



Journal of Intercultural Management and Ethics

JIME

ISSN 2601 - 5749, ISSN-L 2601 - 5749

published by

Center for Socio-Economic Studies and Multiculturalism

Iasi, Romania

www.csesm.org

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ORGANIZATIONAL INTEGRITY: THREE ETHICAL TALMUDIC PRINCIPLES THAT SHOULD INFLUENCE CORPORATE AND PERSONAL DECISIONS

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Abstract

Lord Moulton's maxim that "obedience to the unenforceable is the keystone of ethics" is consistent with the view that society requires more of individuals than simple obedience to the laws that can be enforced. This paper will examine three ethical principles discussed in the Talmud that modern society does not usually consider. One is *Lifnei Iver* (literally, placing a stumbling block before a blind person; misleading people by giving wrong advice). The second is *Geneivat Da'at* (literally, stealing of knowledge; resulting in undeserved goodwill), and the third is *Ani Ha'mehapech B'chararah* (literally, "If a poor person is engaging in the acquisition of a cake") which involves poaching or undercutting such as bidding for a property when another party is in the midst of negotiations. What makes these three cases unusual is that these are situations where traditional Jewish law attempts to extend the boundaries of the law to make people do more than the strict law might require. Organizations that wish to create an ethical culture must broaden the boundaries limiting unethical behavior to include such gray areas.

Keywords: Talmud, Business Ethics, Undeserved Goodwill, Placing a Stumbling Block Before the Blind, Poaching, Deception, Great Recession of 2008

Introduction

Many scholars have employed the Talmud, one of the most influential books of Late Antiquity, as a pedagogical tool to study ethics (Solomon, 2009). The Talmud, the Jewish oral law, elaborates on the text of the Torah and was completed about 1,500 years ago. The Talmudic sages were expert storytellers and used stories as a tool to teach morality and ethics (Rubenstein, 2018). More than 100 precepts in the Torah deal with issues relevant to business ethics that include caring for the poor, not discriminating against the stranger, treating employees fairly, paying wages and rents on time, providing fringe benefits for employees, maintaining honest and stable prices, ensuring accuracy in weights and measures, acting in a manner that ensures one is above suspicion, and providing an honest day's work (Friedman, 2000). It is therefore not surprising that many researchers have examined the Talmud as a source in their studies dealing with business ethics (Fischer & Friedman, 2019; Fischer & Friedman, 2020; Fogel & Friedman, 2008; Friedman, 1985; Friedman & Fischer, 2014; Friedman & Mizrachi, 2020; Levine, 1987, 2000; Pava, 1996; Schnall, 1993; Tamari, 1987, 1991, 1995, 1996).

Lord Moulton's maxim that "obedience to the unenforceable is the keystone of ethics" (cited in Cohen, 1959, p. 220) is consistent with the view that society requires more of

individuals than simple obedience to the laws that can be enforced. The Talmud also sees obeying the strict letter of the law as insufficient and demands that one must go beyond the requirements of the law — *lifnim mishurat hadin* (literally, inside the line of the law) (Shilo, 1978). The Babylonian Talmud (Bava Metzia 30b) declares that Jerusalem was destroyed for following the strict letter of Torah law and not doing more than the law required. There is no consensus regarding this, but the Semak (Sefer Mitzvot Katan, Mitzvah 49) considers the principle of going beyond the requirements of the law as one of the 613 precepts of the Torah.

This paper will examine three ethical principles discussed in the Talmud that modern society does not usually consider seriously. One is *Lifnei Iver* (literally, placing a stumbling block before a blind person; misleading people by giving wrong advice), the second is *Geneivat Da'at* (literally, stealing of knowledge; resulting in undeserved goodwill), and the third is *Ani Ha'mehapech B'chararah* (literally, "If a poor person is engaging in the acquisition of a cake") which involves poaching or undercutting such as bidding for a property when another party is in the midst of negotiations.

Lifnei Iver

The Bible states (Leviticus 19:14): "You shall not curse the deaf nor place a stumbling block before the blind; you shall fear your God — I am your Lord." In Hebrew, the sin of placing a stumbling block before a blind person is referred to as *lifnei iver lo sitten michshol* (before the blind do not place a stumbling block), or succinctly as *lifnei iver*. This verse is somewhat perplexing: Why single out blind people for this law? Was this a prevalent practice in ancient times? Furthermore, many other precepts in the Bible deal with causing injury to others, blind or not. Also, the word "*sitten*" (meaning caused to place —indirectly) is not the correct term if this precept is about placing a stumbling block; the term that should have been used is *tasim* (to place or put — directly).

This may explain why the Talmud felt the need to give the verse a deeper meaning. The word "*iver*" (blind) is interpreted metaphorically to represent any person or group that is unaware, unsuspecting, ignorant, or morally blind. Individuals are prohibited from taking advantage of them or tempting them to do wrong. Thus, one is not permitted to cause another party to "stumble," thereby committing a sin (directly) or (indirectly by) proffering bad advice in everyday matters (Friedman, 2002). Maimonides (Mishneh Torah, Hilchot Rozeach 12:14) broadens this precept to include any action that strengthens the hands of wrongdoers.

There is a dispute over whether the verse should be interpreted literally. Some sages felt that there was no need to have a special law against causing blind people to stumble since many regulations protect individuals from malicious harm (see Minchas Chinuch, 232:4). Others believe that Biblical verses maintain their literal meaning even when the sages use the oral tradition to add additional connotations.

The principle of *lifnei iver* prohibits one from giving bad advice to another person. Thus, one should not advise another party that it is in his interest to sell his field in order to buy a donkey when his true intention is to buy the property for himself. By concealing the ulterior motive of his advice, he has violated the principle of *lifnei iver* (Midrash Sifra, Leviticus 19:14). The Midrash explains why the verse ends with the warning about fearing God: Human beings do not know whether the advice given to them by friends is good or bad. Often, guidance is provided with an ulterior motive. Only God knows the actual intention of the advice giver. In addition, the above verse is considered to be a prohibition against helping or causing others to sin. Thus, placing any kind of prohibited temptation in front of someone would not be allowed. For example, providing an individual with forbidden food, e.g., wine to a *Nazirite* (who takes a vow which prohibits him from drinking wine, cutting hair, or

ritually contaminating himself by coming into contact with the dead), would be a violation of this commandment (Babylonian Talmud, Pesachim 22b). Rabbi Ashi, who owned forests, was permitted to sell the wood to pagans who were fire-worshippers only because most purchased timber is used for kindling, not idolatry (Babylonian Talmud, Nedarim 62b). However, selling the wood directly to allow pagans to practice their idolatrous practices would be prohibited.

