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Yorucha
weekly overview

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Onaah and Mekach Ta'os Part II

Rav Yosef Greenwald

THE FINE LINE BETWEEN ONA'AH & MEKACH TA'OS:

As we explained in Part 1 of this series, *ona'ah* is not an absolute form of theft. This is because no one is taking somebody else's property illicitly. In cases of *ona'ah*, both parties agreed to the sale and agreed to the price, as opposed to a case of *mekach ta'os*, wherein the buyer did not receive the goods he paid for. To illustrate, if someone sells a car that he claims is in good working condition, and, after the sale, the buyer discovers that the engine is shot or the transmission is on its last legs, the entire sale is null and void because the car the buyer received is not what he intended to purchase. This is a case of *mekach ta'os* that falls under the broad category of theft. *ona'ah*, however, is a good sale in which neither side is stealing from the other; however, the Torah protects the rights of the party that was taken advantage of , and gives him a right to undo the sale if he follows certain steps. While *ona'ah* is not theft, the Torah forbids either side to take advantage of the other by either overcharging or underpaying, and offers protection to the side that is taken advantage of.

As we said, because *ona'ah* is not theft, there are certain limitations regarding how it can be enforced. For example, there is a time limit for how long a claim can be made, whereas in a case of *mekach ta'os* there is no statute of limitations. Since *mekach ta'os* has no limitations, a vendor can't simply protect himself from such claims by hanging a sign in his store that declares "All Sales Are Final." If a sale would be *makach ta'os* – meaning the buyer does not receive what he paid for – the sale is nullified as if it never occurred; therefore, the seller cannot have a policy of not giving refunds for such instances. Regarding *ona'ah*, however, there are numerous limitations, and there are cases where the seller could exempt himself from liability.

It is important to remember that although there are many times that one would be able to exempt himself from liability for *ona'ah*, the Rishonim still say that one who takes advantage of his friend transgresses a Torah prohibition even in such cases.

GRAY AREAS:

There are quite a few gray areas," where the laws of ona'ah and *mekach ta'os* intersect and it is unclear exactly how to categorize the situation. In such cases, a *dayan* may have to make a judgment call in his ruling.

To give one example: As we will see later in our discussion, there is a halacha that the rules of enforcing *ona'ah* do not apply in sales of *karka* (land). If a piece of real estate is sold at an inflated or undervalued price, the disadvantaged party is not protected by the halachos of *ona'ah* and cannot make a claim in bais din.

That said, we can discuss a story where an older couple sells a home they lived in for decades because they want to move near their children or into an assisted living facility. They find a buyer who wants to develop the property and agree on a price that they believe is fair for the house itself. Unbeknownst to them, however, the entire neighborhood is about to be rezoned to allow for higher density housing, which will drive up the price considerably. The developer is well-aware of this and knows that in just a few weeks, this home will be worth double what he is offering the couple.

What would the halacha be in such a case?

Is this a question of *ona'ah* because the only complaint against the buyer is that he is underpaying? If that were true, since this is a case of *karka* the sellers would have no recourse to file a claim against him in bais din.

However, it could also be argued that this is a case of *mekach ta'os*. The rationale behind that argument would be that the property the couple believes they are selling is not the same property they actually are selling, as it's entire essence will be changed once the zoning laws are amended. Thus, the couple do not really know what they are selling, which would classify the sale as a *mekach ta'os*. If this argument is correct, the sellers have no limitations in demanding a nullification of the sale.

This is just one example of a story where the line between *ona'ah* and *mekach ta'os* is blurred and unclear. Another example would be if someone sells a car that is in decent

shape, but he dresses up its appearance by giving it a paint job and exterior work to make it look more attractive. If the buyer feels he was overcharged, can he claim that this is not the same car he paid for and, therefore, the entire deal is a *mekach ta'os*, or do we say that it is clearly the same car and the only claim the buyer has is that he was overcharged, meaning he could only pursue a claim of *ona'ah*?

All these variables are factors in a *dayan's* decision-making process.

REAL ESTATE SALES:

As we mentioned above, the halacha is that the laws of *ona'ah* cannot be enforced on sales of *karka*. This is learned from a *Gezeiras Hakasuv*, so we cannot really discuss the reason behind this halacha; however, what we can definitely state is that the reason there can be a difference between movable objects and *karka* regarding *ona'ah* is only because *ona'ah* is not absolute theft. The Torah does not allow theft under any circumstances. When it comes to *gezel*, there can be no differentiation between movable objects and land. (Although there is a well-known rule of *karka eino nigzeles* (land cannot be stolen), this only means that land cannot technically be picked up and stolen. It does not mean that theft would not be enforced on land in cases where it can be stolen.) Regarding *ona'ah*, on the other hand, since it is not absolute theft, there can be such a differentiation and it can be explained that the Torah only protects a person from being taken advantage of in sales of movable objects but not in the real estate market, where deals are more complex and the dynamic of the marketplace is completely different.

