

Dr. Levine, a member of *Tradition's* Editorial Board, holds the Samson and Halina Bitensky Chair in Economics at Yeshiva University and is spiritual leader of the Young Israel of Avenue J in Brooklyn, NY.

## FALSE GOODWILL AND HALAKHA

**G**oodwill is the lubricant of harmonious human relations. As the prophet Samuel put it, “. . . for those who honor Me shall I honor, and those who despise Me will be disgraced (*I Samuel* 2:30).” In some professions, success or failure is heavily predicated upon the ability of a practitioner to confer an abundant amount of goodwill on everyone with whom he or she professionally interacts. The goodwill an individual's actions produce is, however, unwarranted sometimes because it is produced by a false impression. Our purpose here will be to identify the parameters wherein the capture of goodwill is the legitimate entitlement of the person who generated it. Another issue for investigation is the identification of the circumstances where the opportunity to capture legitimately earned goodwill must be passed up.

By means of the case study method, we will set out to explore these issues in the setting of a number of moral dilemmas a rabbi faced in the course of going about his professional duties. After presenting these dilemmas, we shall proceed to develop in general terms the halakhic principles we will draw upon to analyze these cases. We will then apply these principles to the specific cases presented.

### RABBI ARI SAMSON'S GOODWILL

Rabbi Ari Samson paced up and down the third floor of the Gabriel Pavilion of Bet Miriam Hospital, nervously awaiting the results of the diagnostic tests on his son, Tsevi. Three hours had passed since the rabbi and his wife Matilda arrived at the hospital. The couple had received a call from the Refuah Volunteer Ambulance Society that Tsevi was found in a dazed condition after he had apparently rammed into a tree while riding his bicycle. When the medical tests showed that Tsevi sustained no serious injuries, the Samsons breathed a sigh of relief and offered thanksgiving to God for His kindness. At this moment Matilda

spoke up: "Ari, you've had a pretty rough time for the last three hours, why don't you go to the cafeteria for a bite and then visit Joshua Farbstein. On Shabbat, I heard that Mr. Farbstein is in Bet Miriam as a patient."

When Rabbi Samson came calling on Mr. Farbstein, he found Mrs. Farbstein at her husband's bedside. Some of the Farbstein children and grandchildren were there too. The couple was very glad to see him. While extending his hand to the rabbi, Farbstein exclaimed, "The doctors just gave me a clean bill of health. Please God I will be going home soon. I sure appreciate that you made a *special visit* to the hospital to see me." Doing his best to hide his uneasiness, Samson blurted out, "Uh, uh, I'm very flattered that you value my presence so much." Samson continued socializing with the Farbstains for a while and left the couple in good cheer with his blessing that Mr. Farbstein should have a speedy recovery.

As Rabbi Samson returned to his son's room, he was overcome with a sense of guilt that he failed to disabuse Farbstein of the notion that he made a *special* trip to the hospital to visit him. Samson's sense of guilt became reinforced when he realized that similar incidences had occurred to him over the course of the past year and in each episode he lacked the fortitude to disabuse the congregant of the false impression he or she harbored.

In one incident, Samson made a special trip to the hospital to visit Paul Dubchek. Dubchek was the president of Rabbi Samson's shul, the Beth Kodesh of Eden Commons, and a good friend as well. While still in the hospital, Samson paid a call on Dave Plotkin as well. Plotkin, suffering from cellulitis, was being treated with intravenous antibiotics. If not for the urgency Samson felt in visiting Dubchek, he would not have visited Plotkin on that particular day, and perhaps not even make a special trip to see him in the hospital. When Samson visited Plotkin, Plotkin was surprised to see him and exclaimed, "Rabbi, you surely did not make a special trip to the hospital to see me. Who else is here from the shul?" "I am disappointed to hear you speak this way," snapped back the rabbi. "You certainly deserve a special visit; I came to Bet Miriam to see you."

In another incident Beryl Lemnick fell on a banana peel on a Manhattan street. The EMS rushed him to the emergency room of Royal Blue Hospital. The doctors decided to keep him overnight for observation. Coincidentally, Samson was at this time visiting his uncle at Royal Blue. As the rabbi made his way to the cafeteria for a snack, he

## TRADITION

noticed Beryl being wheeled to his room. As soon as Beryl made eye contact with Rabbi Samson, Beryl exclaimed, "I'm overwhelmed that you rushed over to be at my side so soon after my unfortunate accident. What a relief! All the tests were negative. I'm so appreciative that you are here for me." In response to this outpouring of emotion, Samson just smiled in a supportive way and wished his congregant a speedy recovery.

