

Rav Yosef Greenwald, Rav of Khal Dexter Park and Dayan in the Bais HaVaad

Case: A customer orders a chocolate cake from a local bakery. The cake is delivered on Erev Shabbos. The customer leaves it outside by the front door, planning to bring it in later. Right before Shabbos, he goes out to get the cake and instead finds a puddle of melted ice cream in the box. He realizes he must've been sent an ice cream cake by accident.

Question: Since the bakery did not send what he ordered, can he claim *mekach ta'os* and get his money back even though the cake was destroyed while on his property, or do we say that the customer is a *mazik* because he didn't take care of the cake and caused it to melt?

Answer: We previously said that one can only claim *mekach ta'os* on an item he paid for if he returns the item to the seller; however, this is not true in every case.

The Shulchan Aruch discusses a story where someone purchases seeds and plants them in the ground, only to discover that they are deficient and incapable of growing anything. In such a case, the buyer has a valid claim of *mekach ta'os*, even though he cannot return the seeds. This is because he acted in a reasonable manner when he planted the seeds, only discovering later that he had been given a faulty product and there is no complaint against him for not having anything to return.

The Shulchan Aruch also speaks about a case where someone buys an animal to slaughter and eat. When he *shechts* it, he discovers that it is a *tereifah*, which he, of course, cannot make use of. Had he not slaughtered the animal, it could have been returned and used for field work; however, since he acted in a reasonable way when he *shechted* the animal, there is no complaint against him and he is not considered a *mazik* for doing so. One would only be labeled a *mazik* if he damaged the merchandise through reckless actions, but if he acted reasonably there is no claim against him, and he deserves a full refund.

The same would hold true in this case here. Since the customer assumed he was sent the chocolate cake he ordered, which would not have been ruined by being left outside, he acted reasonably and cannot be held responsible for what happened to the ice cream cake. He is not a *mazik* and has every right to claim *mekach ta'os* even though he no longer has a cake to return to the bakery.

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