



Shabbat Table Discussions

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GENEIVAT DA'AT: AVOIDING DECEPTION

Dedicated by Roz and Benjamin Schultz in memory of Esther Balitsky
(Esther Baila bat Yeshaya), a true Eshet Chayil

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When high school quarterback, Nate Haasis, completed his last pass of the season, he broke his conference record for most yards passed. However, he knew something was strange about that pass . After some investigating, he found out that his coach collaborated with the other team's coach to allow him to break the record. He wrote a letter to the commission of the conference stating, "While I admittedly would like to have passed the record, as I think most high school quarterbacks would, I am requesting that the Central State Eight does not include this pass in the record books ... [My personal accomplishments] required a lot of cooperation and hard work from my teammates. I do not wish to diminish the accomplishments that were made in the last three years." The conference accepted his request and his last pass was stricken from the record.

Source: <http://www.nytimes.com/2003/11/01/sports/high-school-football-quarterback-is-rejecting-mark-he-feels-is-tainted.html>

Our actions can speak louder than our words. Sometimes our actions may give a false impression and mislead others unless we state otherwise. Let's consider what one should do in the following scenarios:

Let's look at the following scenarios:

CASE ONE	Mindy is a finalist in a statewide science fair. She asked her friends to come see her exhibit but because it is a great distance from the school, she doesn't expect any of them to come. Lisa, her friend, came to the science fair because her brother was also a finalist. When Mindy sees Lisa she says, "I am so touched that you came all the way here to see my exhibit." Should Lisa tell Mindy why she really came?
CASE TWO	Marc's birthday is coming up and he is planning a birthday trip and can only invite six friends. Marc is very friendly with seven people and if he leaves any of them out, they will be hurt. However, he knows that Shimon won't be available to come on the trip. Is it proper to invite Shimon knowing that he won't come?
CASE THREE	Shira doesn't generally do well at trivia games. While at Beth's house with a few friends, Beth suggests that they play a question and answer game. Shira has played this game many times before and knows the answers to many of the questions. Should she tell her friends that she knows many of the answers before playing?

Let's Examine the Sources

The Tosefta, a collection of rulings from the period of the Mishna, presents the concept of "*geneivat da'at*," which literally means stealing knowledge, and considers it the worst form of theft:

There are seven forms of thieves, the first is one who steals knowledge, such as someone who persistently invites someone to be a guest knowing that this person will not accept the invitation or someone who sends gifts to someone knowing that the person will send them back.

Tosefta, Baba Kamma ch. 7

שבעה גנבין הן הראשון שבכולם גונב דעת הבריות והמסרב בחבירו לאורחו ואין בלבו לקרותו והמרבה לו בתקרובת ויודע לו שאינו מקבל. תוספתא, בבא קמא פרק ז

Questions for the Table:

- 1) Why does the Tosefta consider these activities a form of theft? What is being stolen from the victim?
- 2) If you are invited to an event or receive a gift from your friend, does that change the way you perceive that friend? What does that tell you about the examples in the Tosefta?

Rambam presents an additional factor that is relevant to *geneivat da'at*:

*It is prohibited to act in a deceptive or enticing manner, and one should not say something while meaning something else. Rather one's outward behavior and speech should reflect one's thoughts and it is prohibited to steal the minds of other people ... How so? One should not sell non-kosher meat to a non-Jew pretending that it is kosher and one should not persistently invite someone for a meal knowing that this person will not accept the invitation and one should not send gifts to someone knowing that the person will send them back ... Even one word of enticement or deception (*geneivat da'at*) is prohibited. Rather one should have lips of truth, a proper spirit and a heart that is not tainted by trickery or deception.*

Rambam, Hilchot Dei'ot 2:6

אסור לאדם להנהיג עצמו בדברי חלקות ופיתוי, ולא יהיה אחד בפה ואחד בלב אלא תוכו ככרו והענין שבלב הוא הדבר שבפה, ואסור לגנוב דעת הבריות ... כיצד לא ימכור לנכרי בשר נבילה במקום בשר שחוטט ולא יסרהב בחבירו שיאכל אצלו והוא יודע שאינו אוכל, ולא ירבה לו בתקרובת והוא יודע שאינו מקבל ... ואפילו מלה אחת של פיתוי ושל גניבת דעת אסור, אלא שפת אמת ורוח נכון ולב טהור מכל עמל והוות.

רמב"ם, הל' דעות ב:ו

Questions for the Table:

While the Tosefta stresses that the issue with *geneivat da'at* is theft (*geneivah*), Rambam focuses on *geneivat da'at* being deceit and lying using the same examples. Are there situations where there is no theft but there is deceit? What about theft without deceit?