In contexts other than hospital visits, Rabbi Samson apparently reaped undeserved goodwill. Let us look, for instance, at what happened at the Hyde Park Torah Academy annual banquet. The affair was held at the plush Jefferson Meadowlands Hotel in North Adams, New Jersey. One of the honorees at this affair was a former member of the Beth Kodesh of Eden Commons, Walter Belzag. Belzag had moved out of Eden Commons several years before. At the smorgasbord, Belzag warmly greeted Rabbi Samson and his wife and thanked them lavishly for coming to the affair in his honor. In actuality, the Samsons were guests of another honoree of the evening, Eytan Kramer. Bear in mind, the cost per person was \$250. Without the benefit of Kramer's largesse, the Samsons would not have attended the affair altogether. Instead of disabusing Belzag of his false notion, Samson responded to Belzag's exuberance by saying, "May the Almighty give you health and inspiration to continue your great work."

A misperception of this sort also occurred at the annual Rodef Hessed breakfast in Eden Commons. When Rabbi Samson received his invitation to the annual breakfast, he noticed that this year's honoree was Solomon Drake. Rabbi Samson knew Drake and occasionally used him as a sounding board for his homiletic ideas. Because Drake was not a member of Beth Kodesh, Samson felt no personal obligation to come to the breakfast because of him. He, nevertheless, planned to attend the affair personally rather than just send in a donation. Yes, of course, the cause was very dear to him, but more important, Samson looked upon this event as an opportunity to socialize with his colleagues and exchange insights with them on the weekly portion. He often told Matilda that these exchanges provided unexpected fodder for his sermons. At the affair, Samson was in for a surprise. Drake warmly greeted Samson and effusively thanked him for coming to the breakfast in his honor. In response to Drake's effusive greeting, Samson warmly responded, "It's people like you, Sol, that keep Rodef Hessed's wheels spinning." Samson knew very well that his *primary* purpose in personally coming to the breakfast was not to honor Drake. Nevertheless, the rabbi lacked the fortitude to disabuse Drake of his erroneous impression.

Let's examine one final instance where Rabbi Samson apparently captured unwarranted goodwill. This occurred in the setting of his Friday night lectures at Beth Kodesh. In these lectures Rabbi Samson deals with halakha and contemporary society. This past year Samson chose to lecture on *ribbit* problems and issues in everyday life. He showed that neighborly commodity loans, using a friend's credit card, customer returns policies at department stores, magazine subscriptions and investment in Israeli Government bonds all involve *ribbit* issues, at least on a theoretical level. Samson's lecture was very well received. Many of the congregants complemented him for the fascinating insights he provided them. Samson was delighted to overhear the shul president, Paul Dubchek, beam to Matilda in earshot of Dave Plotkin that "the rabbi has an incredible command over the entire range of rabbinic literature."

The impression the congregants gathered of Samson's erudition was, however, overly favorable. In preparing his lecture Samson made use of Rabbi Yaakov Yeshayahu Bloi's excellent work *Berit Yehuda*. This work equipped Samson to cite talmudic sources and present the analyses of modern authorities for each issue he dealt with. *Berit Yehuda* opened Samson's eyes to issues he was never aware of before. In preparing his lecture, Samson did not look up any of the sources quoted in *Berit Yehuda* but instead relied totally on the author's summaries of these works. Notwithstanding the vital role *Berit Yehuda* played for Samson in the preparation of his lecture, Samson made no mention of either the work or the author during the course of his lecture.

### CAUSING AGGRAVATION TO A SERIOUSLY ILL PATIENT

Several of the scenarios discussed above involve interactions with patients in a hospital setting. The Sages of the Talmud were particularly sensitive to the delicate mental state of a seriously ill patient. Out of concern that receiving aggravating news could cause the condition of a seriously ill patient to deteriorate (*shema ti-taraf da'ato*), the Sages enacted that such a patient should not be given news that his close relative died. News of someone's death should be withheld even if the patient would not be obligated to sit in mourning upon hearing the report.<sup>1</sup> What the above law points to, according to R. Jehiel Mikhel Epstein (Belorussia, 1829-1908), is a prohibition against causing aggravation of any kind to a seriously ill patient.<sup>2</sup>

## TRADITION

What emerges from the above laws is that the standard halakha sets for the treatment of a seriously ill person stands on a higher level than the standard it prescribes for an ordinary, healthy person. In respect to the latter, the standard consists of a prohibition not to cause someone needless mental anguish (*ona'at devarim*).<sup>3</sup> Illustrating the *ona'at devarim* interdict is the prohibition for *B* to inquire about an item's price with no intention to buy it.<sup>4</sup> Since *B* makes his inquiry to *A* with a closed mind, the subsequent disappointment *A* experiences when *B*'s inquiry does not culminate in a sale is regarded as needless mental anguish and is hence the responsibility of *B*'s.<sup>5</sup> But, if *B*'s inquiry is sincere, the disappointment *A* experiences when *B*'s inquiry does not culminate in a sale is not *B*'s responsibility.<sup>6</sup> Similarly, if *A* insults *B*, *B* has every right to respond, without concern that his response may cause pain to *A*.<sup>7</sup> In the latter two instances, the pain *B* inflicts on *A* is not regarded as needless mental anguish.

