

על פי התורה אשר יורוך
Yorucha
weekly overview

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY OVERVIEW VIDEO

Geneivas Da'as Part 2

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We discussed in the previous overview that *geneivas da'as* is defined as taking advantage of someone else by misrepresenting the facts to them. In this overview, we will discuss the status of certain problematic types of marketing as they relate to *geneivas da'as* and *gezel*.

SELLING AND MARKETING INVOLVING GEZEL

To understand the halachic problems that may pertain to improper marketing, we need to differentiate between marketing that violates the prohibition of *gezel* and marketing that is considered deceptive and forbidden only due to *geneivas da'as*. The following two cases are classified as marketing that involve actual *gezel*.

1. **Selling defective items** – Selling items that are defective in some way or do not operate as they should is defined as an act of *gezel*. One who sells an item with a substantial deficiency is obligated to specify to a potential buyer that it exists. If one does not do so, the transaction is considered a *mekach ta'us* (sale based on error) and is entirely void. In this case, a seller who refuses to return the buyer's money has transgressed against the prohibition of *gezel*.
2. **Misrepresenting the value or quality of a product** – A seller may also not misrepresent the value or quality of a product. One who sells a product for a price that is much higher than the true market price or portrays the quality as being much better than the true quality is subject to the rules of *mekach ta'us* or *ona'ah* (fraud), which are also forms of *gezel*.

SELLING AND MARKETING INVOLVING GENEIVAS DA'AS

In contrast, marketing subject to *geneivas da'as* refers to cases where the seller does not misrepresent either the price or quality of the product, but does give inaccurate information that causes people to purchase the product. The following are cases included in this category.

- The Mishnah (Bava Metzia 60a, according to Rashi's interpretation) states that one may not dye the hair of an eved kena'ani (in earlier times, when they used to be sold) to give a more youthful appearance, to increase the appeal of the sale. Nowadays, the same would apply to changing the external appearance of an old car to make it seem brand new, or misrepresenting one's experience in a job interview. In these cases, even if the price will not be affected, a purchaser or employer may be more likely to be influenced by the misrepresentation when deciding whether to purchase the car or hire the employee.
- The Mishnah also states that one may not mix different fruits together if some are new and others are older since this gives the entire batch a fresher look. Essentially, a seller may market his products in the best possible light and make them a bit more attractive, but he may not misrepresent their true qualities and portray them as having features that they lack.
- *Geneivas da'as* also includes misrepresentation in marketing concerning how popular an item is. For example, one may not suggest to a customer

to purchase an item soon because the supply is about to run out, if there is no lack of supply.

- According to one opinion in the Mishnah (not accepted as the halacha), a storeowner may not distribute treats to children to encourage them to shop in his store. According to this opinion, aggressively courting customers in ways that do not relate at all to the products being sold also constitutes *geneivas da'as*.

UNFAIR MARKETING AND MISHKALOS (WEIGHTS)

A subtopic of unfair marketing is the matter of *mishkolos* (weights). In earlier times, weights and scales were commonly used to measure the amount of a product being sold. The Torah forbids tinkering with the weights in such a manner that the amount of the product appears different than it actually is. The Gemara notes that the prohibition takes effect as soon as one has tampered with his weights. Though at this point the seller has not yet cheated any customers by overcharging, the prohibition already applies. This parallels *geneivas da'as*, where the prohibition applies to misrepresenting information even when

the price and value are depicted accurately. From both *geneivas da'as* and *mishkalos*, we see that the **act** of misrepresenting itself is forbidden because one is not allowed to conduct one's business in a state of deception.

CONCLUSION

Because these cases involve only an infraction of *geneivas da'as* and not complete *gezel*, there may be certain leniencies that do not apply to regular *gezel*. For example, Rav Yaakov Emden (in Hagahos Yavetz to Bava Metzia 60a) states that misrepresenting the quality of an item for the purpose of a mitzvah, or *tzedaka* is permitted. The Pischei Choshen argues that misrepresenting an item for a mitzvah should not permit an act of *geneivas da'as*, but the Yavetz still illustrates that in theory, *geneivas da'as* may be considered a slightly lower level than a standard case of *gezel*.

To conclude, we can state that the halacha certainly permits a business owner to work hard and represent his products in the best possible manner. But at the same time, one must make sure to be honest and represent his products/services accurately.

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