

Mind Theft #2

גניבת דעת

In the previous learning session we were introduced to a fascinating concept called *gneivas da'as* – “stealing of the mind.” The Torah teaches us that any undue gratitude or indebtedness that others feel towards us as a result of being even only slight misleading is actually considered to be theft!

When we study the *halachos* of *gneivas daas* we come to see how common its applications are to our daily living: our day-to-day interactions with others are to be built on a foundation of brutal honesty and truthfulness.

In this learning session we'll take some further steps in expanding our understanding of this fascinating topic. We'll discuss the following issues:

- **Does the prohibition of *gneivas daas* require explicitly misleading others, or even if he's doing so implicitly?**
- **Is it still considered *gneivas daas* if the other person has mislead himself?**
- **What are the parameters of “I would have done it for him anyways”?**

1 – REVIEWING THE BASIC SOURCES

Let's begin by reviewing some of the basic concepts of *gneivas daas* (“GD”) that were established in the previous session. *Chazal*, the Sages of the Talmud, provided for us a number of poignant examples:

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

<p>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>Also, he should not open for him barrels of wine which have already been sold to a distributor, unless he informs him...</p> <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 style="text-align: right;">תניא היה ר' מאיר אומר אל יסרהב אדם לחבירו לסעוד אצלו ויודע בו שאינו סועד... לא יפציר בו הואיל ויודע שלא יעשה משום דגונב העת להחזיק לו טובה בחנם כסבור שמן הלב מסרהב לו כן</p> <p style="text-align: right;">ולא יפתח לו חביות המכורות לחנוני א"כ הודיעו...</p> <p style="text-align: right;">ולא יאמר לו סוך שמן מפך ריקן ואם בשביל כבודו של אורח להודיע לבריות שחביב הוא עליו מותר</p>
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The underlying principle of GD, as Rashi explains, is “להחזיק לו טובה בחנם” – generating undeserved feelings of indebtedness.

The Gemara also elaborated on a number of *exceptions*, in which GD is permitted:

Source 2. Chulin 94a – The Story of R' Yehudah & Ulla

<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 style="text-align: right;">איני והא עולא איקלע לבי רב יהודה פתח לו חביות המכורות לחנוני</p> <p style="text-align: right;">אודועי אודעיה</p> <p style="text-align: right;">ואיבעית אימא שאני עולא דחביב ליה לרב יהודה דבלאו הכי נמי פתוחי מפתח ליה</p>
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In summary, here are the scenarios in which GD is allowed:

1. Informed the other (“הודיעו”)
2. For the others honor (“כבודו”)
3. ‘Beloved’: Would’ve done it for him anyways (“חביב ליה”)

2 – HE DUPED HIMSELF!

All the primary sources we've explored until now have been in the Talmud Bavli, tractate "Chulin", page 94a. If we'd literally *turn the page*, to 94b, we'd find a brief story which will shed much light on the parameters of those exceptions to GD previously established.

However, before light, comes darkness. And, before we can merit to see a more illuminated picture of GD, the following story will at least initially cause a significant degree of darkness – in the form of 2 *bomb questions*. Enjoy!!

Source 3. Chulin 94b – The Traveling Rabbi's

<p>Mar Zutra the son of Rav Nachman was once traveling from the town of Sichra to Mechuzah, whilst Rava and Rav Safra were traveling towards Sichra. They ran in to each other on the way. Mar Zutra thought that they had come to greet him, and so he said "Why did the great Rabbis go to such a bother?" (i.e. "you shouldn't have!")</p> <p>Rav Safra responded: "Actually, we didn't know that our teacher (i.e. you, Mar Zutra) was coming; if we would have know, we would have expended much more efforts!"</p> <p>Rava said to him: "Why did you say that to him!? You're making him feel bad!"</p> <p>R' Safra answered: I would have mislead him!</p> <p>(Rava retorted): He mislead himself.</p>	<p>מר זוטרא בריה דרב נחמן הוה קאזיל מסיכרא לבי מחוזא ורבא ורב ספרא הוה קא אתו לסיכרא פגעו אהדדי וכסבור מר זוטרא שלקראתו יצאו הוא סבר לאפיה הוא דקאתו אמר להו למה להו לרבנן דטרוח ואתו כולי האי יצאתם יותר מדאי</p> <p>א"ל רב ספרא אנן לא הוה ידעינן ולעשות עסקינו ולילך למקום אחר יצאנו דקאתי מר אי הוה ידעינן טפי הוה טרחינן</p> <p>א"ל רבא מ"ט אמרת ליה הכי דאחלישתיה לדעתיה שהיה סבור תחלה שכבדנוהו</p> <p>א"ל והא קא מטעינן ליה אם לא הייתי מגלהו היה מחזיק לנו טובה חנם</p> <p>איהו הוא דקא מטעי נפשיה אחרי שאנו לא אמרנו לו לקראתך יצאנו</p>
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Stories in the Talmud are not merely there to provide us with interesting reading material. In this story, we learn a new concept regarding the parameters of GD: "he mislead himself".