A clear-cut application of the *ona'at devarim* interdict as it relates to interaction with the seriously ill is the duty to withhold aggravating news of any sort that can wait. Imparting aggravating information to someone who is suffering mentally and physically may exacerbate the pain of receiving the bad news. Since the information can wait, the extra pain the patient experiences by being told the information on his sickbed is the responsibility of the reporter and violates for him the *ona'at devarim* interdict.

The standard the Sages set for the treatment of a seriously ill patient, however, goes beyond the *ona'at devarim* interdict. Causing a seriously ill patient mental anguish is prohibited, even if the pain involved cannot be said to amount to *needless* mental anguish.

Let us suppose for the moment that the patients Samson visits are all seriously ill. Disabusing them of their false belief that he made a special trip to the hospital to visit them causes dashed expectations. As far as the patient is concerned, his feeling of disappointment will be there whether or not it was produced by a reasonable assumption. The prohibition not to cause aggravation to a seriously ill patient, therefore, leads to the proposition that Rabbi Samson should not disabuse a patient of his erroneous belief that the Rabbi made a special trip to the hospital to visit him. Note, however, that the special protection halakha affords the seriously ill from mental anguish does not give Samson license to tell the patient a lie or engage in *affirmative* deception for the purpose of enhancing his relationship with him.

The criterion for defining what constitutes a seriously ill patient for determining when the extra sensitivity requirement applies requires clarification. Not all hospital patients should be classified as seriously ill for being protected beyond the confines of the law of *ona'at devarim*.<sup>8</sup> In the opinion of this writer, if a patient knows that his condition has been definitively diagnosed and his doctors have told him that he is clearly not in any life-threatening danger and will recover, the usual strictures of *ona'at devarim* should apply, with no extra delicate sensitivity required.<sup>9</sup>

With the aim of simplifying the analysis of the above scenarios, we will assume that the patients Rabbi Samson visits do not fall into the category of the seriously ill.

### FALSE GOODWILL AND HALAKHA

Rabbi Samson's failure to correct his congregants' overestimate of the goodwill he displayed toward them may violate various halakhic principles. Let us begin with the prohibition to create a false impression (*geneivat da'at*).

The biblical source of the *geneivat da'at* interdict is disputed by talmudic decisors. R. Jonah b. Abraham Gerondi (Spain, ca. 1200-1264) places such conduct under the rubric of falsehood (*sheker*).<sup>10</sup> R. Yom Tov Ishbili (Seville, ca. 1250-1330), however, subsumes it under the Torah's admonition against theft (*lo ti-gnovu*, Leviticus 19:11). What *lo ti-gnovu* enjoins is both theft of property and the acquisition of something by means of deception.<sup>11</sup>

Illustrating the *geneivat da'at* prohibition is R. Meir's dictum on *Hullin* 94a:

A man should not urge his friend to dine with him when he knows that his friend will not do so. And he should not offer him many gifts when he knows that his friend will not accept them. And he should not open [for a guest] casks of wine which are to be sold by the shopkeeper unless he informs [the guest] of it. And he should not invite him to anoint himself with oil if the jar is empty. If, however, the purpose is to show the guest great respect, it is permitted.

The underlying rationale for prohibiting the above behavior, according to R. Solomon b. Isaac (Rashi, Troyes, 1040-1105), is that such conduct generates an unwarranted sense of indebtedness on the part of the friend (*mahazik tova be-hinnam*).<sup>12</sup>

## TRADITION

In assessing whether Rabbi Samson violated the *geneivat da'at* prohibition, let us consider that the rabbi, in all but one of the scenarios described above, did not *affirmatively* create false impressions, but instead, was guilty of only a failure to correct the overly favorably impressions he knew that various people had of him. Perhaps, *geneivat da'at* is violated only when one actively creates a false impression by either word or deed. Failure, however, to correct a false impression does not necessarily violate the *geneivat da'at* interdict.

Bearing directly on the above issue in halakha is the disclosure formula the rabbis of the Talmud devised to inform townspeople that a day's supply of meat was not kosher. A public announcement to this effect served a double purpose. At once it communicated to the Gentile patrons that the meat they were buying was not kosher. The proprietors of kosher butcher shops would hence not violate *geneivat da'at* vis-à-vis their Gentile patrons. It also alerted the Jews of the town not to purchase meat from a Gentile supplier on that day.