Lending someone money without having witnesses present is also a violation of *lifnei iver* since it might ultimately tempt the debtor to deny that he or she borrowed any money (Babylonian Talmud, Baba Metzia 75b). If one person lends another money with interest, both the borrower and the lender have violated *lifnei iver*, because each one enables the other to commit the sin of usury (Babylonian Talmud, Bava Metzia 75b). The Babylonian Talmud (Moed Katan 17a) also prohibits a father from hitting an older son because of *lifnei iver*. The son might angrily retaliate and strike his father, causing a grave sin.

One should not entrust animals to a shepherd if there is a strong possibility that the shepherd will allow them to graze on other people's property (Babylonian Talmud, Bava Metzia 5b). Even purchasing milk, wool, or kids from employed shepherds was not permitted because they might have stolen these items from the flocks under their care (Babylonian Talmud, Bava Kama 118b).

Selling anything that has the potential to cause harm to others is prohibited.

Thus, Babylonian Talmud (Avodah Zarah 16a) states: "It is forbidden to sell [idolaters] bears, lions, or anything which may injure the public. One shall not build with them a basilica, a scaffold, a stadium, or a platform." In Talmudic times, wild animals were used in stadiums to kill people for sport; basilicas were used to try people, and, if sentenced to death, the defendant was executed by being thrown from them. Individuals were also thrown off platforms to kill them. The sage Rabbi owned white mules and was rebuked by Rabbi Pinchas b. Yair for owning such vicious and dangerous animals. He offered to sell them but was told by Rabbi Pinchas that he would then violate *lifnei iver* (Babylonian Talmud, Chullin 7b).

According to Abaye, the reason for marking graves is to ensure that priests or pilgrims would not inadvertently become ritually unclean (Babylonian Talmud, Moed Katan 5a). When the Temple in Jerusalem stood, priests and pilgrims bringing sacrifices maintained ritual purity. Leaving an unmarked grave that can result in the ritual contamination of priests and pilgrims is a violation of placing a stumbling block—the grave—before the blind, i.e., the priests and pilgrims.

Leibowitz, the renowned Bible teacher, offers the most comprehensive extension of the law:

But the Torah teaches us that even by sitting at home doing nothing, by complete passivity and divorcement from society, one cannot shake off responsibility for what is transpiring in the world at large, for the iniquity, violence and evil there. By not protesting, "not marking the graves" and danger spots, you have become responsible for any harm arising therefrom, and have violated the prohibition: "Thou shalt not put a stumbling block before the blind..." (Leibowitz, 1983, p. 178).

Modern Examples of *Lifnei Iver*

The following are some everyday business situations that involve *lifnei iver*.

- Accountants and auditors that are not carefully transparent when reporting their financial statements and thereby mislead others, e.g., investors or creditors, are guilty

of *lifnei iver*. Investors and creditors rely on financial statements and have the right to assume that they are indeed accurate records. Moreover, accountants who purposely "cook the books" are guilty of deception and *lifnei iver* by helping their clients sin. There are all kinds of problems with auditors who are careless in their audits. The largest bankruptcy in American history was Lehman Brothers, and there are allegations that Ernst & Young, the auditor, knew (or should have known) that Lehman Brothers' financial statements were "materially misstated" through the use of Repo 105 (McKenna, 2012). Lehman Brothers attempted to make its balance sheet look less risky using accounting gimmicks involving Repo 105 transactions. The auditor was only concerned with GAAP (Generally Accepted Accounting Practices), not *lifnei iver*. One of the biggest business scandals of 2020 involved Luckin coffee. The Beijing-based company, founded in 2017, used fraudulent accounting to inflate its sales (Yang, 2020). Wirecard, the German financial services company, also misled investors with its financial reports. It turned out that the \$2.1 billion that was supposedly missing never existed (Reuters Staff, 2021).

- Advertising intended to elicit envy or create the need for showy luxury products on the part of the consumer may also be problematic. In the classic medieval ethics (*mussar*) work, *Orchos Tzadikim* (Chapter 14: Jealousy), the author notes that jealousy comes from observing what friends own. We become envious of a friend's garment, food, house, and/or wealth, and envy leads to coveting. Thus, individuals who purposely flaunt wealth to arouse their fellows' envy are guilty of *lifnei iver*; as a solution, the *Orchos Tzadikim* recommends a life of moderation and simplicity.
- Running advertisements intended to mislead the public are violations of *lifnei iver* because this is tantamount to providing people with bad advice. Similarly, salespeople or consultants who are asked for advice about products and recommend items that provide them with the highest commissions are also guilty of *lifnei iver*. The individual who possesses the expertise is obligated to provide accurate information and not cause the "blind" client or customer to "stumble" by providing wrong information. This would include stockbrokers who recommend risky financial securities to generate a hefty commission and brokers who churn client discretionary accounts in order to produce high commission incomes, as well.
- Selling dangerous products to the public is a violation of *lifnei iver*. Indeed, selling weapons to criminals or minors would be illegal. Providing cigarettes to minors would certainly be wrong, even if not prohibited by secular law. Several rabbis feel that smoking violates *lifnei iver* since it harms the innocent through second-hand smoke. The opioid crisis occurred because pharmaceutical companies were more concerned about profits than the safety of people. They aggressively promoted prescriptions of opioids, assuring the medical community that they were not addictive. Opioids are misused by about 21 to 29% of the patients prescribed for chronic pain (NIH, 2021). Three of the most prominent American drug distributors and a major pharmaceutical manufacturer announced a \$26 billion settlement with states and local governments to end the opioid lawsuits. One point made in the litigation was that "Distributors almost never sent up warning flares when pharmacy clients took deliveries of quantities of opioids that were wildly disproportionate to the local population. So far, more than 500,000 Americans have died from overdoses to illegal street drugs (synthetic opioids such as Fentanyl) and prescription opioids (Hoffman, 2020, p. B3).