The Gemara further says that *ona'ah* applies to renting, just like it applies to buying. If someone would rent an object at an inflated price, he could make a claim of *ona'ah*. Most Rishonim say that renting real estate at an inflated price is considered taking advantage of the renter and would be prohibited. But could one make a claim in bais din of *ona'ah*? The answer is that he cannot. Because *ona'ah* cannot be enforced on *karka*, it also cannot be enforced on the renting of real estate.

SERVICE PROVIDERS:

This leads us to discuss whether *ona'ah* applies when one is paying for a service. A service is obviously not a movable object, but is it *karka*? What category would it fall under?

The Gemara says a rule of *avadim dumya l'karka* (slaves are similar to land). This dictum does not only apply to actual slaves, but to any hired workers who are paid by the hour or day. A person is not a movable object; therefore, he is compared to *karka*. For this reason, if a worker charges an inflated salary for work, the employer cannot make a claim of *ona'ah* against him.

The Rambam posits a novel idea and rules that this is only true of an employee who is paid by the hour or day. However, a service provider who is paid to do a job and makes his own hours and schedule would be different because he is not "owned" by the employer and has no resemblance to a slave. As such, he is not comparable to *karka*, which means that *ona'ah* could be enforced if the employer was overcharged.

The Ramban disagrees and says that a service provider has the same halachos as any other worker. Accordingly, if a plumber or electrician would quote a very inflated price for a job, and the homeowner agrees to pay it, there is no way to make a claim of *ona'ah* against him in bais din.

Practically speaking, if the service provider has not been paid yet, the homeowner would have the upper hand and could claim that he will not pay the inflated amount based on the ruling of the Rambam. If the payment has already been made, the service provider now has the upper hand and could refuse to give a refund based on the ruling of the Rambam.

WHEN *KARKA* AND *METALTILIN* (MOVEABLE OBJECTS) COLLIDE:

Often, business deals have components of both *karka* and movable objects, which creates more gray areas in halacha.

Rav Akiva Eiger and the Pischei Teshuva discuss instances where one hires a builder to build a house, agreeing to pay for labor and for the materials. While *ona'ah* would certainly apply if the price of the materials was inflated, whether or not it would apply for the labor would be dependent on the *machlokes* between the Ramban and Rambam.

Very often, the situation is not so cut and dry, as one price will be agreed upon for the entire deal. Since the quoted price is for one entire package, it is difficult to assess whether the one who hired the builder is being overcharged for the materials or for the labor. It can also potentially be viewed as one price for all from the builder, and unless it is *ona'ah* on the whole package, it may not be a problem.

To add another layer to the conversation, the status of every house could be subjected to halachic scrutiny. A house is made up of movable material, which is then attached to the ground. In many areas of halacha this is known as *talush u'bisof chibru* (unattached items that ultimately become attached to the ground), which becomes part of a property and is subsequently considered *karka*. This leads to various questions, such as whether a mobile home, which is not fully attached to the ground, has the same status as a standard home with an underground foundation. This is a lengthy, fascinating discussion that is beyond the scope of this series but displays how many variables can come into play in these types of situations.

IS A HOUSE ALWAYS THE SAME HOUSE?

The *Tur* discusses yet another relevant case that shows the myriad variables that can arise in sales.

He quotes the Teshuvas HaRosh who speaks about a story where an individual buys a house, and then discovers that it is in need of quite a bit of work. Doors are torn off the hinges, windows are broken, and the paint is peeling. The buyer claims he signed to buy a house in move-in condition, and that is not what he received. Does he have the right to claim *mekach ta'os* and nullify the entire sale?

The Rosh leans towards ruling that mekach ta'os would only be applicable if there are major problems with the house. For example, if there is structural damage that would require a complete overhaul to fix, the buyer can claim that this is not the house he agreed to buy, and the entire sale can be annulled. However, if all that is required are some fixes that are not so intrinsic to the home, such as broken doors and windows, the buyer cannot claim that this is a different house than the one he bought. While the seller would be required to fix the damage, as the deal was that the buyer would receive a home in move-in condition, it cannot be claimed that the entire sale was a *mekach ta'os* and is null and void.