In respect to the exact formulation of the announcement, the following discussion takes place on *Hullin* 94a:

What is the form of the proclamation? R. Isaac b. Joseph said, "Meat for the army has fallen into our hands" (*nafla bisra le-vene'i heila*). And why not proclaim, "Tereifa meat for the army has fallen into our hands" (*nafla tereifta le-vene'i heila*)? Then they would not buy it. Then are we not deceiving them? No. They are deceiving themselves. As in the following incident: Mar Zutra the son of R. Nahman was once going from Sikara to Mahoza, while Rava and R. Safra were going to Sikara; and they met on the way. Believing that they had come to meet him he said, "Why did the rabbis take the trouble to come so far [to meet me]?" R. Safra replied, "We did not know that the Master was coming; had we known of it, we should have put ourselves out more than this." Rava said to him, "Why did you say that to him? Now you have upset him." He replied, "But we would be deceiving him otherwise." No. He would be deceiving himself."

The support the Talmud draws for *nafla bisra* from the Mar Zutra incident requires explanation. First, given that an explicit announcement of the presence of non-kosher meat in butcher shops repels Gentile customers, formulating the announcement in ambiguous terms would amount to a deliberate attempt at deception. Why, then, do we regard the purchase of non-kosher meat by Gentiles based on the ambiguous announcement as constituting only self-deception on their

part? Second, how can the Mar Zutra episode serve as support for the permissibility of making a calculated ambiguous announcement when the encounter between the rabbis and Mar Zutra was entirely fortuitous and the rabbis did nothing to create the false impression that they constituted a welcoming party for him?

The above difficulties are removed with the proposition that passivity on the part of the offender is not an extenuating factor in deciding whether one violates *geneivat da'at*. Instead, what makes for a *geneivat da'at* violation is that 1) the offender *knows* that the victim has a false impression of him; and 2) the deception is the result of the victim's *reasonable* interpretation of the circumstances confronting him. Let us proceed now to demonstrate that the above criteria explain the identity between *nafla bisra* and the Mar Zutra incident:

Given that no announcement whatsoever is made on days when the meat supply is kosher, the *nafla bisra* announcement should be understood by the ordinary shopper as conveying the message that the meat supply that day is not kosher, notwithstanding that the word *treifa* was not used in the announcement. Both the *nafla bisra . . .* and the *nafal tereifta* proclamation communicate the same message, but with different promotional slants. *Nafal tereifta* is decidedly negative, openly proclaiming that the meat is unfit for Jewish consumption, but available for sale to Gentiles. *Nafla bisra . . .*, on the other hand, openly conveys only that Gentiles are the desired customer base of the product; the unfitness of the product for Jewish consumption is indicated only by means of reasonable implication.

The proposition that the difference between the two proclamations is merely a matter of promotional slant is supported by the comment *ad locum* of R. Solomon b. Isaac (Rashi; Troyes, 1040-1105) as to why Gentiles are repulsed by the *nafal tereifta* proclamation: "It is a disgrace for them, since we do not want to eat it." What makes non-kosher meat obnoxious to the Gentile is not the essentially value-free datum that Jews do not eat it, but rather the formal declaration that they do not *desire* to eat it. The following observation will clarify the point. There are two categories of non-kosher meat. One is meat derived from an animal that was not slaughtered in accordance with Jewish ritual law (*neveila*). The second is meat derived from an organically defective animal (*treifa*). Since there is no qualitative difference between *neveila* and kosher meat, the Gentile should rationally be indifferent between the two. Similarly, at fair market value, a Gentile should find no reason to reject *treifa*. If the Gentile finds non-kosher meat obnoxious, it is therefore not the product

itself that repulses him, but rather the manner in which it is marketed. Expressly representing to him that the meat is *tereifa* makes it a disgrace for him to purchase it, as the declaration openly proclaims that it is unfit for Jewish consumption, but suitable for Gentiles.

Thus, *nafla bisra* is not deceptive disclosure, but a creative way of marketing a product so that it becomes acceptable to Gentiles, whose sole reason for rejecting it would be the word *tereifa* used in its promotion. Since no announcement whatsoever is made when the butcher shops are selling only kosher meat, *nafla bisra* should convey to a reasonable person that the meat is not kosher.

Recall that the Talmud characterizes those misled by *nafla bisra* as being guilty of self-deception. The result of the analysis in the preceding paragraphs shows that this applies only to the few who mistakenly think that the meat being offered for sale is kosher in the absence of an explicit declaration to the contrary. But for the vast majority of patrons, no misunderstanding whatsoever takes place, for they correctly read into *nafla bisra le-vene'i heila* an implicit notification that non-kosher meat is being offered for sale.

