

Genaivas Daas

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- I. **Introduction.** In describing the way that a Jew must conduct himself, the רמב"ם (דעות פרק ב הלכה ו) states that a Jew must exude sincerity. We cannot give off a certain impression when we speak to others, while maintaining entirely contrary thoughts in our minds. We must always utter the truth and be of pure heart and spirit. In fact, the גמרא (פסחים דף קיג:) employs unusually strong language in describing God's attitude toward the insincere person. The גמרא states that there are three groups of people that "God hates", one of them being an insincere person (אחד בפה ואחד בלב). Often, a seemingly innocent act of deceitfulness can cause a person great embarrassment which can have tragic consequences (see חולין דף צד where a victim of גניבת דעת was embarrassed to the point of turning suicidal).
- A. **People that you don't get along with.** One may think that it is preferable to pretend to like a person who he really does not like, rather than to allow the person to know how you really feel about them. After all, we sometimes reason, won't the person feel bad when I tell him how I really feel. Yet, רש"י (בראשית פרק לז פסוק ד') writes that part of the greatness of Yosef's brothers can be seen in the way that they related to him in the context of their dispute with Yosef (מתוך גנותם למדנו שבחם). While it was certainly not appropriate for them to dislike Yosef to the extent that they did, it is to their great credit that they did not attempt to give him a false impression about their feelings toward him – "ולא יכלו דברו לשלום".
- B. **More severe than stealing money.** In many ways, חז"ל consider גניבת דעת to be a more severe prohibition than actually stealing money. The אחרונים grapple with the question of why it is considered to be such a severe prohibition:
1. The ספר אמת קנה suggests that we can understand the severity of this sin in light of a comment of the מנחת (חינוך (מצוה רכד)). In describing the difference between a

גנב (one who steals discreetly) and a גזולן (one who steals openly), the מנחת חינוך posits that even if we were to assume that גזילה from a non-Jew is only rabbinically forbidden, גניבה from a non-Jew may be biblically forbidden. The distinction between the two lies in understanding different categories of מצוות. The מצוות in the תורה can generally be divided into two distinct categories: מצוות בין אדם לחבירו (between man and his fellow) and מצוות בין אדם למקום (between man and God). However, the גר"א added a third category – מצוות בין אדם לעצמו (between man and himself). This third category would include character development. We have an obligation to become better people, not directly benefiting God or other people, but to benefit ourselves by enriching our own personalities. When one steals openly he has violated the איסור בין אדם לחבירו of taking money that does not belong to him. However, when one steals discreetly, he is also revealing a glaring lack of יראת שמים by fearing fellow humans more than he fears God. This is not only a violation בין אדם לחבירו, but בין אדם לעצמו as well. While on a biblical level the torah may consider a non-Jew's property to be הפקר and therefore not subject to גזילה, it may still be subject to גניבה because the basic violation against oneself remains the same regardless of whom he steals from. For this reason, the מנחת חינוך suggests, one may violate גניבה when stealing even less than a פרוטה, while one only incurs a violation of גזילה when stealing something of value. Similarly, גניבת דעת may be worse than actual stealing because of the increased violation בין אדם לעצמו when one engages in גניבת דעת. A person who knowingly deceives other people becomes prone to dishonesty in other contexts, and will more easily lose control of his moral compass.

2. The ספר אמת קנה also suggests a different rationale for the particular severity of גניבת דעת. The גמרא בבא בתרא (דף) states that one who gives money to the poor deserves six blessings, whereas one who appeases

the poor person with words deserves eleven blessings. The implication is that feelings of goodwill are far more valuable than actual money. It thus stands to reason that one who “steals” feelings of gratitude and warmth (by knowingly deceiving them) has committed a greater violation than one who only steals money.