In other words, GD is a problem when *I* do something, which in some way misleads another, thereby engendering undeserved feelings of gratitude. However, when *I* am not misleading, but, rather, he misleads *himself*, there's no violation of GD!

Makes sense.

But there's a big problem with this, and here comes **Bomb Question #1**:

What about our previous Gemara on 94a “one should not open for him barrels of wine which have already been sold to a distributor, unless he informs him”, here too why don’t we apply the reasoning of “he mislead himself”?!? (After all, the host didn’t say anything to explicitly mislead his guest!)

What do you think??

3 – LEVELS OF MIND-THEFT

The dynamic-Talmudic-duo, Rashi & Tosafos (the primary commentators found on the margin of almost every page of the Babylonian Talmud), both address this bomb question:

Source 4. Rashi [צד: ד"ה אינהו]

<p>And that which was taught earlier “one who opens barrels of wine which were already sold to a distributor” is referring specifically to a case where <u>he tells his guest explicitly</u>. “I’m opening them for you!”, for by doing so he’s certainly stealing his mind.</p>	<p>והאי דקתני הפותח חביות המכורות לחנוני דאומר לו בשבילך אני פותחן דודאי גונב דעתו</p>
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Squeezed in to a corner, Rashi is forced to say that the previous Gemara is referring to a specific scenario where the host had explicitly told (and thereby mislead) his guest that the wine was being opened in his honor. According to this, the picture of GD which emerges involves 3 levels, as follows:

“LEVELS OF MISLEADING”			
<i>(Scenario: serving previously-opened wine to a guest)</i>			
Type of Misrepresentation	Degree of Deceit	Halacha	Explanation
1) To tell him that you’re doing it in his honor	High	Forbidden	Mind theft!
2) Remaining Silent (“סתם”)	Middle	Allowed	“He mislead himself”
3) To tell him that you’re not doing it in his honor	None	Allowed	No G.D.

Tosafos, however, takes Rashi to task on a number of points:

Source 5. Tosafos 94b [ד"ה אינהו]

<p>“<i>He’s mislead himself</i>” – Rashi explains: that which was taught earlier “one who opens barrels of wine which were already sold to a distributor” is referring specifically to a case where he tells his guest explicitly “I’m opening them for you!”, for by doing so he’s certainly stealing his mind.</p> <p>This approach does not appear to be true. First of all, because of that which was taught earlier “unless he informs him”, which implies that had he not explicitly informed him then it is forbidden, and the only scenario which <u>is</u> allowed is like this (i.e. the travelling Rabbis) where he’s mislead himself!</p> <p>Moreover, how could the Gemara ask a question from R’ Yehuda who opened a barrel for Ulla (source 2); is it conceivable to think that R’ Yehudah would have mislead Ulla <i>explicitly</i> “I’m doing this for you”?!?</p> <p>Rather, it seems that the resolution is as follows: in the previous case (R’ Yehudah), even though no explicit implication was made, it’s nonetheless forbidden since the guest needn’t be expected to assume that the barrels had in fact been sold to the distributor. However, here, Mar Zutra should have considered the possibility that they had not come to greet him, and, rather, were simply coming for their own purposes.</p>	<p>אינהו דקא מטעו אנפשייהו כי הא - פ' בקונטרס והא דקתני לעיל...הפותח חביות המכורות לחנוני כשאומר לו בשבילך אני פותחן דודאי גונב דעתו</p> <p>ואין נראה דהא אלא אם כן הודיעו קתני דמשמע אפילו בסתם אסור ולא שרי אלא בכה"ג</p> <p>ועוד דמאי פריך מרב יהודה דפתח ליה לעולא דהא ודאי שלא היה מטעהו רב יהודה לומר לו בשבילך אני פותחן</p> <p>לכך נראה דהתם בסתם ואסור משום דאין לאורח לאסוקי אדעתיה דמכורות לחנוני אבל הכא...מר זוטרא איבעי ליה לאסוקי אדעתיה שלא לקראתו היו באים אלא לצורך עצמם:</p>
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Due to the penetrating questions posed on Rashi’s approach, Tosafos emerges with a different resolution to Bomb Question #1. According to Tosafos, there are 2 middle-levels of GD: one, where the unwarranted feelings of indebtedness are the fault of the host, and two, where they are the fault of the guest.

