YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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***Bein Adam Le-chavero*: Ethics of Interpersonal Conduct**

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**Shiur #27: *Geneivat Daat —* Misleading, Misrepresentation and Deception**

In the last two lessons, we have seen the extent to which the chapter which begins “*Kedoshim tihyu*” (*Vayikra* 19) directs each Jew towards a life of holiness, attempting to uproot any trace of deception from the Jewish people. The Sages expound this text to teach us how one must shun being *echad be-feh ve-echad be-lev* (hypocritical) and instead must embrace the ideal of “*tokho ke-varo,"* sincerely expressing one’s inward thoughts via one’s outward actions. The greatest expression of the extent of the prohibition of deceptive practices might very well be the proscription against *geneivat daat,* literally “stealing of the mind,” which includes various forms of misrepresenting oneself and misleading others. This prohibition guides one towards a life of honesty and sincerity.

In order to understand the prohibition, the first question that must be asked regarding *geneivat daat* is the following: what is its source? This will help us understand the nature of the prohibition, by helping us determine what its focus is and what should be included in it. The Talmud (*Chullin* 94a) records the prohibition, and it includes a number of forbidden actions that are a little startling.

Shmuel said, “It is forbidden to deceive people, even a non-Jew.”

The prohibition is not explicit in the Torah; the verse never states that one cannot deceive others. However, when discussing the prohibition of *geneiva*, stealing, we have already pointed out that the Torah mentions the prohibition in the plural tense, “*Lo tignovu.”*

Though we usually associate stealing with money or objects, in fact one can steal many things. Even regarding various forms of deception, one can deceive in order to attain money or to attain other things.

This prohibition applies not only to monetary matters, fraud and deceptive business practices; it includes various cases of verbal misrepresentation and giving misimpressions.

The Tosefta (*Bava Kamma* 7:8) mentions based on the verse that of all the forms of *geneiva*, “The first of among them all is *geneivat daat*.”

In fact the Torah mentions the root “*ganav”* in the context of fooling another, speaking of *geneivat lev —* literally, stealing the heart (*Bereishit* 31:20, 26)*.*  If so, it is logical that the prohibition of *geneiva*, written in the plural, refers to *geneivat daat* as well.

In fact, the Ritva (*Chullin* 94a) and the Semag (154) both explain that *geneivat daat* is biblically prohibited on account of the negative commandment “*Lo tignovu.”* The Ritva adds that the general language, “*Lo tignovu,”* is meant to include all forms of *geneiva*, as the Torah does not limit this prohibition to money; it prohibits all forms of stealing, including stealing the hearts and minds of others.

As we have noted (in lesson #26), the Minchat Chinnukh (Mitzva 224) explains the reason that the prohibition of *geneiva* is so expansive — forbidding *geneiva* even for the benefit of the one stolen from and even including stealing back one’s own purloined goods — is because an act of *geneiva* is rooted in a terribly cruel character trait. All *geneiva* is in fact rooted in deception. It is not only the object taken which is at issue; the deceitful manner of taking it is something which is completely unacceptable. Using the methodology of non-genuine tactics for acquiring anything is deplorable — even if one is recovering his own property or providing charity for others. A Jew must be sincere and honest in the way he deals with others.

Based on this explanation, one might entertain the idea that the most quintessential form of *geneiva* is in fact not stealing money, but rather *geneivat daat*. Especially in cases in which one does not receive anything, it is the act of deceit which the Torah forbids under almost all circumstances.

This source would indicate that *geneivat daat* is presupposed in the prohibition of *geneiva.* Others cite alternative sources for the prohibition.

The Seforno (*Vayikra* 25:17) writes that *geneivat daat* is included in the prohibition against *onaat devarim*, causing others distress with one’s words. In fact, the Mechabbercodifies the laws of *geneivat daat* in *Choshen Mishpat* ch. 228, the same chapter which deals with the laws of *onaat devarim*.

The Semak (262), on the other hand, is of the opinion that the prohibition of *geneivat daat* is only a rabbinic ban. However, his language seems to indicate that it is in fact subsumed under *geneiva*, possibly because it expresses the same character flaw — but the prohibition itself is only rabbinic in nature.

The Shulchan Arukh Ha-Rav explains that the nature of the prohibition depends on the context in which it is violated. If it is violated in the context of monetary matters, than it is actual *geneiva,* but in other contexts, it is only rabbinically forbidden.