- II. **The sources and reasons for the prohibition.** The primary Talmudic source for the prohibition of גניבת דעת is a passage in מסכת חולין (דף צד.). The גמרא states that in שמואל’s view גניבת דעת is prohibited even when committed against a non-Jew.¹ The גמרא explains that שמואל never made a statement to this effect but we learned it from his actions. Once שמואל rode on a ferry. Upon the conclusion of the trip שמואל asked his attendant to pay the ferry driver. The attendant paid the ferry driver with a chicken, giving the impression that it was a kosher chicken, when in fact it was a טרפה. Shmuel became upset with his attendant for the false impression that was conveyed to the ferry driver (in spite of the fact that the non-Jewish ferry driver is permitted to eat non-kosher chicken). The גמרא then proceeds to provide examples of גניבת דעת: one may not invite a friend for a meal when in fact he has no intention of hosting his friend, and is only asking him because he knows that the fellow will not accept his invitation, but will be touched by it. Nor can a person bring a barrel of wine as a gift when there is oil at the mouth of the barrel because this gives the false impression that the barrel is actually full of oil. The גמרא, though, never reveals what the prohibition of גניבת דעת is based on. The ראשונים offer a number of suggestions:
- A. The רמב"ם (הלכות מכירה פרק יח הלכה א') records the laws of גניבת דעת together with the laws of אונאה (unfair pricing). The implication is that the prohibition of גניבת דעת is derived from the prohibition of אונאה. If this is the true source for גניבת דעת

¹ See שו"ע חו"מ סימן שמח סעיף ב' that if a non-Jew makes a mistake that causes a financial gain for a Jew (i.e. טעות עכ"ם), the error need not be reported. The רמ"א (שם) cites a dispute as to whether a Jew may purposely cause the non-Jew to make such an error. The opinion that maintains it is permissible to do so argues that טעות עכ"ם is מותר in all circumstances. Yet, the opinion that maintains that it is prohibited would argue that purposely causing the non-Jew to make a mistake would fall under the category of גניבת דעת and is therefore prohibited (סמ"ע שם).

there should be no prohibition of גניבת דעת of a non-Jew just as there is no prohibition of אונאה against a non-Jew. Indeed, many understand that the רמב"ם would only prohibit גניבת דעת of a non-Jew on a rabbinic level.

- B. The ריטב"א (חולין דף צד.) writes that the prohibition of גניבת דעת is simply another form of גניבה and is therefore prohibited equally whether perpetrated against a Jew or a non-Jew.
- C. The יראים (קכד) offers an approach that is somewhat of a compromise between the רמב"ם and the ריטב"א. He argues that when the גניבת דעת is committed on monetary issues, the prohibition is derived from גניבה. When, however, the prohibition is not related to monetary matters (e.g. the case of inviting a friend for a meal that you do not intend to ever host) the prohibition would be derived from אונאה.
- D. רבינו יונה (שערי תשובה שער ג' סימן קפד) writes that the prohibition of גניבת דעת is a simple outgrowth of the general prohibition of lying – מדבר שקר תרחק. Considering the relative value of honesty, the רבינו יונה writes, the prohibition is far more severe than simply stealing.

III. The parameters of the prohibition.

- A. **Deceiving without speaking.** (חולין דף צד: ד"ה אינהו) תוספות assume that the prohibition of גניבת דעת can be violated even without saying a word. Purposely giving a false impression is enough to constitute a violation of גניבת דעת. תוספות point out that רש"י disagrees with this contention. When the רמב"ם discusses גניבת דעת (דעות ב:ו) he points out that "even a single word of גניבת דעת" is prohibited. The לחם משנה points out that the רמב"ם implies that if one did not use any words to deceive he would not be in violation of גניבת דעת. However, it is also possible that the רמב"ם was only speaking in a case when one is not otherwise deceiving the other person through his actions.
- B. **Allowing him to fool himself.** The גמרא (חולין שם) relates that רב ספרא and רבא were traveling to a town when they encountered a מר זוטרא. Upon seeing these two rabbis

assumed that they had come out to greet him and thanked them for extending this courtesy. רב ספרא then informed him that they had no idea that he was coming and had only run into him by coincidence. (רב ספרא reassured him, though, that had they known he was coming they would have extended themselves even more to greet him.) רבא asked why he told מר זוטרא that they had not come to greet him if this information undoubtedly left him somewhat deflated. When רב ספרא explained that he was concerned about the issue of גניבת דעת, רבא reassured him that there was no concern for גניבת דעת in this case. When one draws his own conclusions without being prompted to do so, there is no problem of גניבת דעת. Instead we assume that the person has fooled himself (איהו הוא דמטעי אנפשיה).

