# Price War: Are Prior Customers Wronged When a Seller Lowers Prices?

Adapted from the writings of Dayan Yitzhak Grossman
February 2, 2023

Recent Tesla buyers aren't pleased:

> Tesla buyers are venting their frustration about missing out on big price cuts announced by the company in recent weeks, with one saying they felt "cheated," and another, "taken advantage of."…A buyer who didn't want to be named for privacy reasons paid $69,000 for a Model Y and took delivery on October 1 after waiting for a year. Following the recent price cuts, the car now starts at $52,990, down from its previous base price of $65,990. "It feels like you have been cheated and robbed," the buyer said. "It feels like we are helpless. It doesn't seem fair to a hardworking family with two kids to rob them of their six months' savings."[1]

It seems rather dubious to consider a seller who cuts prices of his products as having "cheated and robbed" buyers who paid the original price. I am unaware of any halachic discussion of this precise question; in this article, we consider the closest related halachic discussion of which I am aware:

A merchant sells a wholesale quantity of his product to another merchant, who intends to profit by reselling it to retail customers at a higher price. The seller subsequently undermines the buyer by selling the product directly to retail customers at the same price, thus preventing him from selling at a profit. Is the seller permitted to do so, and if he is not, does the buyer have any recourse?

The first authority to discuss a version of this scenario of which I am aware is R' Yaakov Alfandari. In his case, a wholesaler sold one hundred *oka* (an Ottoman measure of mass, about 1.25 kilograms) of leeks to a retailer for three *akçe* (a silver coin that was the primary monetary unit in the Ottoman Empire, at the time apparently comprising .29 grams of silver) per *oka*. The buyer transported the leeks to his village, where he planned to resell them for seven *akçe* an *oka*. The seller then brought leeks to the buyer's village and sold them for the same price of three *akçe*, forcing the buyer to sell his for a similar price. Even at the lower price, he was unable to sell out his supply. This episode took place on a Wednesday just before a three-day Yom Tov, and by Sunday the leeks had spoiled. The seller still demanded the full price of three *akçe*. The buyer proposed that he pay only two *akçe* per *oka,* and only for the leeks that he had managed to sell, because the loss of the rest was the seller's fault, and he was entitled to realize some profit on the deal, since that was the purpose of his purchase.

Rav Alfandari acknowledges that he cannot find a conclusive precedent for this question and is therefore unsure of the halacha. He suggests that what to do might therefore depend on who is in possession of the money (*muchzak*): If the seller had already been paid in full, perhaps the buyer cannot compel him to refund any of the money, but if the buyer had not yet paid, perhaps the seller cannot compel him to pay in full. He reports that he arranged a compromise between the parties.

He cites the Tosefta that requires the seller of an animal to avoid interfering with the buyer's halachic ability to slaughter it by triggering the prohibition against slaughtering an animal and its offspring on the same day (*oso ve'es beno*):

> One who buys [an animal or its offspring] from the homeowner, he takes precedence over the homeowner in slaughtering on that day, because he bought it for that purpose. If two people bought the cows, the first purchaser has the right to slaughter first. If the second slaughtered first, he benefits from his alacrity.[2]

Rav Alfandari argues that it follows that in his case as well, the seller has no right to interfere with the buyer's intended use of his purchase (i.e., the sale of the leeks at retail), but he concludes that this proves only that the seller is not allowed to do so, but not that he is liable to the buyer if he does.[3]

The next authority to discuss a similar scenario is R' Eliyahu Yisrael. He was asked about a merchant who sold plates for a *prutah* (a small coin) apiece to another merchant, who planned to resell them at retail for two *prutos* each. Later the same day, the seller offered plates directly to the public for the same price of one *prutah.* The buyer was quite upset and declared that he would never have purchased the plates had he known that the seller intended to sell to the public for the same price, because he obviously intended to resell them profitably.

Rav Yisrael is puzzled by Rav Alfandari's assertion that the case of *oso ve'es bno* proves only that the seller has no right to interfere with the buyer's intended use of his purchase, but not that he is liable to the buyer if he does do so: The halacha in that case is that if the buyer discovers that the offspring of the animal he purchased had already been slaughtered, the sale is an erroneous sale (*mekach ta'us*) and is void, so the buyer has recourse against the seller for the return of his money.