However, even according to those authorities which see acts of *geneivat daat* as rabbinical prohibitions, it is clear from their words that the Sages are merely extending the biblical laws of *geneiva* and *onaat devarim* to cases which the Torah implicitly disapproves of; it may not specifically forbid these acts, but it has already expressed its vision of the proper dealings with others, which must be devoid of any harming words or deceitful practices. In fact, Rabbeinu Yona (*Shaarei Teshuva* 3:184) seems to indicate that *geneivat daat* is included in the prohibition of *sheker,* falsehood. Dishonesty comes in all shapes and sizes. Sometimes it comes through outright lies, and at other points it is an outgrowth of dishonest practices; as we will soon see, these includes a number of surprising applications of minimal untruth which nonetheless fall into the category of deception.

As we look into some of the cases included in this prohibition, we may note that the source of the prohibition may affect the understanding of its nature and scope.

**Cases of *Geneivat Daat***

The Talmud mentions a host of examples of acts prohibited in the context of *geneivat daat.* Some cases involve monetary deception, while others involve regular interactions in which one might come to mislead another. The examples of the Talmud go very far in delineating the extent to which the Torah tries to distance us from dishonesty. In order to better understand this, let us take a look at a number of the cases discussed in the Talmud.

Rabbi Meir used to say: “A person should not urge his fellow to dine with him when he knows that his fellow will not dine with him, nor should he make numerous offerings of gifts when he knows that he will not accept gifts.”

The Talmud’s principle seems to be that any misrepresentation is forbidden, including offering invitations to one who will clearly not accept them. The Torah guides us towards being honest and straightforward. One may not misrepresent one’s true motives any more than one may sell products under false pretenses. The Rambam (*Hilkhot Deot* 2:6) mentions the prohibition of *geneivat daat* in the social context, alongside the requirement to avoid being *echad be-feh ve-echad be-lev* and a host of other directives from our Sages to be sincere rather than two-faced.

A person is forbidden to act in a smooth-tongued and luring manner. He should not speak one thing outwardly and think otherwise in his heart. Rather, his inner self should be like the self which he shows to the world. What he feels in his heart should be the same as the words on his lips.

It is forbidden to deceive people, even a non-Jew…

It is forbidden to utter a single word of deception or fraud. Rather, one should have truthful speech, an upright spirit and a pure heart, free from all evil and mischief.

Judaism teaches one not to be an actor or actress in a manipulative or insincere manner. This type of “being smooth” is not viewed as a positive character trait. *Geneivat daat* is not only a forbidden act, but a prohibited way of life.

**Even Gifts**

The aforementioned passage in *Chullin* (93b-94a) records the prohibition of *geneivat daat* in the context of a *mishna* detailing a gift given to a non-Jew. The commentators discuss whether one can conclude from the Talmud’s discussion that *geneivat daat* is forbidden in the context of gift-giving, even though a certain level of deception will only make the recipient feel better about his gift. The Mechabber (*CM* 249:2) rules that *geneivat daat* applies even when giving a gift (see *Emet Keneh* 8:4 by Rav Yitzchak Isaac Silver for a complete discussion).

Again, this law seems to highlight the unique nature of the prohibition. Even when giving a gift, one does not have a license to mislead another as o the true value of the gift; rather, one must express his love and care for another in a manner devoid of any trace of deception.

This is especially significant, as many people have an urge to try to make gifts they give seem much more expensive then they in fact are. Applying the prohibition of *geneivat daat* to gifts would require that people eliminate all deception as to the value of their gift-giving, though, as we will see, this in no way requires that one must attach the price tag to the gift.

**Why Not?**

The Rishonim seem to disagree somewhat on the reason for some of the aforementioned prohibited actions. Why can one not invite his friend knowing that the other will not accept?

Throughout his commentary of the Talmud (e.g. *Chullin* 94a), Rashi focuses on the fact that by misleading the other individual, one will “feel a debt of gratitude, for no reason.” It is clear that even if the recipient never acts upon that debt of gratitude, the act itself is forbidden for causing one’s friend to feel indebted.

The Me’iri (*ad loc.*) on the other hand, does not mention that the recipient will feel unduly grateful; rather, he focuses on the fact that by acting in this way one gives the other a misimpression about his true intentions, leading the recipient think that the giver intends to honor him when this is not the case.

