BAIS HAVAAD
HALACHA CENTER

על פי התורה אשר יורוך
Yorucha
weekly overview

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY OVERVIEW VIDEO

Onaah and Mekach Ta'os Part IV

Rav Yosef Greenwald

SAFEK MEKACH TA'OS:

There are many possible scenarios where it is unclear whether an item that was sold was deficient at the time of sale, thus rendering it a *mekach ta'os*, or perhaps it only developed later and the sale is valid.

To give one example: Someone buys a car and drives it for 20 miles before realizing that it is making a telltale rattling noise, indicating that something is seriously wrong with the vehicle. If the problem that is causing the rattling existed at the time of the sale, the buyer would be able to claim *mekach ta'os* and demand for the sale to be rescinded and for the seller to refund him if he already paid. On the other hand, it is possible that the buyer hit a pothole or an obstacle on the road after he bought the car, and the problem only arose after the sale. Thus, it is unclear if a claim of *mekach ta'os* is possible or not.

There is a general halacha of *Hamotzi Meichavero Alav Haraya*, which means that the party with possession of money or any item in dispute has the upper hand and the burden of proof lies on the party trying to force a change of possession. Accordingly, one may think that the determining factor in the case of *safek mekach ta'os* would be whether the buyer paid for the car or not. If he had yet to pay, he would be the one with possession of the money, and he would have the upper hand, whereas if he already paid, the seller would have the upper hand.

However, the Poskim tell us that this is not the halacha. They explain that the way *mekach ta'os* works when a deficiency is found in an item is that the sale is valid, but once the buyer finds the problem he has a right to claim that he would never have bought it had he known about the issue and he can now nullify the sale. Until the sale is nullified, the deal is valid; therefore, the party that is trying to annul the sale is considered to be the one trying to change the facts on the ground, and the burden of proof lies upon him.

This means that in our story of the rattling automobile, the burden of proof would be on the buyer, as he is the one attempting to nullify the sale that we assumed to be valid until now. Whether or not he already paid, he would have to somehow prove that the problem existed at the time of the sale in order to make a valid claim of *mekach ta'os*.

The same would apply in a real estate sale where a problem is found with a house and it is unclear if it was there at the time of the sale or if it only arose later.

Another common application of this halacha would be if someone buys a perishable item from a grocery store and puts it in his refrigerator for two or three days, and, when he takes the item out to eat, he finds it to be spoiled. Since the buyer is the one trying to nullify the sale, it would be up to him to prove that the item was deficient when he bought it. Regarding some items, it could be claimed that the fact that they were spoiled two days after purchase is indicative of the fact that the item was already inferior in quality at the time of purchase; therefore, the buyer does have proof that his claim of *mekach ta'os* is valid and he would be able to nullify the sale. Regarding other items, however, this is not a clear proof and the buyer would have no halachically valid claim.

MAKING PEACE WITH THE PROBLEM:

When someone buys one item, and later discovers that he was given a completely different item, the sale is automatically rendered null and void. For example, if someone orders apples and receives oranges, it is obvious that there never was a sale and the oranges and money that was paid would have to be returned. But if someone does receive the same item he ordered, only to discover that it is blemished in some way, it is now up to the buyer to decide whether he wants to nullify the sale or not. He has the option of accepting the item despite its flaws and making peace with the situation, thereby rendering the original sale valid, or he can claim *mekach ta'os* and nullify the entire sale.

If someone purchases an item and uses it even after discovering the blemish, the Rambam rules that this is sufficient evidence that he has made peace with the deal and he no longer has a right to claim *mekach ta'os*. An example would be if someone buys a car and immediately discovers a problem with it, but uses it for a few days anyway. After those few days, he goes

back to the seller and claims he doesn't want the car because of the flaw and wants his money back. Since he used the car after knowing about the problem, he has forfeited his right to make this claim of *mekach ta'os*.

The source for this ruling is a Gemara that discusses a case where a man marries a woman, only to discover that she possesses a flaw that could render the marriage a *mekach ta'os*. The Gemara says that if the man lives with the woman as a husband and wife, he loses his right to annul the marriage due to this claim. The Poskim learn from this Gemara that the same rule would apply in sales.

This would further apply to any case where the blemish is obvious. If someone purchases an item that is clearly flawed and uses it anyway, he cannot come back and claim that he was unaware of the flaw, as the blemish is clear to all and it is improbable that he didn't notice it before he used the item.

WHEN USE IS NOT A PROOF OF ACCEPTANCE:

There are certain specific cases where a buyer or renter's use of an item is not proof that he made peace with it and forfeited his right to claim *mekach ta'os*.

An example would be if someone rents a car and takes it out on the road, only to discover that it has a serious problem. The man cannot be expected to abandon the car on the side of the road and walk to his destination. Furthermore, if the rental car dealership has closed for the evening then he cannot return it right away, and if he needs a car to get around he will have no other choice but to use this car. In these cases, the renter does not want to use the vehicle and only does so because he is under duress and has no other choice; therefore, his usage does not indicate that he made peace with the car, and he may still have a valid claim of *mekach ta'os*.

ALL SALES FINAL?

It is not uncommon for stores to post signs proclaiming, "No returns", "All sales final", or "Store credit only."

Do such declarations work according to halacha? If someone makes a purchase from a store with such a sign, has he agreed to the clearly posted terms and sacrificed his right to make a claim of *mekach ta'os*?

The simple answer to this question is no.

When a purchase is found to be deficient, the buyer has the option of accepting the item and upholding the sale or annulling the sale with a claim of *mekach ta'os*. A sign cannot make this decision for him. The bottom line is that it is the buyer's decision. If he does choose to claim *mekach ta'os*, the sale is nullified as if it never took place, and no sign can change that fact.

The fact that a buyer can technically nullify a sale does not change because a sign was posted on the wall; therefore, a policy of "no returns" or "store credit only" will not hold up in halacha.

Of course, this only applies to instances where an item is found to be inferior in some way. If a store accepts returns of items as a service even if there is nothing wrong with them, they have every right to limit the scope of how and when these types of returns will be accepted.