Given the role the "reasonable man" principle plays in extricating *nafla bisra* from a deceptive characterization, the affinity of this case to the Mar Zutra incident is readily apparent. In the latter case, too, it is the "reasonable man" standard that frees the rabbis' conduct from the *geneivat da'at* interdict. Consider that Mar Zutra gave no advance notice of his plan to travel to Mahoza. In addition, Rava and R. Safra, who were traveling in the opposite direction from Mahoza to Sikara, met Mar Zutra not in the outskirts of Mahoza, but rather, in the Mahoza roadway toward Sikara. Any reasonable person would regard the rabbis' encounter with Mar Zutra as clearly fortuitous. Because Mar Zutra's assessment that the rabbis constituted a greeting party for him was unreasonable, the rabbis bore no responsibility to disabuse him of his misimpression.<sup>13</sup>

Further support for this thesis can be derived by comparing the text at hand with a point in *geneivat da'at* law expounded in the Jerusalem Talmud, *Makkot* 2:6. The case entails the following elements: *A* is well versed in one tractate of the Talmud, but the townspeople mistakenly think he is proficient in two tractates and accord him the honor due someone who is proficient in two tractates. The Jerusalem Talmud rules that *A* is obligated to disabuse the townspeople of their mistaken impression of him. This ruling apparently contradicts the rule, elucidated on *Hullin* 94a, that an individual is exempt

from correcting a mistaken impression that is rooted in self-deception. Ready reconciliation of the two texts follows, however, from the “reasonable man” hypothesis. An individual need only be concerned about a “reasonable misimpression”. Since the various tractates of the Talmud, especially those in the same order,<sup>14</sup> are interconnected, complement each other, and overlap somewhat, proficiency in one tractate can easily be mistaken for proficiency in two tractates. Accordingly, a talmudic scholar must disabuse the townspeople of their inaccurate assessment of him. In sharp contrast, since a reasonable person would interpret Mar Zutra’s encounter with Rava and R. Safra as nothing more than fortuitous, no corrective obligation devolved upon the rabbis to disabuse Mar Zutra of his error. In a similar vein, a reasonable person will take *nafla bisra* as constituting an implicit declaration that the meat at hand is not kosher. Accordingly, use of this formulation does not constitute deliberate deception.<sup>15</sup>

The above formulation of *geneivat da’at* comports well with the biblical sources of this interdict. Recall that R. Yom Tov Ishbili regards *geneivat da’at* as a form of theft. Now, if *A* knows that he has *B*’s property in his possession he is obligated to return it to *B*, notwithstanding that he played no role whatsoever in removing the property from *B*’s domain.<sup>16</sup> Similarly, if *A* knows that *B* holds an unwarranted feeling of indebtedness towards him, he should be obligated to set *B* straight, provided, of course, that the objective facts make *B*’s judgment reasonable. The circumstance that *A* did not affirmatively create the unwarranted sense of indebtedness should not be an extenuating factor. This selfsame conclusion is indicated if we conceptualize *geneivat da’at*, along with R. Gerondi, as a form of falsehood. Consider that one biblical source for the prohibition against falsehood is “Distance yourself from falsehood” (*Exodus 23:7*). The Torah’s choice of phrase, *Distance yourself*, indicates that affirmative misconduct is not essential for the prohibition against falsehood to be violated.

### SILENCE AS A DISABUSING MECHANISM

Another nuance of the “reasonable man” criterion emerges from an examination of the wine-barrel hospitality case, discussed on *Hullin 94a*: Here we are told that a host *H* should not delude his guest *G* into believing that he has acted toward him with magnanimous hospitality when in fact he has not done so. Opening a barrel of wine in honor of someone usually constitutes a gesture of magnanimous hospitality, as

the wine remaining in the barrel may deteriorate as a result of its exposure to the air. The magnanimity of the gesture is considerably reduced, however, when *H* happens to have sold the barrel of wine to a retailer just before the arrival of *G*. [A price adjustment, of course, will be made with the retailer.]

What constitutes proper conduct for *H* in the latter circumstances is a matter of dispute between Rashi and *Tosafot ad locum*. In Rashi's view, *H* is prohibited from telling *G* that he is opening the barrel especially for him. Since *G* will reasonably assume that the barrel was not sold before his arrival, *H*'s declaration will generate for him an undeserved sense of indebtedness. Nevertheless, if *G* is operating under that assumption, he will be misled just as assuredly even if *H* says nothing while pouring out the wine for him. For this reason *Tosafot* disagree with Rashi, requiring *H* to disabuse *G* of his erroneous assumption and inform him that the barrel was sold before his arrival. Such disclosure will leave no doubt in *G*'s mind that *H*'s hospitality gesture entailed no particular expense.

Rashi's position here is puzzling. To be sure, there is nothing inherent in *H*'s opening of the barrel that directly communicates to *G* that he is the recipient of generous hospitality. But given the plausibility of *G*'s assumption that the barrel was not sold before his arrival, *H*'s action generates a false impression of magnanimity. *H* should therefore be obliged to set *G* straight.