Juul (vaping) intentionally targeted teenagers, trying to hook them on its e-cigarettes containing lots of nicotine which is addictive (Ducharme, 2021).

- Advising someone when there is a conflict of interest would violate *lifnei iver*. Thus,

doctors who recommend tests, medical devices, or procedures when they have a stake in a company providing the above would be guilty of *lifnei iver*. Friedman and Friedman (2009) demonstrate how numerous conflicts of interest were responsible for the Great Recession of 2008. Several lawsuits were filed against financial institutions that sold toxic securities issued by their own companies. Morgan Stanley was sued by Chinese banks for selling collateralized debt obligations consisting of the riskiest subprime mortgages and then betting against them. Internally, people working at Morgan Stanley referred to the securities as "Subprime Meltdown," "Hitman," "Nuclear Holocaust," or in scatological terms as a "Bag of ----." The investment bankers knew these securities (known as Stack 2006-1) were terrible investments (Eisinger, 2013). This is the ultimate violation of *lifnei iver*. The rating agencies gave these toxic securities comprising bundled subprime mortgages Triple-A ratings because they were paid quite well by the companies issuing the securities and had a serious conflict of interest. Indeed, "vast amounts of debt bearing investment grade ratings proved to be much riskier, and shakier than the rating agencies had led investors to believe" (Kolakowski, 2019, Para. 1).

Geneivat Da'at

The literal meaning of *geneivat da'at* in Hebrew is theft of one's mind, thoughts, wisdom, or knowledge, i.e., fooling someone and thereby causing him or her to have a mistaken assumption, belief, and/or impression. Thus, the term is used in Jewish law to indicate deception, cheating, creating a false impression, and acquiring undeserved goodwill. *Geneivat da'at* goes beyond lying. Any words or actions that cause others to form incorrect conclusions about one's motives might violate this prohibition. One does not have the right to diminish another person's ability, Jew or Gentile, to make a fair and honest evaluation, whether in business or interpersonal relations.

Many scholars (Ritva in the name of the Baalei Tosafos, Babylonian Talmud, Chullin 94a; Rabbi Eliezer of Metz, Sefer Yereim, Chapter 224) believe that the proscription against *geneivat da'at* is included in the transgression of "you shalt not steal" (Leviticus 19:11). In Leviticus, the commandment against stealing is in the plural, *lo tignovu* (in the Ten Commandments, it is in the singular, *lo tignov*), enabling one to broaden the law to encompass more situations. Sforno asserts that the eighth of the Ten Commandments (Exodus 20: 13), "Thou shalt not steal," while primarily referring to kidnapping, also includes stealing money and *geneivat da'at*. Rabbi Yonah Gerondi (Shaarei Teshuvah 3:184) regards *geneivat da'at* as a form of falsehood; the Torah explicitly states (Exodus 23:7), "Distance yourself from a false matter." Others believe that the prohibition against *geneivat da'at* is not Biblical but rabbinical (Semak, 262).

Geneivat da'at is not a minor prohibition. Rabbi Eliezer of Metz (Sefer Yereim 224) says that Absalom, son of King David, deserved death for violating the Torah law against *geneivat da'at*. As the Babylonian Talmud (Sotah 9b) asserts, Absalom "stole the hearts" (Rabbi Metz believes that "stealing the heart" is the same as *geneivat da'at*) of three parties — his father, the court, and the people of Israel — and therefore was punished in that his heart was pierced by three spears (II Samuel 18: 14).

The Talmudic View

The sages believed that there are seven types of thieves, and, of these, the most egregious is the one who "steals the minds" of people (Tosefta Bava Kama 7:3). The Babylonian Talmud (Chullin 94a-b) discusses the principle of *geneivat da'at*. "Shmuel states: It is forbidden to steal the mind of anyone, even idolaters." The Talmud then notes that Shmuel never expressly stated the above, but it was deduced from an incident where his

attendant duped a heathen ferryman. There is a dispute in the Talmud as to what happened. One opinion is that Shmuel told his attendant to give the ferryman a chicken, and the latter thought he was getting a kosher chicken but was given one that was unkosher. Another opinion is that the ferryman thought he was receiving undiluted wine but was instead given diluted wine.

Rabbi Meir (Babylonian Talmud, Chullin 94a), in further elaborating on the rules of *geneivat da'at*, states that a person should not urge his friend to dine with him knowing that he will refuse. One should not offer gifts to another person knowing the latter will not accept them. One should not open a barrel of wine for someone making him believe that it was done only for his honor, when in reality, the barrel was sold to a shopkeeper and was going to be opened anyway. It is permitted if he informs his guest of the arrangement. If one's oil jar is empty, one should not tell his guest to anoint himself with oil, knowing he will refuse anyway. However, the Talmud states that in the above cases, it is allowed if the purpose of the request is to show the guest honor. The cases cited by Rabbi Meir involve deception causing undeserved goodwill. For instance, repeatedly inviting a person to a meal with preknowledge that the offer will be turned down, results in a reward of unmerited goodwill. The invitee will believe that she is special in the eyes of the inviter and may even feel an obligation to reciprocate. While this is not outright theft, it is inappropriate behavior for a moral individual.

The Babylonian Talmud (Chullin 94a) also states that one should not go to a mourner's house with a bottle of wine that is only partially full. Apparently, in Talmudic times, comforters would bring bottles of wine for the mourners. An individual could easily provide a nearly empty bottle and strategically place it among the other bottles in a way that the mourners would assume that the reason the bottle was empty was that people had partaken from it (see Maharsha). Nor should one fill the partially empty wine bottle with water since that deceives the mourner. This too is *geneivat da'at* because the mourner will think he was given a whole bottle of wine. Interestingly, the Talmud adds that if there is a big assembly of people at the mourner's house, and the comforter wants to show respect for the mourner (but cannot afford to bring an entire bottle of wine), he is permitted the above deception. Again, this case demonstrates that if the purpose of the *geneivat da'at* is not to receive undeserved gratitude but to show honor or pay tribute to another person, it is permitted.

