

על פי התורה אשר יורוך
Yorucha
weekly overview

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY OVERVIEW VIDEO

Geneivas Da'as Part 1

Rabbi Yosef Greenwald, Rav of Khal Dexter Park

DEFINING GENEIVAS DA'AS

What is the definition of the prohibition of *geneivas da'as*? Although we use the term *geneivah*, it doesn't sound like "regular *geneivah*", since no theft, looting, or damage occurs. It would seem that *geneivas da'as* is different, and refers to taking emotional advantage of another person.

Geneivas da'as refers to cases where a product or service is provided, as well as cases where there is no product/service involved. For example, the Gemara discusses a case where guests received a false impression from their host. They thought that he was going to great lengths to honor them by giving them a better type of meat or opening a whole wine barrel on their behalf. In reality he already had been using those foods anyway for a different reason. According to the Gemara, this violates *geneivas da'as*, because the guests believed that the host was serving special items in their honor, when he was not. This caused them to believe that they had a greater relationship with their host, than they actually did. In these examples, one is not stealing money or a tangible item, but rather misleading another into thinking that he is indebted where that is not actually the case.

CLASSIFYING THE PROHIBITION

Is the prohibition of *geneivas da'as* considered *geneivah de'oraisa*, *geneivah derabanan*, or some other category of wrongdoing? This question is subject to a *machlokes* among the Rishonim.

RASHI

Rashi (Chullin 94a, s.v. mutar) seems to hold that *geneivas da'as* is an *issur derabanan*. We see this from the following Gemara. The Gemara permits flattering someone insincerely where it is necessary to make the person feel better, Rashi explains this to be because "gadol kavod haberiyyos." The Gemara elsewhere (Berachos 19b), also mentions "kavod haberiyyos" (human dignity) considerations, and says that certain rabbinic prohibitions can be waived for it. Since Rashi's uses the term "gadol kavod haberiyyos" to allow *geneivas da'as*, that seems to indicate that it is only *assur miderabanan*, and *kavod haberiyyos* is therefore a legitimate reason to permit it (If it was *deoraysa* this would not override it).

SMAG/RITVA

The Ritva (citing Ba'alei HaTosafos, which are also quoted in the Smag), define *geneivas da'as* as *geneivah de'oraisa*. We need to understand what this means, as this would seem to indicate that this is similar to regular *geneiva*. How can this be considered regular *geneiva*? There is no product or service that you can point to, and say, "that was stolen".

Perhaps we can shed light on this question by examining a different type of *geneivah* known as *goneiv al menas l'meikat* (stealing to bother someone). The gemara says that in such a case, even if he intends to return the item afterwards [ketzos hachoshen], (Bava Metzia 60b) he violates the prohibition of *gezel*. In a normal case of *geneivah*, the victim loses a portion

of his ownership rights to the stolen object. For example, he is unable to sell the item or consecrate it for *hekdes* since it is “*eino bireshuso*” (not in his possession to some degree). Some Rishonim hold though that in the case of *goneiv al menas l'meikat*, that the thief has not removed the item from the possession of the owner at all, and therefore would not be responsible for a loss in cases of *onsin* (unexpected circumstances), unlike a regular *ganav*. The reason is that since the thief plans to return it shortly, it is considered as if it never left the owner's possession.

Based upon this consideration, some Rishonim suggest that *goneiv al menas l'meikat* is only a *derabanan*, since no lasting financial harm is done. Nevertheless, it is still forbidden since it qualifies as a *ma'aseh geneivah* (act of thievery). The Minchas Chinuch notes that the Rambam does not codify the prohibition of *goneiv al menas l'meikat* as *halacha L'mayaseh*. He explains this by suggesting that the prohibition of *goneiv al menas l'meikat* is similar to the case of *Ben Bag Bag* mentioned in the Gemara (Bava Kama 27b). According to *Ben Bag Bag*, if Reuven secretly trespasses in Shimon's property in order to retrieve an object that Shimon stole from him, this constitutes an act of *geneivah*. Even though Reuven is taking back his own item, the act of trespassing and appropriating an object from someone else's property is an act of thievery. The halacha is not in accordance with *Ben Bag Bag*, so the Minchas Chinuch suggests that the case of *goneiv al menas l'meikat* should not be prohibited for the same reason, since both are defined as acts of thievery, however there is no financial loss. This is why the Rambam does not bring it *halacha L'mayaseh*.