Reasonable Expectations

In case #1, Lisa has no intent to deceive Mindy. However, if she doesn't tell Mindy the real reason why she is at the science fair, Lisa will be gaining undeserved goodwill from Mindy. Should we consider any nice things that Mindy does for Lisa as "stolen"? The Talmud discusses a situation similar to case #1:

Mar Zutra son of R. Nachman (a great rabbi) was going from Sichra to Bei Mechuza while Rava and R. Safra were heading towards Sichra. They met on the road and Mar Zutra thought that they came out to greet him. He said, "Why would you make such a great effort for this?" R.

מר זוטרא בריה דרב נחמן הוה קאזיל מסיכרא לבי מחוזא, ורבא ורב ספרא הוו קא אתו לסיכרא, פגעו אהדדי, הוא סבר: לאפיה הוא דקאתו, אמר להו: למה להו לרבנן דטרוה ואתו

Safra said to him, "We didn't know you were coming, but if we did, we would have made an even greater effort." Rava said [later] to [R. Safra], "Why did you say that to him? You caused him to feel bad!" R. Safra said "Wouldn't we have been deceiving him [if we didn't say anything]?" [It would not have been considered deception because] he was deceiving himself.

Chullin 94b

R. Yosef Karo, in his *Shulchan Aruch*, codifies the conclusion of this story as law:

[Regarding *geneivat da'at*,] if the recipient should have realized that nothing was [actually] done for him/her, and the recipient is fooling him/herself into thinking that it was done in his/her honor such as when a person meets a friend on the street, and the friend thought the person had come specifically to greet him/her it is not necessary to inform the friend otherwise.

Shulchan Aruch, Choshen Mishpat 228:6

כולי האי? א"ל רב ספרא: אנו לא הוה ידעינן דקאתי מר, אי הוה ידעינן - טפי הוה טרחינן; א"ל רבא: מ"ט אמרת ליה הכי, דאחלישתיה לדעתיה א"ל והא קא מטעינן ליה איהו הוא דקא מטעי נפשיה.

חולין צד:

ואם הוא דבר דאי בעי ליה לאסוקי אדעתיה שאינו עושה בשבילו, ומטעה עצמו שסובר שעושה בשבילו לכבודו, כגון שפגע בחבירו בדרך וסבור זה שיצא לקראתו לכבודו, אין צריך להודיעו.
שלחן ערוך חושן משפט רכה:ו

Questions for the Table:

- 1) What criteria does *Shulchan Aruch* use to determine whether someone is being deceived or whether one is fooling oneself? How would you apply this to case #1?
- 2) Is there a downside to Lisa informing Mindy that she came to see her brother's project?

Deceiving in order to Honor

The Talmud teaches us that sometimes we are allowed to use deceptive practices for the benefit of the "victim":

One should not offer a guest a container to use for moisturizing one's skin when the container is empty [if it is known that the person won't accept the offer] but if the purpose is to honor the guest, then it is permissible.

Chullin 94a

If the purpose is to honor the guest and show others that this person is dear to the host, then it is permissible.

Rashi, Chullin 94a

לא יאמר לו סוך שמן מפך ריקן, ואם בשביל כבודו מותר.
חולין צד.

ואם בשביל כבודו - של אורח להודיע לבריות שחביב הוא עליו מותר.
רש"י שם

Question for the Table:

Why do you think it is permissible to deceive a guest for the guest's own honor?

R. Yoel Sirkes applies this idea to invitations:

[The language] "One should not persistently invite" implies that it is only prohibited when the host uses pressure, but asking the person one

שלא יסרהב וכו' משמע דוקא הפצרה טובא אסור אבל אמירה גרידא פעם

or two times for the purpose of honoring the individual is permissible and this is common practice.

Bach, Choshen Mishpat no. 228

ושתים מפני הכבוד אין שם איסור. וכך
נוהגים
ב"ח, חושן משפט ס' רכח

Questions for the Table:

- 1) Is it always a form of honor to invite someone one time to an event knowing that he/she will not be able to attend? What is it about persistently inviting someone that makes it *geneivat da'at*?
- 2) How would you apply R. Sirkes' ruling to case #2? Are there other ways for Marc to deal with the situation?

Deception at no Cost to the Victim

In the cases we have discussed involving *geneivat da'at* there is an act of deception and the result is that the deceiver falsely "steals" undeserved goodwill from the victim. If there is theft without deception, then it is not considered *geneivat da'at*. What if there is deception without theft, such as in a case where no goodwill is generated?

Earlier, we presented Rambam's opinion who focuses on the deception aspect of *geneivat da'at*. R. Eliyahu D. Rabinowitz-Teomim (known as the Aderet) comments on Rambam's opinion:

[The source for Rambam's ruling is] *Pesachim 113b*. It is implicit from that passage that it is prohibited even if there are no monetary consequences, for if there were monetary consequences, it would be a violation of "do not steal" which includes *geneivat da'at*.

