

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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GENEIVAT DA'AT

One is not permitted to promote false impressions - literally, to steal the knowledge of another. For example, pressing an individual to be your guest when you know that he cannot attend is prohibited. You probably did not plan on inviting him but knew that you could offer this invitation with impunity. Yet, you stir within him the impression that he is important in your eyes and a desirable guest. Similarly, you mustn't give a guest the impression that you opened a new keg of wine purely for his benefit if the wine was already opened before his arrival. The gemara in Chullin (94a) addresses this prohibition known as geneivat da'at. This is a very sensitive halakha and touches upon many ambiguous situations. May I flatter another person merely to win their favor? What if this flattery is accepted as common courtesy? This article is NOT intended to provide a halakhic guide but rather to address the essence of the issue from an analytical perspective.

When beginning an analysis of a halakha, one should endeavor to determine its source. What is the "mekor" for the prohibition of geneivat da'at? The Ritva in Chullin (94a) claims that the prohibition is de-oraita and it stems from the general prohibition of stealing money. According to the Ritva, then, it is, essentially, a derivative of theft and is included within that biblical prohibition. Similar sentiments are expressed by two sefarim which list the 613 mitzvot: the Semak (prohibition 155) and the Yerei'im (124).

Alternatively, the Semak (Sefer Mitzvot Katan; mitzva 161) argues that the prohibition is not included within the biblical issur of theft. Rather, it is merely a de-rabanan prohibition. Ostensibly, the Semak viewed geneivat da'at as a distinct issur independent of monetary theft. Perhaps, he viewed it as a mitzva which governs the way we speak and the impressions we set. A moral ethical person is careful not merely to speak honestly but to engender an impeccably sincere impression. The nature of such a prohibition has little to do with THEFT proper; instead it addresses the type of personality one hopes to develop. It is with good cause that the Rambam cites the principal

rule of geneivat da'at within Hilkhhot De'ot and not within Hilkhhot Geneiva, implying that it is not a form of theft, but rather relates to a personal code of conduct. (This is not, however, the entire picture according to the Rambam; he cites several additional instances of geneivat da'at in Hilkhhot Mekhira chapter 18 as well).

Another interesting issue emerges from one of the commentaries of the gemara in Chullin. The Ritva in Chullin (94a) posits that we might have thought that geneivat da'at only applies within the context of a sale. When offering a gift, however, one is ALLOWED to create the impression that the gift is worth more than it is! Thus, the gemara goes out of its way to formulate a case of geneivat da'at when gift-giving in order to reject this notion. How might we explain this possibility of confining geneivat da'at to a sale?

Quite possibly, if we view geneivat da'at as some form of non-monetary theft (fooling the client even when the difference does not reflect any monetary value) we might then limit this rule to sales. Indeed, when proffering a gift I can't be classified as a pseudo-thief as I am not receiving anything in return!! Thus, the hava amina appears to be based upon viewing geneivat da'at as some derivative of theft!!! As such it would clearly be limited to purchases. Given this understanding, how are we to analyze the gemara's conclusion?

Perhaps, the conclusion is based upon the following: Once the gemara expands geneivat da'at to gifts it changes its view of the issur, defining it as 'improper moral behavior' (and NOT 'theft'); it therefore includes gift-giving within the prohibition. OR perhaps the gemara discerns a form of geneiva EVEN within dishonest gift-giving? After all, the recipient of a gift will always feel a 'debt of gratitude' (hachzakat tova), and this debt will correspond to his evaluation of the gift. An impression of inflated value will indirectly lead to the giver receiving more than he deserves. This might entail a form of THEFT which applies even when giving a gift!

Essentially, our question remains: Is geneivat da'at improper behavior or is it a derivative of actual theft?

In order to help discern an answer to this quandary, we should investigate a few nafka minot.