Here’s what the expanded picture of GD would look like, including Tosafos opinion:

“LEVELS OF MISLEADING”			
(Scenario: serving previously-opened wine to a guest)			
Type of Misrepresentation	Degree of Deceit	Halacha	Explanation
1) To tell him that you’re doing it in his honor	High	Forbidden	Mind theft!
2) Remaining Silent	Middle (high)	Rashi – Allowed Tos’ - Forbidden	Rashi - “He mislead himself” Tos’ – This is also considered mind theft!
3) Remaining silent, <i>where the other should not have reasonably assumed it was being done in his honor</i>	Middle (low)	Allowed	“He mislead himself”
4) To tell him that you’re not doing it in his honor	None	Allowed	No G.D.

There’s one final wrench to throw in to this picture:

4 – DEAFENING SILENCE

Source 6. Talmud Yerushalmi [שביעית פ"י הל' ג']

<p>R' Yossi said: a person who's learned only one tractate (of Talmud), and travels to a place where they accord him the honor of someone who's learned two tractates, must tell them "I actually only have learnt one tractate"</p>	<p>אמר ר' יוסי הדא אמרא בר נש דתני חדא מיכלא והוא אזל לאתר ואינון מוקרין ליה בגין תרתי צריך מימר לון אנא חדא מיכלא אנא חכים</p>
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This Gemara seems to be problematic with the concept of "he mislead himself": What did this traveler do to mislead anyone; he simply showed up in town and they began offering him unwarranted honor?!? The Maharit (R' Yosef from Trani, 1567-1637) explains:

Source 6. Shu"t Maharit [חלק ב' או"ח סי' ה']

<p>In the Talmud Yerushalmi it says: <i>R' Yossi said: a person who's learned only one tractate (of Talmud), and travels to a place where they accord him the honor of someone who's learned two tractates, must tell them "I actually only have learnt one tractate"</i>, from this we can deduce that if a Baal Teshuva (one who's repented from previous mistakes) is accorded undue honor, due to the fact that others are unaware of his true nature, he's required to tell them "I'm not actually such a great guy", for by not doing so he's stealing their minds.</p> <p>But this is all very difficult, for we learned in Chulin 94b that whenever the principle of "he mislead himself" applies, there's no violation of GD!!</p> <p>Not only is this so according to Rashi, who explains that there is no GD in cases where one made no insinuation one way or the other, but even according to those who argue with Rashi (ie Tosafos) and say that even if one did not insinuate anything himself GD nevertheless applies, however in a situation where one had no realistic reason to think that the other was a "master of 2 tractates", he should never have made such an assumption, for what implication did this new-guy-in-town make regarding this??</p> <p>Perhaps the answer is: when they praised him in front of him, and he remains silent, <u>his silence causes them to err</u>.</p>	<p>בירושלמי אמר ר' יוסי הדא אמרא בר נש דתני חדא מיכלא והוא אזל לאתר ואינון מוקרין ליה בגין תרתי צריך מימר לון אנא חדא מיכלא אנא חכים מוכאן לבעל תשובה שמכבדין אותו לפי שאין מכירין אותו צריך שיאמר להם חוטא אני...משום דגניבת דעת הוא</p> <p>אלא דקשיא לי בה דהא בפ' ג"ה מוכח דכל היכא דאינהו מטעו נפשייהו לא שייך גנבת דעת לא מבעיא לרש"י ז"ל שפירש דליכא גנבת דעת (בסתם) אלא אפי' למ"ד שחלקו עליו ואמרו אף בסתם שייך גנבת דעת היכא דלא הוה ליה להכירו לאסוקי אדעתיה הו"ל לאסוקי אדעתיהו דלא גמיר אלא חדא מכיל' שהרי הוא לא אמר להם שהיה יודע שתים.</p> <p>וי"ל שמקלסים אותו בפניו ושותק דמשתיקתו טועים בכך.¹</p>
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The Maharit provides for us one final brush to round out our picture of the parameters of "he mislead himself": Sometimes by *not* saying something, one says a lot! This concept is referred to throughout the Talmud as "שתיקה כהודאה" – Silence is tantamount to admission. Therefore,