Perhaps the key to understanding Rashi's position is that the case at hand takes place in a social setting. Gestures of friendship, according to talmudic dictum, must be made openly and not in a manner that might result in the recipient's not connecting the friend with the gift: one who bestows a gift on a friend is obligated to inform him of it.<sup>17</sup> What underlines this rule of etiquette is the rabbis' conviction that open gestures of friendship promote pleasant and harmonious interpersonal relations.<sup>18</sup>

Let us assume that this rule of etiquette operates for both parties in the wine-barrel hospitality case. If *H* intends to bestow a generous gesture of hospitality on *G*, proper protocol requires him to tell *G* forthrightly that the barrel is being opened in his honor, rather than rely on *G*'s reaching the same conclusion on his own, based on the reasonable assumption that the barrel was not sold before he arrived. *H*'s silence in the face of his having made an apparently magnanimous gesture should itself shake *G*'s assumption that the opening of the barrel entailed considerable expense for *H*.

One could argue that if *G* is a reasonable person, he should inter-

pret *H*'s silence as a gracious way of telling him that no particular expense was involved in the hospitality gesture. Openly informing *G* runs the risk of offending him, as he might infer from the revelation that the barrel would certainly not have been opened for him if an expense had been involved. Depending upon *H*'s exact use of words, his tone, and voice inflection, *G* might find additional reason to take offense, concluding, for example, that *H* regards him as unworthy of a magnanimous gesture of hospitality. Hence, drawing attention to the lack of expense involved by a gracious silence represents the most diplomatic approach to resolving an awkward situation. The situation is a good application of the talmudic dictum *milla be-sela mashtuka be-trein* ("a word is worth a *sela*, silence two *selas*;" *Megilla* 18a).

The foregoing discussion leads to an understanding of the dispute between Rashi and *Tosafot*. In Rashi's view, *H* is saddled only by a responsibility to clarify his intent. The silence with which he performs an apparently magnanimous gesture communicates to *G* that the gesture did not entail any particular expense. Given the awkwardness of the situation, silence is the most gracious way to make *G* understand this. *Tosafot*, on the other hand, regard *H*'s silence as an inadequate means of undeceiving *G* of his erroneous impression. There are several reasons for this. One is that a false impression cannot be undone unless the force that attempts to remove it is at least as strong as the force that created it. Since the false impression was created by *H*'s action, *H*'s silence, notwithstanding its communicative power, cannot remove it. Only an explicit statement will accomplish this. Another reason is the consideration that the false impression here is not merely a conceptual error. It relates to personal worth, as it involves *G*'s sense of *H*'s regard for him. Since *G* wants to believe that *H* holds him in high regard, cognitive dissonance<sup>19</sup> may set in and prevent him from recognizing the message inherent in *H*'s silence. Nothing less than an explicit statement is required here.

The above understanding makes Rashi's position tenable only for a social setting. This is so because it is etiquette that gives silence its communicative power. In a commercial setting, Rashi could very well agree with *Tosafot*. Indeed, Rashi *ad locum* explicitly espouses the position that silence is not an adequate disabusing mechanism in a commercial setting. Rashi avers this position in connection with the *nafla bisra* formula the rabbis of the 'I'almud devised to inform townspeople that a supply of meat was not kosher. Now, in the absence of the *nafla bisra* proclamation, a Jew, according to Rashi, may not sell non-kosher meat to a

Gentile under the presumption that it is kosher (*be-hezkat kesheira*). Since the Gentile reasonably assumes that the meat is kosher, the butcher's silence dupes the customer into thinking he is buying kosher meat.<sup>20</sup>

### THE RELIABILITY OF SELF-ASSESSMENT

Examining the "reasonableness of the assumption" of the person who imagines he was conferred some special attention is not the only relevant factor to consider in deciding whether one violates the *geneivat da'at* principle here. Another factor to consider is the reliability of self-assessment.

Bearing directly on this issue is the wine-barrel hospitality case discussed above. In this connection, the Talmud relates a hospitality incident involving R. Judah and Ulla. R. Judah opened a barrel of wine in honor of Ulla. The barrel had been sold before Ulla arrived. Two versions of the incident are recorded. In one, R. Judah told his guest about the sale. In the other no such disclosure took place. The Talmud defends the second version on the grounds that Ulla was very dear to R. Judah, and, consequently, he would have extended him the hospitality gesture even if it entailed considerable expense.