(1) First, let us examine the issue by isolating an instance in which absolutely no 'loss' is incurred by the 'victim.' The gemara rules that I may not sell a piece of leather which came from a neveila under the pretense that it was 'shechted' properly. The gemara claims that the leather from a properly sacrificed animal is 'stronger' than leather from an animal which died suddenly. What would happen if the buyer only paid the worth of neveila skin? In this instance he isn't losing anything nor does he incur any incorrect 'debt of gratitude' (as it is a sale in which there is no reason to be 'grateful'). One might have claimed that this case, stripped as it is of any theft component, would be permissible. The Bach (Choshen Mishpat 228), however, argues that even this is prohibited. Perhaps he viewed this prohibition as totally independent of geneiva and, therefore, applicable even when no loss whatsoever is incurred.

(2) The gemara in Shevu'ot (39a) rules that it is prohibited for someone to falsely claim money which he knows is not owed him in an attempt to force the defendant to swear against his claim. This conspiracy is in violation of geneivat da'at. Seemingly, there is no monetary advantage accrued by engaging in this false suit. Evidently, this gemara establishes a form of geneivat da'at which is independent of geneiva. It is interesting to note that the gemara did choose a legal example in which the concept of geneiva might in some way be feasible. In addition, what remains unclear from the gemara is WHO exactly is the victim of this geneivat da'at? Are you fooling the defendant by falsely suing him; or are you deceiving beit din by giving them the impression that he might owe you money? Perhaps this gemara as well is insisting that geneivat da'at only applies when the lie achieves some form of monetary advantage and that extracting a shevu'a has monetary value. [This question, of course, touches upon the nature of shevu'a which is beyond the parameters of this article.]

(3) The gemara in Bava Batra (10b) details an episode in which a Gentile monarch sent moneys to the Jewish community earmarked as charity for Jews. Rava, though accepting this money, distributed it to Gentiles. Rashi inquires as to why this was not geneivat da'at. He answers that it was common knowledge that the Jewish community supported Gentiles as well, and, thus, when this money was first committed to Jewish charity, the possibility of donation to Gentiles was included. The prospect, however, of geneivat da'at in this case of supporting Gentiles instead of Jews might also be a case where no gezeila is possible. If moneys were donated to the

purchase of a Sefer Torah or to redeem captives and were intentionally diverted, this would constitute actual gezeila (see the Yad Rama in Bava Batra). In our case, however, the moneys were given to poor people!! What difference does it make whether the recipients were Jewish or not? So, why must Rashi justify Rava's actions? Perhaps he believed that geneivat da'at was simply improper behavior even when unconnected to gezeila, and even when establishing no monetary advantage.

(4) One final case relates a fascinating halakha of the Rambam. In his list of mitzvot (negative commandments #32) he writes that magic is forbidden because of geneivat da'at. This might include black magic as well as illusionism. Clearly, in this instance no monetary advantage is achieved. The Rambam, then, carves out a form of geneivat da'at which has no relation to the world of geneiva. For this reason, he cites the halakhot in Hilkhhot De'ot and includes magic within the prohibition.

METHODOLOGICAL POINTS:

1. Often mitzvot which instruct us in proper behavior might just be based on more classical issurim. For example, last year, we explored the prohibition of lo tachmod - covetousness. In that article, a similar question was posed: to what degree is this a moral issue, or is it based upon a concrete, legal aspect? Quite possibly, lo tachmod (coveting an item and unfairly pursuing its purchase) is a form of geneiva as well. Here, we raised the same question regarding geneivat da'a: is it a Yoreh De'a halakha (moral) or a Choshen Mishpat rule (pseudo-theft)?

2. To test whether it is based upon classical models or a new (moral) issue inspect the source as to the 'level' (de-oraita/de-rabanan) of the halakha.

AFTERWORD:

The article questioned whether geneivat da'at was a form of theft or simply improper conduct and communication. Perhaps, though, there are different varieties of geneivat da'at. When there is some monetary advantage gained it might be a type of geneiva and its prohibition would be de-oraita. If,

however, it is merely deceptive without personal gain it might be geneivat da'at independent of theft and only prohibited de-rabanan. See the Sefer Avodat Ha-melekh in his comments to the Rambam in Hilkhhot De'ot.