Geneivat da'at applies even in situations where there is no monetary loss. If *geneivat da'at* in buying and selling results in a financial loss, the buyer then has recourse to the courts under different laws, those regarding *mekach taos* (transactions made in error) and possibly *ona'ah* (overcharge). However, even with interpersonal situations that do not involve money, one is still prohibited from deceiving another person. The Maharsha (Babylonian Talmud, Chullin 94a) discusses the Talmudic dictum that one should not sell shoes made from the hide of an animal that died and claim that it came from an animal slaughtered (the latter leather is more robust). He notes that the above misrepresentation would be a problem of *ona'ah* (overcharging) because the hides from a slaughtered animal are of better quality and cost more than hides from animals that died. He therefore explains the Talmud as referring to a case in which the shoes were sold at a fair price and thus was not an overpricing issue. The seller, however, misrepresented the transaction and told the buyer that the shoes were made from leather that was from a slaughtered animal. There is no *ona'ah* because the price is reasonable; however, the seller has earned undeserved gratitude from the buyer, who believed he received a bargain. This is why sellers are obligated to reveal any defect in a product, even if they intend to sell the product at a fair price that takes the imperfection into account.

The Talmud (Tosefta, Baba Metzia 3: 15) states that a storekeeper is not permitted to sprinkle his store with wine or oil because he "steals the minds" of people. Several

commentaries (e.g., Magen Abraham, Minchas Bikurim) feel that the problem with sprinkling one's store with a superior-quality, fragrant wine is that it may fool customers into believing that all the wine sold in the store is of the same high quality. People tend to rely on their sense of smell when purchasing products such as wine or oil.

There are some exceptions to the rule prohibiting *geneivat da'at*. Numerous commentaries (e.g., Bach, Me'irat Einayim, Be'er Ha'Golah) indicate that one may invite someone to a meal or party that she cannot attend if the intent is to be polite. The prohibition is against "urging" the other party, making numerous requests to attend, and thus appearing very eager to invite her. Since the inviter is aware that the invitee cannot be present, repeated requests produce undeserved goodwill. Asking only once or twice, on the other hand, is the accepted protocol and will not be misinterpreted by the invitee. Indeed, not asking someone to come to a party could hurt feelings; others may think the person was not invited because she is an unworthy individual.

The Babylonian Talmud (Chullin 94b) indicates that *geneivat da'at* may not be an issue if an individual has deceived himself. Mar Zutra b. Nachman was traveling from the town of Sikara to Mahuza at the same time that Rava and Rabbi Safra were going to Mahuza. They met, and Mar Zutra assumed that the two sages had come specifically to meet him, so he told them they should not have gone to the trouble. Rabbi Safra felt obliged to explain to Mar Zutra that he had not known of his arrival, but he would have done even more if he had known. Rava, however, thought that this disclaimer was unnecessary since Mar Zutra had deceived himself. Tosafos (Babylonian Talmud, Chullin 94b) distinguishes this case from the above issue with the barrel of wine sold to a shopkeeper and was thus not being expressly opened for the guest. In the case of the barrel of wine, the logical expectation is that the barrel of wine is being opened for the guest. This is why the mistaken assumption has to be corrected. In the case of Mar Zutra, there is no reason to assume when encountering people traveling on a road that they have come to greet you. Thus, one is not obligated to correct the misimpression. Levine (2000, pp. 21-22, 38-39, 120-121) uses the logic of the hypothetical "reasonable man" and states: "the seller's disclosure obligation consists not only of a duty not to mislead in an affirmative manner but also of a requirement to disabuse the customer of his reasonable misperception about the product" (p. 120). The obligation is to correct sensible and logical misunderstandings, not errors reasonable and rational people would not make.

The Shulchan Aruch (Choshen Mishpat, 228: 6), the authoritative 16th Century work on Jewish law (*halacha*) written by Rabbi Yosef Caro (the other classic legal code is *Mishneh Torah* by Maimonides completed between 1170 and 1180 CE), states that one is not allowed to fool others into buying and selling or to "steal their minds." Thus, if there is a defect in merchandise, the seller is obligated to inform the buyer, even if the buyer is an idolater. One is also not permitted to sell the meat of an animal that died (and is therefore not kosher) to an idolater and misrepresent it as ritually slaughtered meat and thus kosher. Although the idolater has not suffered any financial loss, he believes that the Jew cares for him by selling him meat permissible to Jews; resulting in undeserved gratitude. The Shulchan Aruch then adds that one is not permitted to "steal the mind" of others with words (*geneivat da'at b'dvarim*) and make it appear as though he is doing something on his fellow's behalf if he does not intend to do it. Examples include the above-cited cases discussed by Rabbi Meir dealing with undeserved gratitude/goodwill (e.g., inviting someone to a feast, offering a gift to someone who will refuse it, and opening a barrel of wine). Maimonides also discusses *geneivat da'at* in the area of transactions (Mishneh Torah, Hilchot Mechirah 18:1) and interpersonal relations (Mishneh Torah, Hilchot De'ot 2:6). As noted above, *geneivat da'at* has ramifications in business transactions and personal interactions (e.g., insincere invitations).

The Shulchan Aruch (Choshen Mishpat, 228: 6-7) notes that the proscription against

geneivat da'at does not apply in two situations: (1) If an individual should have realized that something was not necessarily being done for his benefit (as in the case involving Mar Zutra and the two sages) but mistakenly believed so, then one is not obligated to inform him of his erroneous assumption. (2) It is permitted if one offers someone something knowing that he will refuse not because he seeks undeserved gratitude but because he wants to show honor and respect for the other party.

Modern Situations Involving Geneivat Da'at

The following are some situations that may involve applications of *geneivat da'at*.

Deceptive Offers: Urging someone to come to a meal knowing beforehand that s/he will not come; offering a person a gift knowing that he will not accept it; opening a barrel of wine that one had to open anyway and making guests believe that it was opened strictly for them (Babylonian Talmud, Chullin 94a). Modern versions of the above might include, offering a person a lift home from a party, knowing that she arrived with her own car and does not need a lift. However, sending a wedding or bar mitzvah invitation to an individual you know, will not or cannot come, should not be a problem, if you are doing it to show respect to the invitee. Also, inviting people to a party or wedding so as not to hurt their feelings would be permissible. As noted above, the problem is with "urging" (i.e., making repeated requests) someone to come. Sending an invitation is also considered proper etiquette, even if the inviter knows the invitee cannot make it. If, however, the invitation is sent for one's own benefit, e.g., to receive a gift, and the reality is that one does not want the person to come, there may be a problem of *geneivat da'at*. Making a gift appear much more valuable than it is would be prohibited by Jewish law (Basri, 1982, p. 245).

