

Mind Theft

גניבת דעת

Session #1

The Torah's treatment of the topic of honesty is quite extensive. The more one begins to study the various *halachos* of honesty in business and in ones personal dealings, the more one comes to appreciate the profound insights on human nature that the Torah provides for us. The topic of *gneivas daas* (lit. "stealing of the mind") is a prime example of this.

Well beyond the requirement to avoid simply being misleading in our daily interactions with others, the *halachos* of *genivas daas* demand of us to be hyper-sensitive of the subtle false impressions we may often present to people, which, as the term implies, may actually considered 'theft'!

This profound topic has a wide array of very practical, day-to-day applications. To that extent, in order to get a full picture of *gneivas daas*, this topic is divided in to two study sessions: the 1st dealing with the basic concepts, and the 2nd expanding on some of its notable exceptions and contradictions.

In this study session we'll explore the following issues:

- What is the basic concept of *gneivas daas*? ('stealing another's mind')
- What are some common applications of this prohibition?
- Is 'stealing another's mind' Biblical or Rabbinic in its origin?
- What are the situations in which is *gneivas daas* is allowed?
- Are there any problems with a surprise birthday party?

1 – BASIC SOURCES: TALMUD

In order to get our feet wet with the basic concept of “*gneivas da’as*” (“stealing of the mind” – henceforth abbreviated as “GD”) we’ll begin with a Gemara in the Tractate of Chulin, which discusses this topic at length:

Source 1. Chulin 94a – The Underlying Principle of GD (Rashi in small font)

<p>Baraisa: R’ Meir said the following: one should not pressure his friend to come eat by him, when he knows that his friend would not be interested in coming. [For, by doing so he is stealing his friends mind, since he will feel an unwarranted sense of indebtedness]</p>	<p>תניא היה ר' מאיר אומר אל יסרהב אדם להכירו לסעוד אצלו ויודע בו שאינו סועד לא יפציר בו הואיל ויודע שלא יעשה משום דגונב דעתו להחזיק לו טובה בחנם כסבור שמן הלב מסרהב לו כן</p>
<p>Also, he should not overwhelm him with gifts, when he knows that he will not accept them.</p>	<p>ולא ירבה לו בתקרובת ויודע בו שאינו מקבל</p>
<p>Also, he should not open for him barrels of wine which have already been sold to a distributor, unless he informs him. [Their barrels used to be sealed, and when a distinguished individual visited he opened one of the barrels to give his guest some nice strong wine. If he’d already sold the barrel to a distributor, but he’s not yet given it to him, he should not open it for a guests honor, since by doing so he is stealing his mind since he will feel unwarranted feelings of gratitude by thinking that his host has taken a great loss of money by opening this barrel, in so far as the rest of the wine which they will not drink will certainly go to waste...but, in truth, it’s already been sold!]</p>	<p>ולא יפתח לו חביות המכורות לחנוני כל חביותיהם מגופות היו וכשבא אדם חשוב אצלו פותח לו חבית להשקותו יין חזק ואם מכר חבית לחנוני שלמה ועדיין היא אצלו לא יפתחנה לאורח הבא לו מפני שגונב לבו להחזיק לו טובה חנם כסבור זה הפסד גדול נפסד ע"י שהרי תשאר חבית זו חסרה ותתקלקל יינה וזה ימסרנה מיד לחנוני שימכרנה לו אא"כ הודיעו מכרתיה לחנוני ואיני נפסד</p>

To summarize, the Gemara provides a few clear examples of GD:

1. Pressuring someone to come dine, knowing well and good that he’s unable to attend
2. Pressuring someone to accept a gift, knowing well and good that he will not accept
3. Opening an excessive amount of wine in a guests honor, giving the appearance of taking a great loss, whilst truthfully having already sold the remainder to a distributor.

What is the underlying principle of GD? Rashi articulates:

“Unwarranted feelings of indebtedness” – להחזיק לו טובה בחנם

Beautiful!! Rashi hits the nail on the head and explains that GD means to do something to another which causes him to have a feeling of gratitude or indebtedness which is in fact unjustified (lit. “free”).