Curiously, the point of leniency in *geneivat da'at* law that emerges from the R. Judah-Ulla incident is conspicuously omitted by Rashi and R. Jacob b. Asher (Germany, 1270-1343) in their treatments of the wine-barrel hospitality case. Noting the omission, R. Aryeh Judah b. Akiba (1759-1819) posits that the aforementioned codifiers regard the Talmudic incident as lacking general applicability. Only a host like R. Judah, i.e., someone of exceptional moral character, is free of the obligation to correct his guest's false impression that he treated him with magnanimous hospitality. In the instance of someone like R. Judah, the host's self-assessment that he would confer generous hospitality on his guest even if it entailed a considerable expense is completely reliable. Such a self-assessment would not, however, free an individual of ordinary moral character from his obligation to make the disclosure. For an ordinary person, such a self-assessment amounts to self-delusion. Confronted with an actual opportunity to confer generous hospitality on a friend only at a considerable expense, the average person would find many convenient excuses not to do so. Since the point of leniency in *geneivat da'at* law that emerges from the R. Judah-Ulla incident does not have general applicability, Rashi and R. Jacob b. Asher omit mentioning it.<sup>21</sup>

R. Aryeh Judah b. Akiba's conclusion regarding the unreliability of self-assessment apparently places him at odds with the responsa literature in respect to an issue dealing with the counteracting of unwarranted bias in the labor market. The specific issue involves the question of whether an individual is permitted to achieve a more youthful appearance by dyeing his beard to enhance his chances of securing employment. Addressing this question, R. Moshe Mordecai Epstein (Hebron, 1866-1922) permits the conduct provided the employer's expectations with respect to performance will be met. Realizing that productivity could decline sharply with advancing age, R. Epstein points out that in the final analysis, the conduct's legitimacy rests on the honesty of the job seeker's self-assessment.<sup>22</sup> Advancing a similar analysis, R. Eliezer Meir Preil (New Jersey, 1881-1934) arrives at the same conclusion.<sup>23</sup> R. Moshe Feinstein (New York, 1895-1986) concurs with these rulings.<sup>24</sup>

If we distinguish between self-assessment cases relating to routine circumstances and those relating to extraordinary hypothetical situations, we approach a reconciliation of the opinions. Self-assessment may very well be reliable when it relates to ordinary, predictable life situations. Although productivity may decline with advancing age, honest self-appraisal can indicate to the senior job seeker whether he can meet the employer's performance standards. The reliability of self-assessment in the realm of the hypothetical is another matter. Individuals of ordinary moral character cannot extrapolate with any degree of accuracy how they would react to a hypothetical situation requiring extraordinary effort on their part.

In the final analysis, the job seeker's self-assessment of his ability is reliable because he knows that it will be subject to objective verification. This is supported by the talmudic text on *Hullin* 94a, referred to earlier. Recall that Mar Zutra jumped to the conclusion that Rava and R. Safra, whom he met on his way to Mahoza, were a welcoming party in his honor. Rava felt that Mar Zutra was guilty of self-deception and thus that there was no need to disabuse him of his error. Rava's confidence that his judgment was correct was rooted, as it appears to this writer, in the knowledge that Mar Zutra himself would soon come to the same conclusion. After all, Rava and R. Safra were traveling in the opposite direction of Mar Zutra. As soon as the three men parted company and went their separate ways, Mar Zutra would realize that Rava and R. Safra had not come as a welcoming party for him. The certainty that Mar Zutra's hindsight judgment would confirm his own *a priori* judgment gave Rava the confidence that his assessment was correct.

## TRADITION

The selfsame feature of objective verifiability is what gave the rabbis, in the same reference text on *Hullin* 94, the confidence that the marketplace would understand *nafla bisra* as an implicit declaration of *tereifa*. If the rabbis were wrong, then the *nafla bisra* proclamation would unsettle the marketplace greatly. Sellers would think that they were representing their meat as non-kosher, but the Gentile clientele would take the representation to mean that the meat was kosher. This misunderstanding would manifest itself in a significant number of complaints of deception against the Jewish butchers. Any unsettling of the marketplace as a result of the proclamation of *nafla bisra* informs the rabbis that they erred in expecting the marketplace to read the meaning they intended into *nafla bisra*. This, in turn, will necessitate its replacement with a *nafal tereifta* announcement.<sup>25</sup>

## HEVER IR

Another consideration in assessing whether Rabbi Samson violated *geneivat da'at* law is the following dictum on *Hullin* 94a:

A man should not go to the house of a mourner with a bottle in which the wine shakes about; neither should he fill it with water because he thereby deceives him. If, however, there is a *hever ir* (large assembly) present, it is permitted.

What proceeds from the above dictum is that in the presence of *hever ir* an individual may affirmatively create the impression that the honor he is bestowing upon a mourner is greater than it actually is.<sup>25a</sup> The backdrop against which *hever ir* operates, according to R. Samuel Edels (Poland, 1555-1631), is the custom, prevalent in the time of the Talmud, for visitors to bring jugs of wine for the mourner to drink. The mourner will, of course, not drink from all the jugs of wine brought by the visitors. Under these conditions, a visitor may bring an empty jug and maneuver so that the mourner takes someone else's jug from which to drink. Later, when the mourner notices empty jugs, he will imagine that the empty jugs were the ones from which he drank. Hence, the mourner will not discover the ruse that one of the visitors brought an empty jug. Since the visitor with the empty jug clearly desires to honor the mourner in the presence of *hever ir*, his action is permissible, notwithstanding the overly favorable impression of honor he makes on the mourner.<sup>26</sup> What proceeds from R. Edels' analysis is that *hever ir* is not an extenuating factor unless we are reasonably cer-

tain that the individual who is the target of the honor will not catch on later that the impression of honor he or she got from his caller was overly favorable.