In order to violate GD, one needn't only *say* misleading words, but, rather can simply **imply** a misrepresentation by his non-denial of *others* words.

¹ יש לתמוה על דברי המהרי"ט דלפי דבריו לכאורה אינו מוכן קושיית רבא על מר זוטרא דאי לו יגיד ליה הרי שתיקתו כהודאה. ראיתי בספר החשוב "לרעך כמוך" מהלך לתרין, ע"כ כרך א' דף 219, מ"מ אכמ"ל.

5 – WHERE’S THE LOVE?

There’s another element of the story of the travelling Rabbi’s which, if we think about it, presents us with another difficulty. Rava asked R’ Safra “why did you explicitly tell Mar Zutra that we were on the way to the town anyways? By doing so you made him feel bad!” R’ Safra answered “I would have been misleading him otherwise!” (i.e. and thereby transgressing GD). Here comes **Bomb Question #2** - asks Tosafos:

Source 7. Tosafos 94b, Question [ד"ה והא קא מטעינן]

<p>“I would’ve misled him” – Challenge: this is not called being ‘misleading’, since anyways they surely would have come to greet Mar Zutra (as R’ Safra himself told him “If we would have known, we would’ve expended much more effort!”), and in these sort of scenarios it was previously taught that “Ulla is different, for he was beloved to R’ Yehudah”?!? (i.e. the leniency of “beloved”)</p>	<p>והא קא מטעינן ליה - וא"ת והא אין זה טעות כיון דבלאו הכי היו באים לכבודו כדקאמר ליה טפי הוה טרחנא דכה"ג אמרינן לעיל שאני עולא דחביב ליה לרב יהודה</p>
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What do you think??

Source 8. Tosafos 94b – Answer

<p>We can answer that the two cases are not analogous at all, for previously even though there was no loss by opening the barrels, since they were already sold, at the end of the day R’ Yehudah did in fact open them for Ulla, and since even if they’d not been sold he would have opened them for him, he was not required to tell Ulla. However, in this case, they (R’ Safra and Rava) had not come for him (Mar Zutra)</p>	<p>וי"ל דלא דמי כלל דלעיל נהי דליכא פסידא כל כך במה שפותחין כיון שהיו מכורות לחנוני מ"מ בעבורו פתחין וכיון דאפילו לא היו מכורות היה פותחין בעבורו לא הוצרך להודיעו כלל אבל הכא לא באו כלל בעבורו</p>
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The distinction Tosafos makes is challenging to understand (See footnote²). Because of this, there are other commentators³ who suggest an alternative – and perhaps more radical – approach to this bomb question:

² We can explain Tosafos as follows: Gratitude or indebtedness come in 1 of 2 ways – in response to the very *act* of giving, and also due to the *intention* of the giver. Therefore, in an instance where one would have been prepared to bear a loss for his beloved friend (i.e. his intention is present) but he did not do any action to that extent, he’s not fully deserving of the others gratitude, and this is the case of R’ Safra and Rava, who did not initially travel to meet Mar Zutra even though they would have been prepared to do so.

