

Onaah and Mekach Ta'os Part I

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THE PROHIBITION OF TAKING ADVANTAGE:

There are numerous misdeeds that fall under the general heading of *gezel* (theft). If one steals from his friend or deliberately cheats him out of money, he has transgressed such a prohibition. *ona'ah*, however, is not in this category. *ona'ah* is in its own category and has its own dynamics.

The word *ona'ah* actually means to cause someone harm or to take advantage of someone. We see that the same term is used to refer to *onaas mamon*, which means taking advantage of someone in a monetary way, and *onaas devarim*, which means harming someone and taking advantage of them with words. Thus, the prohibition of *ona'ah* is not a form of theft, as one who overcharges is not actually stealing; rather, he is taking advantage of a buyer who is unaware that he is being mistreated, which is also prohibited by the Torah. Conversely, if a buyer takes advantage of a naïve seller and underpays him, he too has transgressed the prohibition of taking advantage of an unwitting individual.

STATUTE OF LIMITATIONS:

Because *ona'ah* is not a form of theft, it has various halachos that are different and more limited than the laws of *gezel*.

For example, if one is the victim of theft, there is no statute of limitations. Even if he finds out years later that someone stole from him, he can bring a claim to *bais din* to recoup his loss. *ona'ah*, however, has a very short time frame during which the victim can make a claim. The halacha is that he only has the amount of time it would take to consult with another merchant to ascertain whether he was overcharged or not. Basically, he must act right away. If he does not, he will miss the time limit to make a claim of *ona'ah*.

THREE LEVELS OF OVERCHARGING:

It is very difficult to determine exactly when a merchant transgresses *ona'ah*. Obviously, different stores have different prices for the same item, and many factors go into how much a store charges. Just because one store is more expensive does not necessarily mean he is overcharging and transgressing the law of *ona'ah*.

1. The general rule of Chazal is that if a seller inflates the price of an item up to less than a *shtus* (a sixth of the standard price for that item), we assume the buyer agrees to the price and there is no claim of *ona'ah*.
2. If he overcharges by exactly one-sixth, the buyer can demand a refund of the amount he was overcharged.
3. If the seller overcharges by more than one-sixth, the buyer can demand that the entire sale be nullified. (The same amounts would apply in the converse scenario where the buyer underpays the seller.)

Understandably, it is very difficult for someone to make a claim of *ona'ah* in *bais din*, as there are many variables that determine the price of an item.

- **Location:** A common reason why a product may cost more in one place than another is its location. For example, a bottle of milk in a rural grocery store will cost less than the same bottle of milk in an upscale Manhattan supermarket.

As the rent is completely different among other things, that will certainly affect the price.

- **Upscale:** Similarly, the same suit will cost more in a fancy store located in an upper-class neighborhood.

This can be either because of the ambiance, level of service or the quality of the suit.

- **Concert/Amusement Park Venues:** So too, a bottle of water will cost a lot more in an amusement park than the same bottle of water would cost in a grocery store.

This would be considered the price in that place, and

is part of the amusement park experience.

Because so many variables such as these exist, the merchant will usually claim that he had good reason to charge a higher price.

It should be pointed out that although the specific location and circumstances of a sale have to be taken into consideration when deciding what is a fair price, that does not mean that one can take advantage of someone in a tight spot. For example, if someone meets another person who is dying of thirst and dehydration, he cannot demand \$1,000 for a bottle of water and then say that he did nothing wrong because that was how much the water is worth for this man. Such a person is doing the wrong thing by jacking up the price and the buyer may be able to wiggle out from paying him by saying that he only agreed when he was in a desperate situation.

MORE LIMITATIONS:

In the times of the Gemara, it was unheard of for people to sell their personal effects, such as their furniture, tools or clothing. If someone was selling such items, it was a sign that they were destitute and desperate for money; therefore, it was understood that they would not be charging the standard price. We see from here again, that the context of a sale sets the price. Some contemporary Poskim want to compare a yard sale, where one sells his personal household items, to the case of this Gemara; however, it seems that the comparison is flawed, as a person who makes a yard sale usually is not desperate for money and is merely trying to make a few dollars while cleaning out his home. Either way, the prices at

a yard sale would vary greatly from prices elsewhere, as the context again sets the price.

In our times, we also have a concept of a dealer who sells for a commission. It is true that his price is jacked up, but it cannot be said that he is overcharging. What he is actually doing is charging a fee for his service of matching up buyers with merchandise they otherwise would be unable to find on their own. Both sides are aware of the nature of the service he is offering, which means that he cannot be considered to be selling at inflated prices.

EVEN WHEN ONA'AH CANNOT BE ENFORCED, THERE STILL MAY BE A TRANSGRESSION:

It must be noted that even when *ona'ah* cannot be enforced by a *bais din*, the party that overcharges or underpays may still have transgressed on a *d'oraysa* level.

When one overcharges by less than a sixth, it could be argued that he is within the accepted amount and is not taking advantage of the other party. However, if one is clearly overcharging and there is just no way to prove it due to various limitations, the Ramban rules that he still has transgressed the prohibition of *lo sonu*. An example of this may be a plumber who comes to someone's home to do a job and charges him an amount that is well above and beyond the accepted norm. As we shall discuss in the next segment, there is a debate regarding whether *ona'ah* applies to a service provider like a plumber; however, it is clear that this plumber took advantage of someone else, and, according to the Ramban, he has committed a *d'oraysa* level *aveirah*.



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