The Smag, though, distinguishes between the case of *Ben Bag Bag* and *goneiv al menas l'meikat*. The Smag does not rule in accordance with *Ben Bag Bag*, but he does rule that *goneiv al menas l'meikat* constitutes an *issur de'oraisa*. Perhaps the Smag used a different definition for what constitutes stealing. It can be that *geneivah de'oraisa* includes any act of financial wrongdoing where one takes advantage of another even if there is no financial loss. This would explain why the Smag holds that *geneivas da'as* is also *assur de'oraisa*, because this too is a case of taking advantage of another although there is no financial loss.

RAMBAM

Since the Rambam does not accept, *goneiv al menas l'meikat* as actual *geneiva*, then perhaps he would also not accept *geneivas da'as* as an *issur* of *geneiva*. This seems consistent with how the Rambam codifies the prohibition of *geneivas da'as*. He does not bring it down with the halachos of stealing, he brings it in Hilchos Deos, which deals with *proper middos*, rather. It would seem that the Rambam classifies the halacha of *geneivas da'as*, misrepresenting one's intent and taking advantage of someone, as part of a moral/*middos* imperative, that as *yidden*, we have to be moral and honest people. The Shulchan Aruch apparently disagrees, as he cites the halachos of *geneivas da'as* in Choshen Mishpat together with the guidelines for ethical marketing techniques (Siman 228). *Geneivas da'as* may still only be *assur derabanan* according to the Shulchan Aruch, but it is certainly classified as causing harm to another in a halachically significant manner.

To summarize, we have a number of approaches to how to categorize the prohibition of *geneivas da'as*:

1. **Rashi** – *Geneivas da'as* is considered *geneivah miderabanan*
2. **Smag** -- *Geneivas da'as* is considered *geneivah mide'oraisa*
3. **Rambam** -- *Geneivas da'as* is simply about being moral and having good *middos*.
4. **Shulchan Aruch** -- *Geneivas da'as* is *assur* as an improper ethical marketing technique at least on the level of a *derabanan*.

An interesting ramification of this *machlokes* can be with regard to how to do proper *teshuvah* for violating *geneivas da'as*. For example, if an employer realized that he had violated *geneivas da'as* previously in his dealings with employees, the proper method of *teshuvah* may depend upon this *machlokes*. If *geneivas da'as* is classified as a form of *gezel*, then the employer would need to ask *mechila* from his employees, as this constitutes a classic *aveirah of bein adam l'chaveiro*. But if *geneivas da'as* is classified as a lack of basic *middos* and decency, then this may qualify as an *aveirah bein adam laMakom*.

PRACTICAL CASES OF GENEIVAS DA'AS

Cases of *geneivas da'as* often occur within client-employer relationships. For example, an employer hires a new employee and tells him that numerous qualified candidates were interviewed, but he made the best impression out of all of them. In reality, only two others were interviewed who were not even qualified. Alternatively, the employer tells the employee that significant growth potential exists in the new job when this may not be the case. Even if the employee would have accepted the job regardless, if the employer's statement prompts the employee to be motivated to put in additional effort or hours of work, it may violate *geneivas da'as* (in addition to telling a lie).

Geneivas da'as can also arise concerning a misrepresentation of a potential sale. If a seller describes a product in an inaccurate manner (where the price would not be affected either way), this may cause the purchaser to think the product is

better or more valuable than it really is. In this case, the seller would violate *geneivas da'as* even if the purchaser would have bought the product otherwise.

Another potential case of *geneivas da'as* is mentioned by the Bach (Y.D. 120). The Bach discusses a case of a Jewish money lender who had taken a *mashkon* (collateral) from an Akum that had borrowed money from him. If the borrower had been Jewish, the lender may not use such a *mashkon*, but rather must put it away for safekeeping. With regard to an Akum, though, the Bach says that using the *mashkon* would be the same issue, as it violates *geneivas da'as* (which is *assur* even when the victim is an Akum). The Bach presumably classifies this as a case of *geneivas da'as* as opposed to actual *geneivah* because it is not a case of actual stealing, as the Jew has legal possession of the *mashkon*. The Taz disagrees, arguing that *geneivas da'as* does not include cases of financial misuse such as this, but only cases of moral wrongdoing or misleading someone.

Want to receive practical
Q&A daily videos on the
Yorucha topics?

✈ baishavaad.org/daily
☎ 732.232.1412