However, in a situation where one had in fact done an action for his friend **and** he would have been prepared to take a loss, in so far as the combination of these factors indicates his tremendous affection for the other, in this instance it is sufficient that he “would’ve done it anyways,” even though in truth he did not lose anything, since he did an action **and** had the intention in his heart. [לרעך כמוך גנב"ד פ"ג הערה ע"ה]

³ התפארת יעקב ת' באופן אחר וז"ל ולפע"ד ליישב בפשיטות דע"כ לא התירו לעייל בכה"ג דעולא רק התם דלעולא עצמו הי' ברור לו דחביב בעיניו שהי' פותח לכבודו הלכך אין צריך להודיעו אבל כל שאין הדבר ידוע לאורח אף שבאמת חביב אצלו צריך להודיעו דאח"כ שיתברר לו שלא הי' בשבילו הוי אצלו גניבת דעת והיינו דקאמר לי' רב ספרא דלכך הודיעו דבלא"ה היו באין לכבודו דאז שפיר לא הוי הטעאה אבל כשלא יודיעו דבר זה ואח"כ שיתברר לו שלו באו לכבודו יהא מוטעה מהם כנ"ל עכ"ל

Source 9. Lechem Mishna, [דעות פ"ב הל' ו']

The Gemara in Chulin 94a asks a question from that which Ulla visited R' Yehudah, who opened for him previously-sold barrels of wine etc..., and answers either "he had informed him", or "Ulla is different since he was beloved..." It would seem that according to this second answer, that, in a case where an individual would have anyways done a favor for another, there should be no problem of GD. But if that's true, we have a problem: throughout the Talmud, whenever the Gemara presents 2 answers, the 2nd one is the one we follow in halacha, and that having been said, why did the Rambam not mention this leniency of "I would've done it anyways"?!! This is equally difficult on the Tur, who does not bring this halacha, and, in fact the Beis Yosef says: "*I cannot understand why the Tur would leave out this halacha. Perhaps it's because it's so obvious...*"

This answer (of the Beis Yosef) is insufficient. For behold: Tosafos asks on that which was taught regarding Mar Zutra "*Challenge: this is not called being 'misleading', since anyways they surely would have come to greet Mar Zutra, and in these sort of scenarios it was previously taught that "Ulla is different, for he was beloved to R' Yehudah"?!?"*", and Tosafos answers that "*regarding the barrels it's true that there was no loss since they'd already been sold, but at the end of the day he had in fact opened it for him,*" meaning to say that we only apply the leniency of "I would've done it for him anyways" in a case where he had indeed done the act for the other...but in a case where he'd not acted for the other at all, even though he would have, it's not allowed. Accordingly, since we need this distinction, it certainly is **not** "so obvious" that would not require the Tur and Rambam to mention it!!

Rather, it seems to me that we can offer an explanation which is equal for both the Rambam and Tur, both of whom do not rule like the 2nd answer: the question which Tosafos asks is so powerful that they did not agree with his answer! Rather, R' Safra and Rava simply did not hold of the 2nd answer in the gemara, but, rather, like the 1st answer of "he informed him", and therefore they (Rambam and Tur) ruled like the 1st answer and not like the 2nd. The Rosh, also, in his halachos, did not mention this answer, for the same reason.

בגמ' (חולין צ"ד) הקשו דעולא איקלע לבי רב יהודה פתח ליה חביות המכורות לחנוני ותירצו אודועי אודעיה ואב"א שאני עולא דחביב ליה לרב יהודה דבלא"ה נמי פתוחי מפתח ליה. משמע לפי תירוצא בתרא דאם הוא אדם דבלאו הכי היה פותח בעבורו מותר וא"כ קשה דבכולי גמ' נקטינן לישנא בתרא עיקר וא"כ למה לא כתב רבינו דין זה וכן הטור בח"מ בהל' אונאה ס' רכ"ח לא הזכירו וכתב שם הרב"י ולא ידעתי למה השמיטו רבינו ואפשר משום דמלתא דפשיטא היא עכ"ל.