1. There are a number of practical applications of this concept. For instance:

a. If a person visits a sick friend in a hospital and happens to notice that another acquaintance of his is also at the hospital, he may go visit the second person without informing him that he came for the first person. If the second patient believes that the visitor traveled to the hospital on his account, he has fooled himself. This would only be the case if the second patient could have been expected to realize the reason for the hospital visit. When there is no way for him to know that the visitor was there for another patient, he should be informed that the visitor was in the hospital anyway.

b. The ספר אמת קנה relates a story of a couple in ארץ ישראל who had a baby boy around פורים time. Not surprisingly, due to the proximity of the birth to פורים they named their son מרדכי. A few weeks later the received a generous check in the mail accompanied by a note from a distant cousin in America thanking them for naming the baby after his father. In reality the couple didn't even think of the fact that they had a

relative by this name. They only named their baby מרדכי because of פורים. It would seem that this couple should not be concerned about גנבת דעת in this case, because the relative could have reasonably been expected to realize that the baby was not truly named for his father.

C. **To give honor.** The סמ"ע (ח"מ סימן רכה ס"ק י') writes that one who has a barrel of oil may offer his friend some of the oil to anoint himself, even though he has no intention of actually sharing the oil. The סמ"ע explains that this is considered proper etiquette when one wants to show respect to another person. The person is aware that he is not expected to partake of the oil and views the offer as a standard sign of respect. Although, the specific case of the סמ"ע is somewhat difficult to relate to, we can derive from his ruling that whenever the statement is viewed as a sign of respect or affection (rather than an attempt to deceive) one may engage in what would otherwise be construed as גניבת דעת.

1. This idea may help explain a difficult passage in the גמרא (דף ק:). The גמרא states that even if we would never have received the תורה, we would have been able to derive many positive character traits by observing the behavior of the animal kingdom. For instance, the גמרא says, we would learn דרך ארץ from a chicken. The rooster is careful to appease the chicken before mating. Prior to mating the rooster motions to the chicken as if to say that he will buy her a long coat. After mating he motions to suggest that he would be happy to buy the coat if he only had the money. On the surface this גמרא is perplexing. The behavior of the rooster seems to smack of גניבת דעת. He knows in advance that he will not be able to buy the chicken a coat. Yet he makes an offer that he knows he will not be able to fulfill. Based on the סמ"ע, though, we can suggest that the chicken is also well aware of the fact that she will not receive a coat. Yet, she is interested in being treated nicely prior to mating. Similarly, if it

is considered proper etiquette to make offers that cannot be fulfilled, one may do so. The אורחות צדיקים (שער החניפות) even encourages false flattery if it helps promote שלום בית or enhanced adherence to מצוות.

D. גניבת דעת as it relates to distributing charity of non-

Jews. The גמרא in the first פרק of בבא בתרא records two seemingly contradictory stories. The first (דף ה.) involves a member of the gentile royalty sending an undisclosed sum of money to רב יוסף with the request that it be used for a מצוה רבה. "מצוה רבה" diligently researched the notion of מצוה רבה and concluded that פדיון שבוים would qualify as a "great מצוה", and he therefore used all of the money for פדיון שבוים. (For elaboration on the concept of מצוה רבה see תוספות בבא בתרא דף יג. תוספות בבא בתרא דף יא. - יא.). The second episode (דף יא. - יא.) involved the same gentile royalty sending a substantial sum of money to רבי אמי who promptly rejected the gift. Subsequently she sent the money to רבא who accepted the gift. After a brief debate the גמרא concludes that all would agree that one may accept the money for the purpose of peaceful relations with the government so long as he gives it to non-Jewish poor people. The logic is that giving the money to Jewish people will enhance the merits of the non-Jewish royalty, and we try to avoid granting the gentiles any such merit. The apparent contradiction is that the first גמרא implies that money received from gentiles should be used for their intended purpose, whereas the latter גמרא implies that more freedom is granted in spending the money.

1. (דף יא.) רש"י notes the contradiction and suggests that we may distinguish between money that is given with specific instructions that it be used for a specific purpose and money that is given with the assumption that it will be used properly. When there is a stated purpose for the money, one may not veer from the instructions they were given. That is why רב יוסף diligently used the money for פדיון שבוים. When, however, the instruction is only to use the money for "charity" one may give it to non-Jewish charities because the giver is aware that Jews give money to non-Jewish charities as well.