2 – THE EXCEPTION OF DIGNITY

With the basic underlying principle of GD under our belt, we can proceed with some more examples, and also begin to *expand* the parameters of GD by noting some *exceptions* to the prohibition. The Gemara in Chulin continues:

Source 2. Chulin 94a – The Exception of Human Dignity

<p>Also, he should not tell him to smear oil from an empty vessel. However, if he's doing it for the other's honor, it's allowed.</p>	<p>ולא יאמר לו סוך שמן מפך ריקן ואם בשביל כבודו של אורח להודיע לבריות שחביב הוא עליו מותר</p>
<p>The Rabbi's taught: One may not go to a house of mourning holding an empty bottle, or one filled with water (i.e. which gives the appearance that it's filled with a more expensive or dignified beverage), since by doing so he is stealing the mourners mind. However, if there are other people there, and his intention therefore is to honor the mourner in their eyes, it's allowed.</p>	<p>ת"ר לא ילך אדם לבית האבל ובידו לגין המתקשקש חסר לפי שזה סבור שהוא מלא ולא ימלאנו מים מפני שמתעהו גונב דעתו ואם יש שם חבר עיר חבורות עיר שיש שם רבים וזה מתכוין להחשיב את האבל בעיניהן שיאמרו כמה חשוב זה שזה מכבדו כ"כ מותר דגדול כבוד הבריות</p>

To summarize, the Gemara provides for us some additional examples of GD, with a notable exception:

1. Offering a bottle of oil, which appears full, whilst knowing that the other will not accept
 2. Arriving at a house of mourning carrying empty vessels, which gives the appearance that he's brought drinks.
- However, in both of these circumstances, if he's doing these deceptive acts for the sake of the recipient's honor, it's allowed.

This is slightly alarming, after all, the concept at hand here is called “*stealing* of another's mind”, and since when is theft permitted, even if it's for the benefit of the other??

What do you think??

In truth, Rashi, in explaining the leniency of “כבודו” (“the other's honor”) actually answers this question in but a few poignant words:

“Greater is human dignity” – “גדול כבוד הבריות”

In order to understand and appreciate these succinct words of Rashi, some background information is in order.

There are situations in which, for the sake of human dignity (“כבוד הבריות”) one is allowed to violate certain prohibitions, such as in the following source:

Source 3. Brachos 19b – The Concept of “Human Dignity”

<p>So great is human dignity that it supersedes a Biblical prohibition ... (the Gemara qualifies that this is actually referring to) every Rabbinic prohibition is included in the general Biblical concept of “<i>Do not deviate from the verdict that they announce to you either right or left</i>” (Devarim 17:11), but in a scenario which includes a breach of human dignity the Rabbi’s were lenient</p>	<p>גדול כבוד הבריות שדוחה [את] לא תעשה שבתורה ... כל מילי דרבנן אסמכינהו על לאו דלא תסור ומשום כבודו שרו רבנן והכי קאמר להו דבר שהוא מדברי סופרים נדחה מפני כבוד הבריות וקרי ליה ל"ת משום דכתיב לא תסור. ודקא קשיא לכו דאורייתא הוא. רבנן אחלוה ליקרייהו לעבור על דבריהם היכא דאיכא כבוד הבריות כגון לטלטל בשבת אבנים של בית הכסא לקנחה [שבת פא:] או מי שנפסקה ציצית טליתו בכרמלית לא הצריכו להניח טליתו שם וליכנס לביתו ערום [מנחות לח:]</p>
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We see clearly that are situations in which, for the sake of human dignity (“כבוד הבריות”) one is allowed to violate certain prohibitions. However, this is limited only to prohibitions which are Rabbinic in their origin, where the Rabbi’s ‘waved’ the prohibition in lieu of a breach of a person’s dignity¹. Regarding Biblical prohibitions, though, this leniency does *not* apply.