Irregular Merchandise: Sellers are obligated to disclose any defects, deficiencies, shortcomings, or imperfections in their merchandise; otherwise, they are guilty of *geneivat da'at*. This is true even if the product is being sold at a fair price, so there is no problem with *mekach taos* (transactional error). Tamari (1991, pp. 73-76) stresses that Jewish law rejects the concept of "Let the buyer beware;" the burden of ensuring that the buyer is not deceived is on the seller.

Deceptive Quality/Advertising Puffery: Misleading customers into thinking that the quality of the item they purchased is much better than it is, would be *geneivat da'at*. This case is similar to the Talmudic case (Babylonian Talmud, Chullin 94a) involving selling shoes made from the hide of a dead animal (of lower quality) and misrepresenting them as coming from the skin of a slaughtered animal (of higher quality). Deceptive advertising would be one way of dishonestly raising customers' expectations regarding the quality of products. Selling products with misleading nutritional information, e.g., selling nutrition supplements as weight loss, wrinkle elimination, or memory-improvement aids, when there is no actual evidence that they have any beneficial effect, would also fall under the prohibition of *geneivat da'at*.

Spitz (1997) states that if individuals believe that the quality of a product manufactured in one place or country (e.g., Swiss watches, Japanese cameras) is superior to that of competing brands made elsewhere, then sellers are not permitted to suggest or hint that the merchandise comes from the area with the reputation for outstanding quality if this is not the case.

Levine (1987, pp. 51-57) asserts that advertising puffery may also result in *geneivat da'at* and thus be prohibited by Jewish law. Puffery means exaggerated, overstated advertising, the kind upon which reasonable consumers will generally not rely. Puffery might include very vague, subjective statements regarding product superiority, e.g., "best in the universe," "whiter than white," or "fit for an emperor." True puffery is not usually regarded as deceptive advertising. Levine, however, believes that if the puffery produces expectations on the part of the consumer that the product cannot deliver, then it would be considered *geneivat*

da'at. Tamari (1996, p. 74) feels that deceptive packaging that makes customers believe they are receiving larger or more items may also constitute *geneivat da'at*.

Deceptive Bargains: Deceiving customers and making them believe they have received a bargain when they have not, would also be *geneivat da'at*. Thus, phony markdowns are prohibited, i.e., marking items with spuriously high prices solely to slash them later, to make customers think they are getting a bargain. In addition, falsely claiming "last day of sale" would also be forbidden (Tamari, 1996, p. 74).

Levine (1987, p. 48) states that firms that find that they are stuck with a product that is not selling well, and therefore reduce the price to eliminate excess inventory, are not permitted to promote the sale as a discount sale, and thereby suggest that customers are obtaining a bargain. Because, in reality, the price discount is due to declining demand, the new price represents a "fair" price, not a bargain price, and the firm should call the "sale" a clearance sale. Otherwise, the firm would acquire undeserved goodwill. Tamari (1991, pp. 75-76) notes that advertisements claiming sale prices that are not lower than the regular price are *geneivat da'at*.

Kaufman (2002, p. 39) prohibits a firm from running advertisements stating, "Watches normally \$39.99, now only \$19.99," if the \$39.99 price is simply the manufacturer's suggested selling price, not the usual selling price for these watches. Spitz (2001) maintains that retailers may not claim the following if they are untrue: "I can give it to you for \$50, but not less, because that's what I paid for it"; "This is the best model of its kind"; and "the lowest prices in town." It is clear from the above opinions that a seller is not permitted to make a buyer believe that she has obtained a bargain when she has actually paid the regular price. Even causing a customer to think that they have received an "exceptional bargain" when all they have gotten is a small bargain would be problematic.

Deceptive Credentials/ Cheating on Examinations: Cheating on examinations violates *geneivat da'at*. Both the teacher of the course and future employers who rely on grades to determine the abilities of students/potential employees have been deceived. Rabbi Moshe Feinstein (Igros Moshe, Choshen Mishpat 2: 30) and Rabbi Menashe Klein (Mishna Halachos 7:275), prominent 20th-century scholars of Jewish law, state that cheating on exams given in secular studies is prohibited. Additional information on this subject may be found in Povarsky (1995) and Resnicoff (2002).

Similar to the problem of cheating on examinations is the question of the permissibility of changing the details of cases discussed in a medical paper to make the article more publishable and thus improve one's chances of getting a job. In various fields, such as academia, a resume containing several publications is more likely to lead to a job than one with fewer publications. Rabbi Waldenberg (Tzitz Eliezer, vol. 15, no. 12) felt that this also falls under the prohibition of *geneivat da'at*. It is interesting to note that Nuovo et al. (2002) published a paper that discussed the problem of using statistics in medical studies to make new drugs sound much more effective than in reality.

Levine (2000, p. 330) indicates that "creating a false impression for the purpose of counteracting an unwarranted bias" may be permitted under some circumstances. Thus, individuals may be allowed to dye their beards to appear younger to get a job. This, however, is only permitted if the individual is young enough to perform the required work. Suppose the work involves, say, heavy lifting that is more appropriate for a much younger person, then dyeing one's hair or beard to appear youthful would not be permissible.

Exaggerating One's Knowledge: The Jerusalem Talmud (Makkot 2:6) declares that if an individual is knowledgeable in one tractate of the Talmud and he goes to another town in which people want to honor him because they believe that he knows two tractates, he is required to correct their false impression. This seems to contradict the Babylonian Talmud (Chullin 94b), which indicates that if people have fooled themselves, one is not obligated to

correct the misperception. However, in this case, it is not unreasonable to expect that one who has expertise in one tractate also has proficiency in another because many of the tractates of the Talmud are interrelated, interconnected, and overlapping (Levine 2000, p. 120-121). In addition, the individual is being honored for his accomplishments in two tractates, and his participation strengthens this false belief (Spitz, 1997). As noted above, the prohibition against *geneivat da'at* goes beyond simply requiring that one not deceive. Individuals must correct false impressions made by other people making reasonable assumptions about motives in business and non-business situations.