The implication is that if the practice were for Jews not to give to non-Jewish charities, the money would have to be used for Jewish charities in order to avoid גניבת דעת.

2. (דף ה. ד"ה יתיב) suggests a different resolution to the contradictory stories. Certainly, תוספות suggest, allowing non-Jews the merit of supporting Jews cannot be permitted. When the earlier story records that רב יוסף used the money for פדיון שבויים, it merely means that he used the money for פדיון שבויים of a non-Jew.
3. As a matter of הלכה the (סימן רנד סעיף ב') rules that even if the non-Jew expects the money to be distributed to Jews, one should secretly distribute the money to gentiles instead. The implication is that גניבת דעת is permissible in order to deny a non-Jew of the merit of helping Jews. However, the רמ"א disagrees and requires that we follow any specific instructions that may have been given along with the money. The ט"ז (שם ס"ק ב') distinguishes between a gentile who specifically wants the money to be given to Jews and a gentile who is only giving due to more general compassion for anybody in need. In the former case, giving the money to Jews would provide too large a merit for the gentile, and should be avoided. (The ט"ז argues that this is not a problem of גניבת דעת unless the instructions were specifically not to give to gentiles. Even if the instructions were to give at least some of the money to Jews one may give all of it to gentiles because doing so is only a passive violation of the desire of the gentile to give some of the money to Jews.) In the latter case, the gentile will not receive a great merit for the giving anyway and the money may therefore be distributed to Jews in private.

IV. Practical examples of גניבת דעת.

- A. **Sharing tickets.** It would seem that sharing a two way train ticket (or for that matter a weekly or monthly ticket) may not be a violation of actual גניבה (because the ticket was paid for), but is certainly a violation of גניבת דעת. The transit authority gives the ticket at a discounted price on the condition that the ticket is to be used by only one person. When it is split between two people to avoid the extra expense, it would seem to be a blatant violation of גניבת דעת. Obviously, lying about a child's or adult's age to receive a children's or senior discount is a violation of both גניבה and גניבת דעת.
- B. **Lying in negotiations.** When one is negotiating a price for a product that he is selling, it is forbidden to claim to have another buyer when in fact no other buyer exists. Such claims will lead the buyer to pay the asking price or even higher based on false information (שו"ת תשובות והנהגות חלק (ד' סימן רטז).
- C. **Performing magic tricks.** The רמב"ם (ספר המצוות לא תעשה לב) states that performing magic tricks is a form of גניבת דעת. Even though one may technically be avoiding the classic prohibition of כישוף by using sleight of hand, he is in violation of גניבת דעת when he convinces the audience that he is in possession of some sort of mystical power. Additionally, the רמב"ם writes, the children and less educated members of society are liable to go out of their minds watching these tricks. Interestingly, in his תשובה on the topic of performing magic tricks, רב משה פיינשטיין זצ"ל, clearly rejects any concern that children will believe the magician to possess mystical powers. He argues that our children are far more astute that we give them credit for (שו"ת אגרות משה יו"ד ד' סימן יג). As a practical matter, there are many more issues that need to be explored for a comprehensive halachic approach to magic tricks. Rav Moshe does suggest room for a lenient ruling when the tricks are done within certain parameters.

D. **Store giveaways.** The (הלכות מכירה פרק יח הלכה ד') rules that a storekeeper may give candies to children (or use other giveaways) to draw people to his store. The difficulty with this ruling is not in its conclusion but in the (הוא אמינא) to think otherwise. It is difficult to understand where one would have perceived a potential problem of (גניבת דעת) in distributing candies to children. Perhaps one may have thought that this is (גניבת דעת) of the children who assume that they are receiving something for free due to the storekeeper's generosity, when the storekeeper clearly has his own financial interests in mind. It could also have been argued that the (גניבת דעת) is perpetrated against the (בעל הבית) who sends his children or maids on errands with the assumption that they will go to the best available store, and not the store that is offering the child or (שפחה) an incentive to shop there. In any case, the conclusion of the (רמב"ם) and the (שו"ע) is that there is no concern for (גניבת דעת) in this case.