One might venture to say that Rashi and the Me’iri disagree on the exact nature of these examples of prohibitions. According to Rashi, the focus of the prohibition is the undeserved debt of gratitude, which one has achieved unduly and, therefore, essentially stolen. The Me’iri, though, seems to understand that it is the misrepresentation alone which is forbidden, even if no debt of gratitude is incurred, for the focus is not on an actual act of stealing, but rather the dishonesty involved, the “stealing of the mind”. When all is said and done though, it is not only that the recipient feels unduly indebted towards the giver, but that the giver attains this through deceiving the recipient.

**Permitted Circumstances**

The Talmud goes on to explain that some cases of *geneivat daat* can be permitted under certain circumstances.

…Nor should he open for him barrels that have been sold to a shopkeeper unless he notifies him that they have been sold. Nor should he say to another, “Anoint yourself with oil,” when he is actually offering an empty flask; however, if he does so for his honor it is permitted.

It is interesting to note that there seems to be a distinction between the various permitted instances mentioned here. The first permitted method is by informing all of the facts, which is clearly acceptable because there is no deception and no misleading is involved.

 The second case, however, is highly difficult. The Talmud would seem to say that even though you are in fact deceiving the individual, since he is benefiting from it by being honored, it is permitted. This opens up a very important question: how do we understand why this is permitted? Regarding *geneiva,* we have seen that it is forbidden to steal for the benefit of the individual being robbed — why would *geneivat daat* be different?

 If we understand that *geneivat daat* is a form of *geneiva,* then we must explain why its *halakhot* differ. Based on the explanations of Rashi and the Me’iri, we may explain this. According to Rashi, the concern of *geneivat daat* is that the other individual will feel unnecessarily indebted. However, in this case, the merchant has honored the potential customer, and therefore, the customer does owe the merchant a debt of gratitude, even if the customer thinks it is for the oil the merchant has offered him, not for showing his importance to the crowd. According to the Me’iri, this act would be permitted because *geneivat daat* is forbidden in any context wherein someone might wrongly think that another person is treating him with high regard. In this case, as we have noted, the merchant is in fact honoring the potential customer, albeit in a different way.

**“He Would Have Done It Anyway”**

 The continuation of the passage provides other permissible cases. The Talmud says that it is permitted to open a new barrel of wine for a guest without informing him that the rest of the contents of the barrel are about to be sold through a merchant, in a case where one would have opened the barrel for the guest even if he would have to absorb the loss of the rest of the barrel. The conclusion seems to be that if an action would have been done anyway, one can do it on behalf of another, even though the other does not realize that one in fact is not losing by benefitting him.

 Tosafot, however, limit the extent of this permitted practice based upon an important passage in the continuation of the discussion.

 **“He Misleads Himself”**

*Geneivat daat* forbids purposeful misrepresentation, but what if one is silent and the other individual misleads himself — is one obligated to inform him? This issue is mentioned in the continuation of the passage in the Talmud, but the proper understanding is dependent upon a dispute among the Rishonim. The Talmud states that one is permitted to remain silent when “they mislead themselves,” and it brings a story of Rava and Rav Safra to illustrate this issue (94b):

Mar Zutra son of Rav Nachman was going from Sikara to Bei Machuza, and Rava and Rav Safra were coming to Sikara. They met each other on the road. Mar Zutra thought that they were coming to greet him (to show him honor).

He said to them: “Why was it necessary for the rabbis to trouble themselves and come so far?”

Rav Safra said to him, “We did know that the master was coming, but had we known we would have troubled ourselves even more.”

Rava said to Rav Safra: “What was the reason you told him and disheartened him?”

Rav Safra said to Rava “But we would be misleading him (otherwise)!”

Rava replied, “It is he who misleads himself; we are not required to correct him.”

Rava and Rav Safra seem to debate whether one is obligated to tell the whole truth when he realizes that his actions may lead to someone else’s misunderstanding, who may feel a sense of gratitude for an act which was supposedly done on his behalf. Rav Safra, to whom the Talmud (*Makkot* 24a, in another context) attributes the verse “He speaks truthfulness in his heart” (*Tehillim* 15:2), could not allow Mar Zutra to be misled, even if that was not his intention. He opts to tell the truth, even though Mar Zutra might possibly be disheartened by his remark. Rava, however, feels that in a situation where one does not perform any act of deception and the misimpression develops in the other individual’s mind, one need not disclose all the facts. The Talmud ends with Rava having the last word, which would seem to indicate that whenever there is no intention of deception, it is permitted to “play along," as it were, with the other individual’s self-deception.