Deceptive Testimonials: According to Levine (1987, pp. 57-59), product testimonials and endorsements may be problematic. Because, in most cases, experts and testing laboratories that endorse products are paid for their services, they are not unbiased. If the public believes that their opinions are objective and impartial, the endorsement will constitute *geneivat da'at*.

Deceptive Accounting Practices: Accountants or auditors who purposely provide misleading financial statements are guilty of *geneivat da'at* (Tamari, 1995, pp. 65-66). The ten worst accounting scandals of all time include WorldCom, Enron, Waste Management Company, Freddie Mac, Tyco, HealthSouth, Satyam, American Insurance Group, Lehman Brothers, and Bernie Madoff (Thakur, 2021). Several other firms demonstrated how easy it is for auditors to use creative accounting to distort the actual financial situation of a company and deceive the public. Dishonest auditors are also guilty of *lifnei iver*, placing a "stumbling block before a blind person."

Excessive Compensation for Executives: According to the latest EPI report, the problem of excessive pay for CEOs continues to worsen. Corporate boards are responsible for determining the compensation packages for CEOs, and there is little relationship between productivity and executive pay. It has more to do with the ability of CEOs to use their power/leverage to decide on their compensation. Using the realized compensation measure (which considers the value of stock options), the CEO-to-worker compensation ratio was 351-to-1 in 2020; it was 21:1 in 1965 (Mishel & Kandra, 2021).

From 1978 to 2020, CEO pay based on realized compensation grew by 1,322%, far outstripping S&P stock market growth (817%) and top 0.1% earnings growth (which was 341% between 1978 and 2019, the latest data available). In contrast, compensation of the typical worker grew by just 18.0% from 1978 to 2020 (para. 1).

Excessive remuneration of CEOs is not a legal issue but an ethical issue. CEOs who are paid exorbitant salaries by compensation committees unconnected to the firm's growth, and solely based on the executive's ability to wield power, are possibly guilty of *geneivat da'at*. When determining the CEO's pay, the deck is stacked against shareholders and biased in favor of the executive. In establishing remuneration, the compensation committee approves a so-called peer group consisting of firms supposedly similar to the CEO's firm. The peer group does not have to contain competitive organizations that, in theory, might be in the market to hire someone similar to this particular CEO. The peer group used usually consists of companies with high-paid CEOs (Clifford, 2017). It is no surprise that CEOs earn much more than they are worth.

These negotiations are particularly troubling when a CEO is not newly appointed, but instead has been in charge of the company for years. It's impractical, if not impossible, for board members, committed to being supportive, to transform themselves into hard-nosed negotiators, especially when the CEO controls the company's resources (as well as the information that might be used for bonus targets) while the comp committee has neither staff nor institutional

memory. Also, oftentimes, the CEO is friends with members of the board.

Additionally, most directors know they won't be personally liable no matter how much they pay the CEO; something called the business-judgment rule—which is derived from case law and accepts that business is inherently uncertain and risky, allowing directors to exercise their best judgment without being liable for unprofitable choices—protects them in executive-compensation decisions. Also, there is safety in numbers. Directors can reassure themselves that they are acting precisely as all other Fortune 500 board members act, and even rationalize that the profligacy of those other boards created this problem: Those boards acted irresponsibly, established ridiculous pay levels, and left us with no choice but to match them (paras. 10-11).

Deception for Charity: If an individual, even an idolater, requests that their contribution be given to a specific charity, switching to another charity without the donor's consent would be *geneivat da'at* (Rashi, Babylonian Talmud, Baba Bathra 11a). In many synagogues, the custom is to auction off various honors, e.g., being called up to the Torah, and the proceeds usually go to the organization. Suppose one knows that an individual will pay anything to get a particular honor, say, getting called up to the Torah on Yom Kippur. Is it permissible to bid against the individual to drive up the price and thus benefit the synagogue? This question is discussed in *Sheilot U'Teshuvot Yosef Ometz* (Section 57), and in the case discussed, there is an additional factor. The shill has agreed that he will only have to pay a fraction of what he bid if he wins the bidding war. According to *Yosef Ometz*, this is prohibited and is *geneivat da'at*. First, suppose the shill wins the bidding war and obtains the honor. In that case, the other members of the synagogue will think he donated a great deal to the organization for the privilege when the reality is that he contributed considerably less. Second, even if the shill loses the bidding war, the congregation members will think that he was willing to donate a considerable amount when, in reality, he had no interest in giving that large an amount to the synagogue.

Poaching: Bidding for a Property when Another Party is in the Midst of Negotiations

While one is in the process of negotiating for a particular property, a newcomer frequently offers a more attractive bid, snatching the property away from the first party. Some people might see this as shrewd business tactics. The Talmud, however, calls this case "*ani ha'mehapech b'chararah*" (literally, "If a poor person is engaging in the acquisition of a cake") and labels the second party wicked (a *rasha*). "Poor" refers to the aggrieved individual lacking something he wishes to acquire. The Talmud cites the story of one Sage who abandoned a field he had just purchased after discovering that someone else had been negotiating for it prior to the purchase.

The Gemara relates a similar story: Rabba bar bar Hana gave money to Rav and said: Purchase this land for me, and Rav went and purchased it for himself. The Gemara asks: But isn't it taught in the Baraita [an outside text] concerning an agent who acts in this manner: What he did is done, but he has treated him in a deceitful manner? The Gemara answers: The land was located in a valley inhabited by violent men, who treated Rav with respect and were prepared to sell the land to him, but who did not treat Rabba bar bar Hana with respect and would not have allowed him to purchase the land. As in the case of Ravin, the Gemara questions this behavior:

Nevertheless, Rav should have informed him. The Gemara responds that Rav thought: In the meantime, someone else will come and purchase the land (Babylonian Talmud, Kiddushin 59a; translation based on Sefaria.org).

Rav Giddel was negotiating to purchase a particular plot of land. In the meantime, Rabbi Abba went and bought it. Rav Giddel went and complained about Rabbi Abba to Rabbi Zeira. Rabbi Zeira went and complained about Rabbi Abba to Rav Yitzhak Nappaḥa. Rav Yitzhak Nappaḥa said to him: Wait until Rabbi Abba comes to visit us for the next Festival when all come to hear the Festival sermon, on which occasion we can discuss this matter with him. When Rabbi Abba ascended, Rav Yitzhak Nappaḥa found him and said to him: "If a poor person is engaging in the acquisition of a cake and another person comes and takes it away, what is the law? Rabbi Abba said to him: The one who took it away is called wicked. Rabbi Yitzhak Nappaḥa replied: But if so, what is the reason the Master acted this way? Rav Giddel was negotiating the purchase of this land, and you purchased it.

