

What Constitutes Geneivas Da'as?

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Question: Many people are familiar with the term "*geneivas da'as*" and are aware that it is forbidden. However, not everyone realizes what the basic parameters of *geneivas da'as* actually are. What are some of the basic guidelines for defining which cases constitute *geneivas da'as*?

Answer: Let us begin by first emphasizing that *geneivas da'as* is indeed a form of *geneivah*. Although it is a *machlokes* whether *geneivas da'as* is forbidden *mide'oraisa* or *miderabanan*, all agree that it is forbidden, despite no tangible object being taken without permission like ordinary *geneivah*. In fact, Lavan uses the expression "*vatignov es levavi*," "you stole my heart" (Bereishis 31:26), when referring to how (in his mind) Yaakov tricked him when fleeing.

The Shulchan Aruch describes two types of cases where the *issur* of *geneivas da'as* is relevant. In the first, one sells an item at price value but fools the buyer into believing that the quality of the product is greater than it is. For example, one who sells a refurbished item at a lower price but was told that it was new would violate *geneivas da'as*, since the sale was made under false pretenses, and the buyer may not have purchased the product had he known it was not new.

The second type of case pertains to where one individual misleads another concerning the relationship between them. In the example of the Shulchan Aruch, one opened a new barrel of wine for a prominent visitor. The visitor assumed that the host opened it just for him and was indebted to the host for it. If the host opened the barrel for a different reason, then the Shulchan Aruch states that he would violate *geneivas da'as* by not informing him of this.

The most basic condition necessary to transgress *geneivas da'as* is that *hataya* (deception) must occur. If one does not fool or deceive another, then he has not violated *geneivas da'as*. Thus, if while attempting to sell an item one mentions its positive qualities but does not point out any of the shortcomings, he has not violated *geneivas da'as*. In this case, no false pretense or active deception exists and selling in such a manner would be permitted.