E. **Changing appearance.** The (חושן משפט סימן רכה סעיף שולחן ערוך) rules that one may not color (or paint) a product that he is selling to make it appear newer than it is. For instance, the (שו"ע) says, one may not dye the hair of an elderly slave to make him appear younger to potential buyers.

1. The (או"ח תרמה:ו) rules that for this reason it is forbidden for those who sell (לולבים) to color the (לולבים) green so that they should appear to be fresher than they actually are.

2. (סימן שעט) rules that one may not dye his hair to appear younger for a prospective date, as this is (גניבת דעת). (It would seem that a person whose hair has turned white at a very young age would not violate (גניבת דעת) when dyeing his hair because he is only trying to appear his true age, not younger than he is.) When it comes to men dyeing their hair, there is another issue to contend with aside from (גניבת דעת). Specifically, men are forbidden from beautifying themselves in the manner that women beautify themselves. Thus, any question of a man

dyeing his hair (whether for a job, a שידוך or any other reason) must be analyzed with both issues in mind. There is considerable literature on this topic and it is clearly beyond the scope of this essay to fully explore each case. (See 'שו"ת שואל ומשיב קמא חלק א' (סימן רי, משנה הלכות חלק טז סימן לו, שו"ת אגרו"מ יו"ד חלק ב' סימן סא

F. **Selling Fruits.** The (חו"מ סימן רכה סעיף יז) rules that one may remove spoiled fruits from a basket to make the quality of his fruits appear to be better than they are. However, the salesman may not remove the rotten fruits only from the top of the barrel, leaving them mixed in the bottom of the barrel where they are not visible to the consumer. This would be a blatant violation of דעת גניבת דעת. Clearly a storeowner may not package the fruit in any way that leaves only the nicer looking fruit visible, while hiding lesser quality fruit until the package is opened.

G. **Cheating on exams.** Historically the Responsa Literature consists of difficult halachic questions that required the help of a great rabbi to answer. This is probably why prior to a few decades ago it is difficult to find a תשובה on the topic of whether or not it is permissible to cheat on an exam. In fact, each of the contemporary פוסקים who were asked about this issue expressed a certain degree of surprise that anybody would even think that it is permissible to be dishonest on exams. What follows are a sampling of the contemporary halachic literature on the topic of dishonesty on exams.

1. Rav Moshe Feinstein זצ"ל ('סימן ל') was asked about ישיבות that allow their students to steal the answers to regents examinations. Rav Feinstein pointed out that aside from the prohibition of דעת גניבת דעת, dishonesty on exams also constitutes actual גניבה of money. People rely on grades when making decisions about who to admit into schools of higher learning and even when making hiring decisions. When one is hired for a job based on falsified grades, he is stealing the financial gain that he achieves as a result of his

dishonesty. Rav Moshe does address potential excuses that one may advance to justify dishonesty:

- a. One cannot claim that he is qualified for the job anyway and the grades are meaningless because grades do reflect a level of knowledge and diligence that are reasonable qualities for a potential employer to look at when making hiring decisions.
 - b. It is fairly common for *ישיבה* boys who dedicate themselves to *תורה*, to view secular studies as a waste of time. They may view studying as *ביטול תורה*, and instead opt to take whatever shortcuts are necessary to achieve a passing grade without having to take time away from their studies. Rav Moshe points out the fallacy of such an argument. Such claims are more often based in laziness than in piety. In fact one who regularly cheats on exams trains himself to become lazy and inattentive in his intellectual pursuits, which will certainly carry over to his approach to *torah* study as well.
 - c. Rav Moshe concludes his *תשובה* by telling the questioner not to be too concerned by the rumors that *ישיבות* allow their boys to cheat. After all, such conduct runs so counter to everything that a *ישיבה* tries to accomplish and the values it tries to inculcate in the students, that these accusations cannot possibly be true. There is no doubt, argues Rav Feinstein, that those who hate *ישיבות* and are only interested in slandering the *ישיבות* and destroying them, are the source of such rumors.
2. Rabbi Shmuel Wosner שליטא (סימן קסג) was approached by a principal of a girls school in Tel Aviv who was criticized for not allowing the students to cheat on exams. Apparently the

parents in the school felt that it was a sort of tyranny being practiced by the principal in not allowing the students to be dishonest on exams. Rabbi Wosner, after expressing surprise that anybody would ever even need to ask this question, points out that cheating on exams involves multiple prohibitions. It is prohibited on account of גניבת דעת, lying (לא תשקרו ומדבר שקר תרחק), and it trains a person to become deceitful. Additionally, he runs the risk of being hired for a job for which he is not a competent candidate, thereby causing untold damage to his employer.

