

Shlichus

PART III

Rav Boruch Meir Levin and Rav Yosef Dovid Josilowsky, Dayanim at the Bais Havaad

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

AN EXTRA BONUS GIVEN TO AN AGENT:

Let's begin by looking at two cases involving an agent who received an extra bonus.

Case #1: Reuven sends his friend Shimon to the deli to purchase a pastrami sandwich for him. The owner of the deli tells him that he has some extra potato knishes and he is happy to give him one for free along with his purchase. Who is entitled to the free knish? Reuven or Shimon?

Case #2: Reuven is a foreman who works for Shimon, a real estate developer. Shimon is building a development of 55 homes and Reuven orders thermostats from the manufacturer for those homes. The manufacturer sends a shipment of 55 thermostats. A week later, a duplicate shipment of 55 thermostats arrives, which had apparently been sent in error. For whatever reason, it was not relevant to return the second shipment to the manufacturer. Who owns the excess thermostats? Reuven or Shimon?

SPLITTING THE PROCEEDS:

The Gemara discusses Case #1 – where someone deliberately gives an extra bonus to a *shliach* – and rules that it should be evenly split between the *shliach* and *meshalayach*. Rashi explains that the reason it is split is because we do not know the storeowner's intentions, i.e. we don't know whether he wanted to give the gift to the *shliach* or to the principal; therefore, we divide it between them. According to this explanation, it would seem that if we would know to whom the storeowner intended to give the gift, it would belong solely to him.

The *Rif* disagrees with Rashi and says that the Gemara is even talking about an instance where we know that the storeowner intended to give the gift to the *shliach*. Even if the storeowner specified that he intended to give it to the *shliach*, it still must be split with the one who sent him. He explains that the storeowner only threw in the added bonus because of the purchase. Since it was the principal's money that generated the gift, he is entitled to half of it.

The *Taz* rules that the halacha follows the opinion of the *Rif*, and the bonus is split even if the storeowner specifically intended it for the *shliach*.

On the other hand, if the storeowner specified that he intended to give it to the *meshalayach*, it would go to him alone.

A MISTAKEN BONUS:

Regarding Case #2 – where the other party made an unintentional mistake – *Tosafos* takes note that there are two distinct types of mistakes that could be made:

The first type of mistake is a "*ta'os b'cheshbon*", a mistake made when counting out the product. An example of this would be if the going price for apples is five for a dollar and the storeowner accidentally gives the customer six apples instead of five because he counted wrong.

The second type of mistake is "*ta'os b'mekach*", a mistake made regarding the sale. An example of this would be if the storeowner thought that the going rate was six apples for a dollar when it actually is five and purposely gave the customer six apples based on that mistaken assumption.

Rabenu Tam originally suggests that both types of mistakes should result in a ruling like that of the *Rif*, with the extra apple being split between the *shliach* and *meshalayach*. He then retracted this ruling and concluded that in both cases it belongs solely to the principal. The *Ri* disagrees and says that in the case of *ta'os b'cheshbon*, the entire extra apple should belong to the *shliach*. He explains that the sixth apple is not really connected to the purchase since it was only given as the result of a mistaken count. He compares it to an unrelated *aveida*, a lost object. In this case, the non-Jewish owner "lost" the apple by handing it over mistakenly to the *shliach*; therefore, it is now ownerless, and the *shliach* has the right to take possession of the entire apple for himself. Only in the case of *ta'os b'mekach* does he agree with Rabbeinu Tam's original position that the sixth apple should be split with the *meshalayach* because, in this case, the apple was given as part of the sale, albeit mistakenly. Accordingly, since it was only given as a result of the *meshalayach's* money, he has a right to part of the apple.

WHY IS THE SALE VALID ALTOGETHER?

This leads us to ask the following question: In the case of *ta'os b'mekach*, is it a valid sale in the first place? If it is a good sale, it would seem that the sixth apple is an actual part of the sale and should belong completely to the *meshalayach*, as he paid for it. If it is an invalid sale, and for whatever reason it is not relevant to return the sixth apple to the seller, that apple seemingly should be considered ownerless and should belong to the *shliach*, just like in the case of *ta'os b'cheshbon*. Why would the halacha ever be to split that apple?

The *Ketzos Hachoshen* takes the view that it is a valid sale. He explains that not all mistakes render a sale to be a “mekach ta’os”. If the seller had in mind to make a sale that is not out of the realm of possibility, the deal could be valid even if a mistake was made regarding the price. For example: If someone enters furniture store and asks how much a certain couch costs; he is told that the price is \$100, and he purchases the couch. Later, the storeowner calls him and tells him that the price is actually \$1200 and the computer had made a mistake. That sale is invalidated because it is obvious that a couch would never be sold for a mere \$100. This is a clear *mekach ta’os*. If, however, the buyer was told that the price is \$1,200, and after he makes the purchase, the store calls and tells him that an error had been made and the price is actually \$1,400, it is not so clear that the deal is invalid. Since the quoted price is not implausible, it is not evident that a mistake was made, so it is not necessarily a *mekach ta’os*.