ול"נ דאין זה מספיק דהא התוס' הקשו על הא דאמרינן התם בהא דמר זוטרא וכו' דהקשו שם והא קמטעי ליה כתבו התוס' שם וא"ת והא אין זה טעות כיון דבלאו הכי היו באים לכבודו דכה"ג אמרינן לעיל שאני עולא דחביב ותירצו דבפתיחת חביות נהי דליכא פסידא כל כך במה שפותחן כיון שהיו מכורות לחנוני מ"מ בעבורו פותחן, כלומר דלא אמרינן שאם בלאו הכי היה עושה מפני כבודו שמותר אלא בדבר שעושה בשבילו דכיון דסוף סוף בשבילו עשה אע"פ שאין לו פסידא במה שעשה כיון דאפילו אם היה לו פסידא היה עושה בשבילו מותר אבל בדבר שלא עשה בשבילו כלל אע"פ שבשבילו היה עושה אינו מותר וא"כ כיון דאנו צריכין לחילוק זה אין פשוט כ"כ שלא היה לטור לבאר.

לכך נ"ל טעם שוה לרבינו ולטור דלא פסקו כתירוצא בתרא משום דאקושיא דהקשו תוס' לא משמע להו האי תירוצא שתירצו התוס' אלא דרב ספרא ורבא לא ס"ל כתירוצא בתרא אלא כתירוצא דאודועי אודעיה ולכך פסקו כהך תירוצא ולא ותירוצא דואבע"א וכן הרא"ש בפסקיו לא הזכיר ההוא תירוצא מהך טעמא.

Unbelievable! The *Lechem Mishna* goes so far as to say that this is such a bomb question, that it actually has no answer!! And because of this, says the *Lechem Mishna*, many of the great Medieval Talmudic-giants – Rif, Rambam, Rosh, and Tur – all left it out!! According to this, **there is no leniency of "beloved; I would've done it for him anyways"!!**

EXAMPLES:

1. After a wedding, Reuven's giving a ride home for his good bud Shimon. Reuven goes right to the front door of Shimon's house, and it's quite obvious that Reuven had gone out of his way for him, in so far as Reuven lives on the other side of town. The truth is, however, that Reuven had by chance needed to be in Shimon's part of town for another reason, and that's why he'd gone out of his way to Shimon's house. *Is Reuven required to tell Shimon this?*
2. Rob has been asked by Sam to take one of the cakes which Sam has bought, to the party at Levi's house. When Rob arrives holding the cake, Levi shouts "Hey! So thoughtful of you to bring a cake to the party! Thanks Rob!" Rob doesn't respond. *Has Rob violated GD?*
3. Friday afternoons are always busy, but Dave really wants to bring by some home-made pastries to his friends Moe's house, who's hosting a Kiddush in his house this Shabbos in honor of the birth of his new baby girl. With no time to bake the pastries at home, Dave picks up an order from one of the small local bakeries which specializes in delicious pastries, and drops them off at Moe's house only a few minutes before Shabbos.
After Shabbos, Moe and Dave meet up in shul one morning, and Moe says "Hey Dave, my wife says to please pass along her thanks for the delicious home-made pastries! We could really taste the love!" *Does Dave need to tell Moe his little 'secret'?*
4. Brian is the coach for his son Andrews hockey team, the 'Mount Sinai Miracles'. At the pre-season tryouts, Brian notes one of the new players' names: **Wayne Paretzky**. "Hey, with a name like that, you must be good. You're on the team!!" *Need Wayne say anything?*
5. Raymond is quite ill, and he's asked his friend Sam to pray for him. A month later, Raymond runs in to Sam and says "Thank you so much for praying for me. I feel much, much better now, B"H." In truth, Sam had actually forgotten to pray for him, and now he's torn: by not saying anything, he may be implying that he had in fact prayed, but, on the other hand, if he'd tell Raymond that he'd forgotten, he might offend him. *What should he do?*
6. Jeremy is on a business trip out in Dallas, Texas, just in time able to catch a *mincha* in one of the towns' shuls. On the shuls public notifications board, he notices a wedding invitation for "Suzy and Jonny Bergsteingold", and realizes that Jonny is an old buddy of his from highschool. As he makes his surprise appearance at the wedding, Jonny is so excited to see him. "You came all the way to Dallas for my wedding!?! You're such a tzaddik! Thank you!!" *Need Jeremy correct him?*
7. *May one buy a gift for another which appears to be more expensive than it actually is?*