical case of a car sale, if the buyer would receive a car of lesser quality than he expected and would drive around for a week before deciding he wants to claim *mekach ta’os*, he would no longer be able to make such a claim as his usage of the car proves that he came to terms with it.

The case in question, however, would be an exception to the rule. In a case like this, where the buyer only used the item for a pressing need and not for typical use, there is no underlying proof that he accepted the deal and made peace with the situation; rather, it is still clear that he never wanted to accept the car, and he does not forfeit his right to claim *mekach ta’os.* However, since the customer did get two days of use out of the car, the dealer does have the right to charge him two days’ worth of rent; but he would only be able to charge him the value of renting a car with a bad transmission for two days.

Question: What if someone would order a pizza for his hungry family and discover that it is burnt or very underdone, and then, with nothing else to serve for supper, serve it to them anyway? Would he still have a claim of *mekach ta’os* even though the pizza was eaten?

Answer: In the story of the deficient vehicle, the customer is ultimately returning the car, which allows him to nullify the sale. In this story, there is nothing left to return, so the customer would not be able to stake a claim of *mekach ta’os* in order to get a refund.

What I could suggest for such a person is as follows: If the customer finds the pizza that was delivered to his house is burned, he can call the store and tell them that it was a *mekach ta’os,* and they can send their delivery man back to pick up the uneaten pizza and give him a refund. In all probability, they will have no desire to do so, but the customer has every right to nullify the sale. The customer can then tell the store that if they don’t want to come down to pick up the pizza, he is willing to purchase it from them for half-price or a quarter of the price and they just might agree. In essence, what he is really doing is annulling the first sale through his

claim of *mekach ta’os* and then negotiating a new sale for the burnt pizza.

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