Bnei Binyamin, Hilchot Deiot 2:6

פסחים (קיג:). ומשמע שם שאפילו
אינו בדבר שבממון אסור שאילו
בממון אסור משום לא תגנוב שהיא
גניבת דעת.
בני, בנימין, הלכות דעות ב:ו

Questions for Table:

- 1) When Rambam highlights *geneivat da'at* as a form of deceit, do his comments apply even when there is absolutely no loss to the victim (not even false good will)?
- 2) In case #3, is Shira causing her friends a loss by not revealing that she has seen these questions before? Does it make a difference that she is generally not good at these games and knowing some of the answers will place everyone on similar levels?

Cheating on Exams

As opposed to Shira's dilemma in case #3 where there is a question if her friends lose out, when someone cheats on an exam, the teacher, whose job it is to evaluate the students, loses out because he/she cannot do his/her job well when students cheat. R. Moshe Feinstein takes this even further:

Regarding your question about that which you heard that in [some] *yeshivot*, [the administration] permits the students to steal the answers to the questions on the state's final examination (regents) in order to deceive [the state into] awarding a degree recognizing satisfactory completion of the material, this is prohibited not only

הנה בדבר שאלתו על מה ששמע
שבישיבות מתירין להתלמידים לגנוב את
התשובות להשאלות במבחני הסיום
שעושה המדינה (רידזענס) כדי להונות
ולקבל את התעודות שגמרו בטוב, הנה

because it is the law of the government, but also because it is a violation of Torah law. This is not only geneivat da'at that is prohibited according to Shmuel ... it is also actual theft because when this person is seeking a job and the employer demands someone who satisfactorily completed secular studies in high-school, the student will show the employer his/her high-school diploma in order to procure the job and by doing so will violate the prohibition of monetary theft.

Igrot Moshe, Chosen Mishpat 2:30

דבר זה אסור לא רק מדינת דמלכותא אלא
מדין התורה, ואין זה רק גניבת דעת ...
אלא דהוא גם גניבת דבר ממש דהא
כשירצה לפרנסתו במשך הזמן להשכיר
עצמו אצל אחד לעבוד בעסקיו ורוצים
ברוב הפעמים במי שגמר היטב למודיו
דחול והוא יראה לו התעודה איך שגמר
בטוב ועל סמך זה קבלוהו שזהו גניבת
ממון ממש.
אגרות משה חו"מ ב:ל

In a recent book titled *Extreme Trust*, authors Don Peppers and Martha Rogers argue that one of the greatest competitive advantages we can gain over others is trust. When we pursue honesty and integrity, the value added from trust far outweighs any advantage we might gain through deception. Honesty is reflected through our words and our actions. Like Nate Haasis, who didn't want to take undeserved credit for something he didn't earn, we too should make sure that we act in a way that earns the positive image that we are trying to create.

Compiled by Rabbi Josh Flug, Director of Torah Research, CJF

BIOGRAPHICAL SKETCHES OF AUTHORS CITED

R. Moshe ben Maimon (also known as Rambam and Maimonides, 1138-1204) is one of the most famous rabbis in Jewish history. His works on Jewish law and Jewish philosophy are extremely influential and continue to be studied regularly by scholars and students. He began his life in Cordoba, Spain but eventually settled in Egypt.

R. Yosef Karo (1488-1575) was born in Toledo Spain, but his family was forced to leave there during the expulsion in 1492. They moved to Portugal and then Bulgaria, but he eventually settled in the Land of Israel ca. 1535. Aside from *Shulchan Aruch*, R. Karo authored numerous works including *Kesef Mishneh* and *Beit Yosef*.

R. Shlomo Yitzchaki (also known as **Rashi**, 1040-1105) is one of the most popular commentators on the Bible and Talmud. He is classically included in any printing of a Hebrew Bible or Talmud containing commentary. He lived in Northern France.

R. Yoel Sirkes (1561-1640) is most well-known for his *Bayit Chadash* (or *Bach*). He held rabbinical positions in Belz, Brisk and Krakow.

R. Eliyahu David Rabinowitz Teomim (also known by his acronym Aderet, 1845-1905) served as the rosh yeshiva of Mir before emigrating to Israel in 1899. He was R. Avraham I. Kook's father-in-law and served as a mentor to R. Kook.

R. Moshe Feinstein (1895-1986) was one of the most prominent decisors of Jewish law in the 20th century. He was the rabbi of Luban, Russia before moving to the United States in 1936. In the U.S., he served as rosh yeshiva (head of a rabbinical seminary) of Mesivta Tifereth Jerusalem. His magnum opus, *Igrot Moshe*, is a collection of responsa (answers to questions about Jewish law) about contemporary issues of Jewish life.

Don Peppers and **Martha Rogers** are the founders of the Peppers and Rogers Group, a management consulting group focused on a customer-based strategies. They are both renowned international lecturers.