Tosafot (s.v*. Ve-ha),* however, limit the extent of allowing one to be silent in the wake of another’s misleading himself based on an earlier passage which seems to forbid a similar case. The Talmud (*ibid*. 94a) tells the story of Ulla’s visit to Rav Yehuda. Rav Yehuda opened a new large barrel of wine in Ulla’s honor, but he had been intending to do so anyway. Was Rav Yehuda obligated to inform Ulla of his original plans, so that Ulla would not get the misimpression that Rav Yehuda was opening the new barrel for him?

Tosafot differentiates between different cases: one need not mention his original plan if the alternative option was considered as well; however, if one only had one singular intention at the time, even if one might have done so in any case, he must inform the other of his lack of intention to benefit him, even though he would have done so anyway.

The specific applications are extensive (see *Emet Keneh*, 8:18-20, 38) but the bottom line is clear. The Torah goes out of its way to distance one from deception, but at the same time, it concerns itself with the feelings of others, and therefore, when no deception is involved, one can remain silent when one truly wishes to benefit others.

However, one must be honest with about his true intentions and realize the limitations of these principles. One can remain silent only if he honestly would help another who had misled himself, but he can in no part play in to their being misled. For instance, regarding the gift one has given to another, after having found it on sale at a rock-bottom price, one need not inform the recipient who thinks that it is worth a mint of its true value. However, if the individual asks “How much was it?” one cannot, in any way, provide an ambiguous answer which would seem to indicate that the object cost more than it really did. Again, deception has no place in the life of a Jew: silence is permitted when preventing deception, but it is forbidden in cases where it may add to the mistruth.

**Inadvertently Giving a Wrong Impression**

The extent to which one must be forthcoming in order to prevent misimpressions, even if one is not responsible for them, may be clearly seen in cases in which one is honored undeservedly. It is here that even another’s misleading himself requires one to stand up and declare that one is unworthy of the honor bestowed upon him.

The source for this law is a *mishna* (*Shevi’it* 10:8) that lays out the following rule: if one is an inadvertent killer (who may take refuge in a Levite city) but is thought to be a distinguished Levite, he must announce his true identity, for the Torah says “This is the word of the killer” (*Devarim* 19:4). Only if the townspeople know his true identity can he accept the honor.

The Yerushalmi (*ibid*. 10:3) applies the same ruling to anyone who is honored under the presumption that he is a greater scholar than he actually is. The clear ruling is that in matters of honor, one cannot accept praise for attributes in which one is lacking. If so, then one’s silence in the wake of other’s misimpressions would in fact be tantamount to *geneivat daat,* deceitful misrepresentation. The specifics of these laws are very complex, as under certain conditions, accepted custom allows for exaggeration that is not meant to be taken literally. (See *Emet Keneh,* ch. 8.)

**Concluding Lessons**

There are numerous practical halakhic applications for these laws which fall beyond the purview of this series, but it is worthwhile to mention the words of Rav Moshe Feinstein regarding the possible issues of theft for one who cheats on an examination. Rav Moshe rules that it is undoubtedly *geneivat daat* for a student to misrepresent his knowledge and deceive his teacher, but it is also outright *geneiva* in that any position in life that one achieves afterwards based on this deception in fact involves stealing from the individual who should have done better (not to mention the problems of dishonesty and possible desecration of name of God, if done in Jewish institutions).

Though the specifics of *geneivat daat* are beyond the purview of our series, dealing with these questions is of extreme importance. Whether one arrives at the conclusion that a given act is forbidden or permitted, either through extensive study or through speaking to someone well-versed in these laws, it will become clear that the Torah’s guidelines go far in ensuring that one does not live a life of deception. Business practices and personal practices, even consumer-protection laws that are never consciously thought of, are part and parcel of the Torah’s educational system of honesty and sincerity. Certainly, in the field of advertising, dressing up merchandise and concealing defects are both forbidden, but as we have seen, the applications go much further.

In truth, possibly the most important thing to remember is that even though the Torah goes out of its way to ensure that individuals do not deceive each other, as seen in previous lessons, the only one who is truly deceived is the deceiver himself. Rather than fool others, he fools himself into a life of dishonesty, where he is unable to maintain faithfulness even with himself. It is for this reason that the Rambam explains (*Hilkhot De’ot* 2:6) the ideal character of the Jew in the following way:

Rather, one should have truthful speech, an upright spirit and a pure heart, free from all evil and mischief.