Accordingly, in the case of *ta’os b’mekach*, where the seller gives six apples instead of five, it is not clear to all that he made a mistake; therefore, the deal is valid. The *Ketzos* says that the *Rishonim* were referring to such a case when they ruled that the sale is valid and the sixth apple is either split according to the *Ri* or is given entirely to the principal according to *Rabbeinu Tam*.

WHY THE PRINCIPAL RECEIVES HALF:

Having said this, the *Ketzos* asks what is the logic of the *Ri* altogether in the case of *ta’os b’mekach*; why doesn’t the principal get the entire apple and not have to split it with the *shliach*, because it is really part of his sale? Furthermore, the reasons of both *Rashi* and the *Rif* don’t seem to apply to such a case?

The *Ketzos* answers that the *Ri* holds like the *Hagahos Ashri*, who says [unlike the *Rif* or *Rashi*] that the reason the apple is split in the case of *ta’os b’mekach* is because the *mazal* of both men led to the mistake. Technically, the extra apple is part of the sale and should belong to the actual buyer, i.e., the *meshalayach*; however, because both men’s *mazal* caused the mistake, they split the apple. Only in the case of a purposeful addition, where the seller had in mind to give the entire apple to the *meshalayach*, did we say that it goes entirely to the principal because this is not related to the *mazal* of either man; rather, he deliberately gave the apple as part of the sale to the buyer. That is why the *meshalayach* is entitled to all of it.

THE APPROACH OF THE SEMA:

The *Sema* however, understands the *machlokes* differently. He says that the *Ri* is talking about a case where the sale is a *mekach ta’os* and is not valid. This means that the extra apple really still belongs to the seller. If for whatever reason, it cannot be returned, one might assume that it is like a lost object and should go solely to the *shliach*. While this is indeed true in the case of *ta’os b’cheshbon*, he argues that the case of *ta’os b’mekach* is different because the extra apple was generated directly as a result of the sale.

In the case of *ta’os b’cheshbon*, the sixth apple was not given directly because of the sale; rather, it fell out of the hands of the seller and is considered ownerless; therefore, it belongs to the *shliach*. In the case of *ta’os b’mekach*, the sixth apple was generated by the *meshalayach*’s money as part of the sale. Since the *meshalayach* is directly connected to the apple through his money, he deserves half of it.

APPLYING THE DIFFERENT OPINIONS:

Although the *Ketzos* and *Sema* learn the *Ri* differently, they do not necessarily argue about the *halacha*. They both may agree that in a case where the deal is valid, the *Hagahos Ashri*’s reasoning would apply, i.e. the apple would be split when *mazal* is at play and would not be split when it is not. Whereas, in a case where the deal is invalid, the *Sema*’s reasoning would apply and the apple would go to the *shliach* in a case that it is not directly generated by the *meshalayach*’s money, but would be split with the *meshalayach* in a case where it is.

In Case #2, when the foreman received the second set of thermostats, it was clearly a *mekach ta’os* because it is obvious to all that a mistake was made. This means that these thermostats really still belong to the seller. If they cannot be returned, they are clearly akin to a lost item and one may assume that they should belong to the *shliach* if he takes possession of them first. However, according to the *Sema* who says that even if the extra item is a lost object, if it was directly generated by the *meshalayach*’s money it belongs to him, it can be argued that, in this case, the extra thermostats were sent as a direct result of the buyer’s order and, therefore, he is entitled to half of them.

A DELIVERY TO THE WRONG ADDRESS:

The *Sema*’s rule that a buyer is entitled to half of a mistake if his money generated the error can also be applied to cases that do not involve *shlichus*. An example of this is the case below:

Reuven ordered an item from Amazon. The package was mistakenly delivered to his neighbor, Shimon. Shimon noticed the package on his porch, but it took him several days before he got around to taking care of it. Meanwhile, Reuven contacted the seller and told him that his package hadn’t arrived. When the seller was unable to track where the package had gone, he sent a replacement to Reuven. After the second package was delivered to Reuven, Shimon brought him the first package and told him it had been delivered to him erroneously. The seller was contacted and he said that it would be too much of a hassle to return the item and they should keep it. Who does the first package belong to?

At first glance, it may seem that it is ownerless and, therefore, belongs to Shimon because he got it first. According to the *Sema*, however, Reuven is entitled to half of it because the delivery of the package was directly generated by his purchase.

To watch the video or listen to the *shiur* given by the *Dayan*, visit: www.baishavaad.org/yorucha-topics
Or sign up to receive them via whatsapp: [📞 732.232.1412](https://www.whatsapp.com/channel/002997322321412)