Back to Rashi

We can now appreciate what Rashi was implying to us: *GD is only Rabbinically prohibited*, and, therefore, when one’s intention in ‘stealing his mind’ is for the others dignity, the prohibition simply does not apply!²

That having been said, we’re not yet quite out of the woods. There are, in fact, many *Rishonim*³ who maintain that GD is a Biblical-prohibition:

¹ Rashi provides a few examples: one may violate the Rabbinic enactment of *muktzah* if he has nothing else with which to clean himself after using the facilities [Shabbos 81b]. Similarly, if one is wearing a four-cornered garment which is obligated in the mitvah of *tzitzis*, and one of the *tzitzis* breaks or become invalid, he needn’t remove the garment from himself, thus leaving himself shirtless, even though he will be violating the prohibition of ‘carrying’ (in so far as the 3 other *tzitzis* can no longer be considered part of the shirt) through a public-domain called a *karmelis*, which is Rabbinically prohibited [Menachos 38b].

² הסבר זו בדברי רש"י שמעתי מאת הרה"ג ר' יצחק ברקוביץ שליט"א. יש להוסיף דבקושטא דמלתא דברי רש"י הם תמוהים דהרי לא שמענו היתר של כבוד הבריות אלא בכגון להציל מן הבושה וכדומה אבל בקום ועשה רק לכבד את הזולת מהיכי תיתי, וצ"ב.
³ כן הוא דעת הסמ"ג לא תעשה קנ"ה

Source 4. Ritva on Chulin 94a

Regarding prohibition of “stealing another’s mind”, some of my great teachers have recorded in the name of Tosafos, that this is a biblical prohibition, deduced from the verse “Do not steal...” (Vayikra 19:11)

...and even though we don’t typically find the language of “theft” to be referring to “stealing another’s mind”, (rather, we usually emphasize the element of stealing one’s heart), even still, here, “Do not steal” is stated in general terms, to include *even* monetary theft. Indeed, in the Tosefta in Bava Kama we are taught: “There are 3 types of thieves, and the biggest amongst them is the one who steals the minds of others”

ואיסור גניבת דעת...כתבו קצת רבותי' בשם בעלי התוס' ז"ל שהוא איסור תורה דנפקא לן מדכתיב לא תגנבו ולא תכחשו וגו'

...ואע"ג דלא אשכחן גניבה סתם על גניבת דעת אלא לשון גניבת לב בכאן נכתב לא תגנבו סתם לכלול אף גניבת ממון ובתוספתא דב"ק איתא שלשה גנבים הם גדול שבכולם גונב דעת הבריות:

The Ritva states unequivocally that the prohibition of GD is included in the general Biblical mitzvah of “Don’t steal”. Moreover, GD is *so much so* a violation of ‘theft’ that it’s even worse/more-severe than actual monetary theft!!

According to the Ritva, then, our original question regarding to the leniency of ‘another’s honor’ certainly returns:

Question:

If GD is considered actual theft, then how can there be there a leniency of “for the others honor?!”

Since when is stealing allowed simply for the benefit of the other?

What do you think??

3 - EXPANDING OUR DEFINITION OF "THEFT"

Source 5. Bava Metzia 61b

<p>Why do I need the prohibition: <i>"You shall not steal"</i>, that the Merciful One wrote? (See footnote 4)</p> <p>This is coming to include that which was taught in the following Baraisa: "You shall not steal" applies in all circumstances, even if you do so only in order to aggravate the victim (i.e. and you plan on giving the object back); "you shall not steal" applies in all circumstances, even if you do so in order to pay the double payment as a gift to the person from whom you stole.</p>	<p style="text-align: center;">"לא תגנובו" (ויקרא יט,א) דכתב</p> <p style="text-align: center;">רחמנא למא לי לילף מרבית ואונאה שהרי מחסרו ממון</p> <p style="text-align: center;">לכדתניא לא תגנוב על מנת למיקט לצער</p> <p style="text-align: center;">לא תגנוב על מנת לשלם תשלומי כפל שרוצה לההנותו ויודע בו שלא יקבל</p>
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Unbelievable! The Gemara explains that the prohibition of "Don't steal" is actually coming to include a much more profound manifestation of theft than the 'classical definition' (i.e. taking in to your possession something which belongs to someone else without his consent): rather, the very *act* of theft itself is prohibited, even if the other will not be lacking whatsoever!