Rabbi Abba said to him: I did not know that Rav Giddel was trying to acquire the land. Rabbi Yitzhak Nappaḥa retorted: Now too, the Master should give it to him, since you have been made aware that he submitted the first offer. Rabbi Abba said to him: As for selling, I will not sell it, as it is the first land I have ever purchased, and this matter of selling one's first acquisition is not a good omen. If he wants to accept it as a gift, let him take it. Rav Giddel did not descend to claim this plot of land, as it is written (Proverbs 15:27): "But he who hates gifts shall live," and therefore he did not wish to accept the land as a gift. Rabbi Abba also did not descend to it because Rav Giddel was already engaged in its acquisition when he acquired the land. In this manner, this Sage did not descend to take the plot of land, and that Sage did not descend to take care of it, and it was called the land of the Sages (Babylonian Talmud, Kiddushin 59a; based on translations by Sefaria.org and ArtScroll).

Consider the case of someone negotiating to purchase a house; if the two parties agree to a price and are about to close the deal, and another party jumps in and gets the dwelling, the interloper is called wicked because the interloper should look elsewhere. Why interfere with someone else's business deal that s/he has been working on to close? In the view of the Talmud, the interloper can find another house to purchase. On the other hand, *before* the two parties have agreed on a price, a newcomer would be permitted to jump in and make an offer.

Rashi (Shlomo Yitzchaki, 1040-1105; a foremost medieval French commentator on the Bible and Talmud) and *Tosafos* (1100 – 1328, prominent medieval commentators on the Talmud living in France and Germany) disagree whether this ruling applies only to commerce or also to gifts and found ownerless objects. Rashi believes that "*ani ha'mehapech b'chararah*" applies to both business cases as well as someone who is attempting to acquire something that is ownerless and free (*hefker*).

Rabbeinu Tam, a leading French *Tosafist*, disagrees with Rashi regarding a lost object or something ownerless (Babylonian Talmud, Kiddushin 59a, s.v. Ani): With ownerless property, one cannot tell the second party to go elsewhere and find a similar object. For example, if someone sees a \$100 bill in the street and is about to grab it, another person has

the right, according to Tosafos, to cut in and take it. He cannot be told: "Why don't you look for another \$100?" Presumably, it is rare for one to find a lost \$100 bill.

It is unclear from the Shulchan Aruch (Choshen Mishpat 237:1) whether Rabbi Caro sides with Rashi or Tosafos because he cites both opinions (Hoffman, 2015). The Rema accepts the view of Tosafos that the law applies only to commerce.

Most halachic decisors agree that if someone violates the precept and poaches, he is not obligated to undo his act; however, the proper thing is to do so. One who refuses to do the right thing is publicly shamed in the synagogues and denounced for acting in such a wicked manner (Pischei Teshuvah).

Poaching in Dating

The Talmud also frowns on someone who "jumps in" and steals a woman discussing marriage with someone else.

GEMARA: The Mishna teaches that in the case of one man who says to another: Go [as my agent] and betroth so-and-so to me, and the latter went and betrothed her to himself, she is betrothed to the second man. A Tanna taught concerning this issue: What he did is done; it is effective, and the woman is betrothed to the second man, but he has treated him, i.e., the first man, in a deceitful manner, and it is prohibited to act in this fashion. The Gemara explains: And the Tanna of our Mishna, when he teaches the apparently superfluous term "went," also indicates that he went and acted deceitfully (Babylonian Talmud, Kiddushin 58b; based on a translation by Sefaria.org).

The Gemara relates: Ravin the Pious was appointed an agent and went to betroth a woman to his son, but in the end, he betrothed her to himself. The Gemara raises a difficulty: But isn't it taught in the aforementioned *Baraita*: What he did is done, but he has treated him in a deceitful manner? How could a pious individual act in this fashion? The Gemara answers: The woman's family would not give her to the son and agreed only to let her marry the father. The Gemara further asks: Even so, before betrothing her, he should have first informed his son that they refuse to let her marry him. The Gemara explains that Ravin thought: In the meantime, while I am busy reporting back to my son, someone else will come and betroth her (Babylonian Talmud, Kiddushin 59a; based on a translation by Sefaria.org).

Many commentaries believe that *ani ha'mehapech b'chararah* does not apply to dating because it is permitted to interlope with respect to ownerless property. Thus, a preemptive move in the case of marriage is not seen as worse than one in the case of jumping in to claim an ownerless object. The Aruch Hashulchan (Even Ha-Ezer 35:29), citing the opinions of the Tur and the Shulchan Aruch, makes this very point that marriage is not worse than the case of gifts or lost objects, where the interloper is not considered wicked.

Only when a person is appointed as an agent to betroth a particular woman on someone else's behalf is the interloper considered a deceiver but not a wicked person (*rasha*). After all, the person who sent the agent relied on him to make the match on his behalf. The term used in the Talmud is that he "acted deceitfully," which is not the same as being labeled a wicked person. Interestingly, Maimonides considers the sneaky agent a *rasha* (see Aruch Hashulchan, Even Ha-Ezer 35:29).

If someone appoints an agent to betroth a woman on his behalf, but he went and betrothed her to himself, she is betrothed to the agent.

However, it is forbidden to do so; whoever acts in this manner concerning dating or commerce is considered a *rasha* (Maimonides, Mishnah Torah, Laws of Marriage, 9:17).

Rabbi Feinstein (Igros Moshe, Even Ha-Ezer 1:91) asserts that if two people are simply dating, the rule of *ani ha'mehapech b'chararah* does not apply. Dating is no different than commerce, where if two parties are discussing a sale and a price has not been set, another party has the right to jump in and try to purchase the item. The interloper is considered wicked only when a final price has been reached. However, suppose the couple decided to get engaged but has not yet formally done anything (e.g., write the *tena'im*, the formal betrothal agreement), a "God-fearing individual" should act stringently and consider the opinion of Rashi (Rabbi Feinstein indicates that the Rema accepts the view of Tosafos that the issue of *ani ha'mehapech b'chararah* does not apply to ownerless property and gifts), and not try to date the girl.