Rav Yisrael proceeds, however, to distinguish between Rav Alfandari's case of the sale of leeks and the precedent from the sale of an animal on the one hand, and his own case of the sale of plates, on various grounds. For one, the purchases in the former cases were time sensitive: The buyer of the animal had a need for meat on that particular day, and the leeks were perishable and so could only be sold before Yom Tov. If the plates, on the other hand, could not be sold immediately due to the seller offering his inventory to the public, the buyer could just wait several days until the seller had exhausted his supply and then sell his for more.[4]

R' Shlomo Drimer raises a fundamental objection to Rav Yisrael's argument that just as the discovery that the offspring or mother of the animal one has purchased was already slaughtered on that day is grounds for a claim of *mekach ta'us*, so, too, are a seller's post-sale actions that undermine the buyer's ability to profit from his purchase: In the former case, the problem already existed at the time of the sale, whereas in the latter, it came later. The sine qua non of *mekach ta'us* is an error at the time of the sale.

Rav Drimer suggests, however, that perhaps a claim of *mekach ta'us* can still be made on the grounds that had the buyer known at the time of the

sale that the seller held additional inventory, he would not have made the purchase without stipulating that the seller sell no more.[5]

Rav Drimer then proceeds to consider whether the sale can be reversed on the grounds of *umdena* (an unspoken assumption that informs our understanding of, and can modify the explicitly expressed terms of, an agreement between two parties). He ultimately concludes that while the buyer may certainly object to the seller undermining his ability to profit by selling direct to consumer, it is difficult to argue that the seller's doing so is grounds to overturn the sale.[6]

A very similar analysis of Rav Yisrael's argument is set forth by R' Shlomo Yehudah Tabak; he, too, objects that *mekach ta'us* requires an error at the time of the sale, and he, too, considers the application of the rules of *gilui da'as* (an expression of intent that falls short of an explicit contractual stipulation) to Rav Yisrael's case.[7]

The Tesla price cut is very different from all of these cases, in which buyers' ability to realize their intended benefit from their purchases was hampered by sellers' actions. Retail Tesla buyers are in no way prevented *objectively* from fully enjoying the use of their purchased vehicles by subsequent price cuts. Although their *subjective* sense of psychological enjoyment may be lessened by the feeling of having missed out on a better price, it does not seem likely to this author that this would be grounds for a claim of *mekach ta'us*. It is also true that the price cuts may cause the buyers to ultimately receive less for their vehicles should they sell them or trade them in, but this, too, does not seem sufficient grounds for a claim of *mekach ta'us*. An analysis of the application of *umdena* and *gilui da'as* is beyond the scope of this article, but it appears likely that these frameworks would also not be grounds for halachically actionable claims against Tesla.

Whether Tesla has done anything wrong by making surprise cuts to its products is an interesting question. It can be argued that it would be *midas* Sdom for existing buyers to object, because the price cuts cost them nothing. But perhaps their sense of being taken advantage of is real enough to render their objections not *midas* Sdom, or perhaps the long-term impact on their vehicles' resale and trade-in value would eliminate the concern. Further consideration of these points is required.

[1]Sam Tabahriti. A Tesla buyer says she effectively lost $10,810 overnight after the carmaker slashed prices. Insider. https://www.businessinsider.com/tesla-buyer-price-cuts-lost-11k-felt-cheated-vent-frustration-2023-1.

[2]Tosefta Chulin 5:1.

[3]Shu"t Mutzal Meieish *cheilek* 2 *siman* 11.

[4]Shu"t Kol Eliyahu *cheilek* 1 C.M. *siman* 23. A very similar distinction appears in Divrei Geonim *klal* 5 *os* 21, which summarizes the *teshuvah* of the Mutzal Meieish and the first section of that of the Kol Eliyahu, and then proceeds to object to the Kol Eliyahu's comparison of his case to that of the *oso ve'es beno* rule and that of the Mutzal Meieish on the aforementioned grounds. This is quite baffling, since as we have noted, the Kol Eliyahu itself makes virtually the identical point in the continuation of his discussion! Cf.

the beginning and end of the discussion of the Bais Shlomo cited in the following note.
[5]See the discussion of this point in Eirech Shai C.M. *siman* 230.
[6]Shu”t Bais Shlomo C.M. *siman* 87 s.v. *Asher he’etik*. (This *teshuvah* is addressed to his brother-in-law, R’ Chaim Aryeh Kahana, author of Divrei Geonim, in response to various passages in (a draft of) that work, and it is apparently to this *teshuvah* that Rav Kahana refers at the end of his comments on those responsa.)
[7]Eirech Shai ibid.