Fascinating! But, in what sense is this considered theft?!? It may indeed be inappropriate, but how can this be included under the general rubric of "Don't steal"?

The Minchas Chinuch gives us a spectacular explanation:

Source 6. Minchas Chinuch #224

<p>From that which the Torah prohibits one from stealing even simply to aggravate the other (i.e. where he intends on returning it immediately), and also to take one's own object out of another's watch, this indicates to us that the Torah did not simply prohibit theft <i>only</i> because it deprives the other that which rightfully belongs to him. Rather, even the very lowly character-trait itself which one exercises when he steals, is also prohibited. ...and according to this reasoning, even stealing the smallest amount (less than a prutah) is also a violation of theft, since by doing so one habituates himself in this.</p>	<p style="text-align: center;">אף על מנת למיקט ואף שלו⁵ אסור לגנוב מן התורה, מזה נראה דהתורה לא אסרה זה מדין ממון לבד רק המדה הגרועה הזאת בעצמה התורה אסרה...גם בפחות משהו פרוטה עובר על לאו הזה דמרגיל עצמו בזה ולא מטעם חצי שיעור</p>
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⁴ The Gemara had previously been discussing 2 other Torah prohibitions which are closely related to theft: *onah* (overcharging) and *ribbis* (charging interest). The common denominator behind these mitzvohs is that they cause the afflicted individual to be lacking that which rightfully belongs to him. That being so, the Gemara therefore questions the need all together for the prohibition of "Don't steal", in so far as it should be logically deduced from these other prohibitions.

⁵ בת"כ (קדושים פרשתא כ') כ' בן בג בג אומר לא תגנובו משלך מבית אחרים אלא שבור את שיניו ואומר לו שלי אני נוטל

The Minchas Chinuch explains that there are actually 2 components to every act of theft:

1. What it does to **him** (i.e. *he* is now lacking something which rightfully belongs to him)
2. What it does to **you** (i.e. *you* have now engrained in yourself a lowly, animalistic character-trait of “take take take!”)

When one steals in order to simply aggravate his fellow, with full intentions of immediately giving the object back, he’s done nothing wrong in so far as **the other** is concerned⁶, but he’s done something wrong in so far as **he himself** is concerned. Therefore, this is also considered ‘theft’.

Bringing it back home!

With this innovative principle of the Minchas Chinuch in mind, we can suggest an answer to our main question (end of pg. 5):

What is GD? We learned: “causing another to have unwarranted feelings of indebtedness”. Let’s think *critically*: can GD really be considered ‘theft’, in the classic sense of taking something from someone else? Are you actually *taking* something?⁷ Perhaps in an abstract sense, but according to the Minchas Chinuch we can explain as follows – it’s ‘theft’ simply in so far as it’s bad for **you** and **your character-traits!!**

How so? The deceptive component: I’m doing something to another which causes him to feel a sense of undeserved gratitude towards me.

According to this, the prohibition of GD is really dependant on one’s **INTENTION**: there’s nothing intrinsically wrong with the act in and of itself; rather, it’s the deceptive intention (i.e. to gain unjustified favor) within it which is the problem.

Therefore,

Answer

Since GD is dependent on one’s personal deceptive intention, where ones intention is for the others benefit (i.e. to honor him), GD does not apply!

⁶ That is to say, he’s not caused the other to be ‘lacking that which rightfully belongs to him’ in any way. There may, of course, be other serious problems with his action, such as a violation of “*Onnaas Devarim*” (agitating others)

⁷ It’s perhaps because of this question that Rashi understood GD to be only Rabbinically prohibited.