3. Rabbi J.D. Bleich (Contemporary Halachic Problems II) adds two more considerations not mentioned by the other פוסקים:

- a. "Teachers are employed to serve as proctors during examinations. A teacher who is not vigilant in assuring honesty on the part of the examinees – or worse, one who tacitly condones dishonest conduct – accepts payment for services that (which) have not been rendered. This, too, is a form of theft."
- b. "When students or graduates of religious institutions engage in academic dishonesty of whatever form, their actions entail the gravest of all transgressions, namely, חילול ה', or profanation of the Divine Name." (see רמב"ם הלכות דעות פרק ו')

H. Announcing false pledges to raise money for צדקה.

Those who are involved in fundraising can attest to the importance of "getting the ball rolling" when it comes to making people comfortable donating money to a cause. When there is an appeal in shul, many people will only feel comfortable making a pledge once they hear that others have also pledged money. The question of whether one can announce a false pledge to lead others into making

pledges was posed to two of the leading contemporary פוסקים:

1. Rabbi Yitzchak Weiss (שו"ת מנחת יצחק חלק ג' סימן צז) clearly forbids the practice of announcing false pledges. He cites two proofs for the stringent ruling:

a. The גמרא סוכה דף כט lists four people who are destined to have their possessions confiscated by the government: one who maintains documents of debt that have already been paid in his house, one who loans money with interest, one who has the ability to stop others from prohibitions but neglects to do so, and one who pledges money to charity and doesn't give the money. The מהרש"א (חידושי אגדות שם) writes that the last category refers to community leaders who claim to have only pledged the money to encourage others to give as well. This is exactly the case in question and it is clearly prohibited by the מהרש"א.

b. The תלמוד ירושלמי (ברכות פ"ז ה"ב ונזיר פ"ה ה"ג) tells a story of 300 נזירים who approached רבי שמעון בן שטח. The rabbi was able to find a היתר to absolve 150 of them of their oath of נזירות. He was not as successful in helping the other 150. רבי שמעון approached ינאי המלך with a proposition: "There are 300 נזירים who all need money for קרבנות to fulfill their נזירות vow. If you take care of half of them I will take care of the other half". ינאי responded by paying for קרבנות of 150 נזירים. When ינאי later found out that שמעון בן שטח had not paid a penny for a קרבן he became very angry that he was fooled into paying for all of the קרבנות. שמעון בן שטח explained that when he said that he would "take care" of the other 150 נזירים he did not mean that he would spend money on purchasing קרבנות, but that he would use his intellect and knowledge as a rabbi to absolve them of their requirements. Rav Weiss

points out that had שמעון בן שטח not had this explanation it would have been prohibited for him to falsely pledge money just to encourage ינאי to do the same.

2. Rabbi Moshe Shternbuch (שו"ת תשובות והנהגות חלק ד' סימן רטז) was asked if it is permissible to make a false pledge to encourage others to give if you inform the גבאי in advance that the pledge is not meant seriously. Rav Shternbuch responded by analyzing each of the potential prohibitions involved:

- a. It is certainly not a violation of any sort of נדר because he never intended to give the money, and the גבאים were aware of this in advance. Even if this did constitute some type of נדר, the גבאים are authorized to be מוחל any financial obligation the person may have.
- b. This would certainly be a violation of גניבת דעת of the other donors who base the amount of their pledge on their perception of what the earlier pledges were.
- c. It may also be a problem of גזל if the deceived parties regret their donations when they find out about the ruse. This point, though, is debatable because the בית דין may have a right to force a wealthy person into giving צדקה against his will, and it is not considered גניבה. Having him voluntarily donate the money based on false information may be no worse than actually falsifying information.

V. **Conclusion.** It is appropriate to conclude this essay by citing the well know גמרא שבת. The גמרא tells us that when we die and face our final day of judgment, the very first question we will be asked will relate to how honest we were in our dealings with others – נשאת ונתת באמונה –. This should serve as an inspiration to make the correct choices in questions of honesty.