Of course, once the *tena'im* have been written, it would be wrong for another party to jump in and try to get either party to break off the engagement.

Poaching in Finding Employment Teacher of Torah

Tosafos (Babylonian Talmud, Kiddushin 59a, s.v. Ani) applies the principle of *ani ha'mehapech b'chararah* to employment. Tosafos avers that it is prohibited for a teacher to offer his services to an employer who already has another teacher working for him; it is only allowed when the employer explicitly states that he is terminating the services of the current teacher and is looking for a replacement.

Tosafos notes that if an employer has hired a particular teacher to teach his child, another party has the right to approach the teacher and make him a better offer. The reason is that the second employer can say, "I only want this teacher since I feel that he will be better for my son than any other teacher." The employer cannot argue why don't you find a different teacher. As we know, not all teachers are alike. Only with property can one assume that there are numerous equivalent properties, so why not look elsewhere. The Shulchan Aruch (Choshen Mishpat 237:2) accepts the position of Tosafos when it comes to employment.

There are, however, reasons that a teacher of Torah may be a unique case.

Rav Yehoshua HaKohen Falk (1555–1614), the SMA explains (237:8) that since the essence of teaching Torah is to discuss the concepts and delve deeply into them, every Torah teacher is different, so finding the appropriate one is akin to finding something scarce. Since every teacher explains the Torah differently, it is like not having two of the same items. The Yam Shel Shlomo (Siman 2) concurs with this view. The Nesivos also states clearly that the Shulchan Aruch's ruling that it is permitted to hire away another person's Torah tutor seems to imply that he rules like Tosfos and not Rashi... However, the Aruch HaShulchan (Choshen Mishpat 237:5) gives a different explanation for the Shulchan Aruch's leniency regarding a Torah tutor. He writes that since it is a matter of a *d'var mitzvah* [precept], it is permitted—even according to Rashi. The Aruch HaShulchan expresses the idea that the Shulchan Aruch is consistently ruling in accordance with Rashi's view—the second recorded opinion (Hoffman, 2015, para. 15),

Finding workers "is also analogous in this sense to acquiring ownerless property" because people are different and are not interchangeable (NLE, 2019). Rabbi Yosef Fleischman (Alon HaMishpat no. 13) states:

A worker who is unable to find another job in the city is permitted,

according to the majority of authorities, to offer an employer his services, even when the employer has already made up with another worker. The reason for this is that the work, under such circumstances, is considered as ownerless property, which cannot be obtained elsewhere. According to most authorities, the prohibition of *ani ha'mehapech be'chararah* therefore does not apply (cited in NLE, 2013, p. 11).

According to Hoffman (2015), when hiring someone else's employee, the ruling depends on how specialized the work is. Some jobs require workers to have extensive training. But there are unskilled jobs that almost anyone could do adequately.

Case of the Button Workers

There was a case involving button workers where a former employee decided to open his own button factory and wanted to hire his former co-workers. The button factory owner argued that this was a case of *ani ha'mehapech be'chararah* and is not permitted. The Avnei Nezer (Choshen Mishpat 17) ruled that since this was a specialized skill, it would be difficult to find workers with the necessary skills and was thus similar to the case of the teacher. Therefore, he concluded that the person who wanted to open his own button factory would be allowed to make offers to the button workers (Hoffman, 2015).

Case of the Babysitter or Maid

Hoffman (2015) rules that finding another individual with equivalent abilities for jobs, such as watching children or house cleaning, is relatively easy. Thus, one who lures away someone else's cleaning lady or babysitter would be considered a "wicked person."

Conclusion

Jewish law demands that one be ethical and go beyond the halachic legal requirement. This is homiletically derived from the verses (Exodus 18:20) "And you shall instruct them about the statutes and the laws, and you shall make known to them the way in which they must walk and the work they must do" and (Deuteronomy 6:18): "You shall do that which is fair and good in the sight of the Lord" (Babylonian Talmud, Baba Metzia 30b, 16b). The concept of doing what is "fair and good" provides the Talmudic sages with the legal ability to use their judgment and demand more than the strict letter of the law demands. The bottom line is that obeying the letter of the law and not cheating or stealing is insufficient for a God-fearing person. The Talmud sees going beyond (or stricter than) the requirements of the law, *lifnim mishurat hadin* (literally, inside the line of the law), as a Torah requirement. Indeed, Jerusalem was destroyed for following the strict letter of Torah law and not doing more than the law required (Babylonian Talmud, Baba Metzia 30b).

What makes these three cases unusual is that these are situations where Jewish law attempts to extend the boundaries of the law to make people do more than strict law might require. Thus, one might argue that there is nothing wrong with cutting in a business deal if a contract has not been signed, and some businesspeople might see the interlopers as astute. The Talmud, however, demands that ethics be built into the law. Although the interloper has successfully snatched the property away, he is punished with public humiliation (that is the worst penalty available in a case when the deal has not been legally finalized). Moreover, a wicked person will also be punished in the afterlife.

The seemingly simple verse prohibiting the placement of stumbling blocks before the blind is a succinct statement encompassing many essential rules of ethics and morality. It is an admonition not to take advantage of the weak and the helpless or to place temptation in the path of those who may be morally weak. It is also a call to action demanding that society and

people do everything possible to help the weak, the vulnerable, and the helpless. It is a fundamental principle of business ethics and is on par with such essential principles as "The stranger who resides with you shall be treated the same as the native-born, and you love him as yourself" (Leviticus 19:34) and "loving your fellow human being as yourself" (Leviticus 19: 18). The legal system may not punish one who assists another party in committing a transgression, but one can see how unethical this may be.

Everyone will agree that there is something seriously wrong with deceiving others. Virtually every legal system has laws dealing with fraud, including deceptive advertising. One might feel that undeserved goodwill is not the same as false advertising, even though both fall under the rubric of deception. The concept of *geneivat da'at* broadens the principle of deception to include all kinds of undeserved goodwill.

Organizations that want to create an ethical culture must extend the boundaries of unethical behavior to include actions that hint at dishonesty, even if not technically illegal.

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