4 – THE EXCEPTION OF “MY BELOVED”

We learned earlier (source 1) that one example of GD is offering expensive wine to a guest, thereby giving the false impression that it was opened in his honor. However, if one explicitly informs his guest of the whole picture, it’s allowed. The Gemara proceeds to question this ruling from a seemingly contradictory story:

Source 7. Chulin 94a – The Story of R’ Yehudah & Ulla

<p>Also, he should not open for him barrels of wine which have already been sold to a distributor, unless he informs him.</p> <p>[Question] Is that really so? But Ulla once visited Rav Yehudah, who opened for him barrels which had already been sold to distributor!?!</p> <p>(Answer #1) He informed him about it.</p> <p>(Answer #2) Alternatively, Ulla is different, for he was beloved to R’ Yehudah, and therefore even if he had not already sold the barrels to the distributor, he would have opened them for Ulla.</p>	<p>ולא יפתח לו חביות המכורות לחנוני אא"כ הודיעו</p> <p>איני והא עולא איקלע לבי רב יהודה פתח לו חביות המכורות לחנוני</p> <p>אודועי אודעיה</p> <p>ואיבעית אימא שאני עולא דחביב ליה לרב יהודה דבלאו הכי נמי פתוחי מפתח ליה</p>
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The Gemara suggests 2 resolutions to explain the seeming misconduct of R’ Yehudah towards his special guest, Ulla. Either:

1. He had in fact told Ulla the ‘whole story’ regarding the wine; or,
2. Even if he’d not told him the whole story – and, in fact, was being slightly deceptive – it was nonetheless allowed in this particular instance since R’ Yehudah and Ulla already had a warm relationship, and R’ Yehudah *would have done this for him regardless*.

The Gemara introduces us to a new exception to GD: “Beloved” (“חביב ליה”) –

“I would’ve done it for him anyways!”

Why should this be allowed? At the end of the day, he’s still ‘stealing his mind’, right?

What do you think??

Following the line of reasoning we explained earlier, according to the Minchas Chinuch, this leniency can be easily understood: the prohibition of GD is, fundamentally, dependant on one’s *deceptive intent* – the act in and of itself is not the problem, since, technically, he’s not actually ‘taking’ anything. Therefore, regarding someone with whom one has a pre-existing positive relationship – one to whom he’d happily do favors and incur losses for – it stands to reason that his intention is certainly **not** deceptive: he’s serving him the expensive wine not for his own benefit, but, rather, for the other’s enjoyment ☺

EXAMPLES

1. Barry is a student in Mr. Belzky's "Judaism 101" class, and is collecting money from all of his classmates in order to buy a gift for their beloved teacher. Having collected from all of the students, Barry realizes that he's actually got more than enough money with which to purchase the gift, even without his own \$5 contribution. Barry goes ahead and purchases the gift, and presents it to the teacher on the behalf of the entire class. *Is this a violation of gneivas daas?*
2. Ari and his friends have had a great dinner together on their annual "boys night out", and, to top it off, order a whole array of tantalizing deserts. Even all the 'boys' can't finish the delicacies though, and Ari notices that there's a few deserts on the table which are entirely untouched. He mentions to the waitress that these deserts should be given to the young couple dining across the room, on behalf of "the boys". As the young couple wave their signs of appreciation, Ari considers to himself that perhaps he should tell the recipients the entire story...
3. Following Robs annual Super Bowl party at his house, he's got a lot of soft-drinks left over. Just a few days later, some of Rob's old acquaintances happen to stop by unexpectedly, happening to be in town for a day. Rob is so happy for the opportunity to be able to use some of the soft drinks, and lays them out in front of his buds in a warm display of companionship. *Should Rob tell them whole story?*
4. It is very common during the Yom Tov season for one to buy a certain *kibbud* (lit. 'honor', referring to an Aliyah to the Torah, or its removal from the Ark, etc...), and spend a lot of money on the same *kibbud* each year. May another place a higher bid on this *kibbud* with the sole intent of raising the price?⁸
5. In the summer, people sometimes buy air conditioners in Walmart, use them in their cottage and the likes, and then return them at the end of the summer, within the 60-day return period. Is this a problem of *genivas daas*?
6. Moishy has a membership at Costco, a large chain store which sells items in bulk. Rachel, his daughter, would like to borrow the membership card and go shopping for herself at Costco. Is this a potential problem of *gneivas daas*?

⁸ Examples 4,5, & 6 are from "Living with Honesty" by R' Lebovitz and R' Lane, pg. 391-400