Does *hever ir* have relevancy for the scenarios of our case study? Yes. To see why, we only need mention that if affirmative action to create an overly favorably impression of honor is permissible in the presence of *hever ir*, then, a duty to *correct* an overly favorable impression of honor in the presence of *hever ir* should also not obtain.

### SHEKER (FALSEHOOD)

Another relevant ethical principle in analyzing the various scenarios is the prohibition against falsehood (*sheker*, see *Exodus 23:7*). One aspect of *sheker* that is relevant here is the prohibition for *A* to conceal to *B* the primary motive behind his action and reveal to him only the secondary motive behind the action. This prohibition is derived from an analysis of R. Natan's dictum on *Yevamot* 65b. Here, R. Natan expounds that it is not only permissible to alter the truth for the sake of peace but it is, in fact, required. R. Natan derives this from an episode in the life of Samuel the prophet: God charged Samuel to go to Bethlehem and anoint one of Jesse's sons as King of Israel. Whereupon Samuel inquired: "How shall I go? For, if Saul hears, he will kill me." . . . (*I Samuel* 16:2). In response to Samuel's concern God created a pretext for him: . . . "You shall take a heifer with you, and you shall say, "I have come to slaughter (a sacrifice) to the Lord." (*I Samuel* 16:2).

R. Natan's dictum requires further elaboration. In what manner did Samuel alter the truth? True to his word, Samuel offered the sacrifice and invited the elders of Bethlehem to join him in the sacrificial feast (*I Samuel* 16:15). Addressing himself to this issue, R. Yom Tov Ishbili points out that Samuel's primary mission was to anoint one of Jesse's sons King of Israel. Concealing this from the inquisitive elders of Bethlehem and revealing to them only his secondary purpose in coming constitutes a form of *sheker*. What allowed Samuel to conduct himself in this fashion was his motive to preserve peace. Since God Himself provided Samuel with the pretext, one can derive that it is a *mitsva* to alter the truth for preserving peace.<sup>27</sup>

Another nuance of the prohibition against *sheker* that is relevant for our case studies is the biblical interdict: *lo ti-sa sheima shav* ("Do not accept a false report," *Exodus 23:1*). Quoting *Targum Onkelos*, Rashi

understands the verse as a general prohibition against accepting false reports.<sup>28</sup> Following this line, R. Aaron ha-Levi (Barcelona, 1235-1300) understands the prohibition to accept false reports to be an aspect of the Torah's concern that we distance ourselves from falsehood (*Exodus* 23: 7).<sup>29</sup> In his analysis of the prohibition to accept a false report, R. Nahum Yavrov posits that the prohibition does not apply to all forms of falsehood. In his view, the prohibition applies only to a lie that causes an injustice or perversion in interpersonal relations.<sup>30</sup>

The prohibition against *sheker* is not absolute. Reference was already made to R. Natan's caveat, known as the *darkhei shalom* (lit. "ways of peace") principle, that it is a *mitsva* to alter the truth for the purpose of promoting peace. What is important for our cases studies is to point out the limitations of this caveat.

One limitation of *darkhei shalom*, according to R. Menahem b. Solomon Meiri (Meiri, Perpignan, 1249-1316), is that a lie is legitimate only to prevent a rift, but not to merely mollify or prevent the occurrence of momentary ruffled feelings. Meiri derives this principle from the following incident, recorded on *Yevamot* 63a:

Rav was constantly tormented by his wife. If he told her, "Prepare me lentils," she would prepare him small peas; [and if he asked for] small peas, she prepared him lentils. When his son Hiyya grew up, he gave her [his father's instructions] in reverse. "Your mother," Rav remarked to him, "has improved!" "It was I", the other replied, "who reversed [your orders] to her." "This is what people say", the first said to him, "'Thine own off-spring teaches thee reason,' however, you must not continue to do so, for it is said, 'They have taught their tongue to speak lies, they weary themselves,' etc. (*Jeremiah* 9:4)".

Why did Rav object to Hiyya's conduct? Insofar as Hiyya made use of lies to promote domestic harmony between his parents, his conduct should have been regarded as an application of the *darkhei shalom* principle and, hence, praiseworthy. Addressing himself to this issue, Meiri posits that Rav's objection to Hiyya's conduct was rooted in his belief that silently he could tolerate his wife's spiteful conduct without getting into a rift with her over it. Since Hiyya's lie accomplishes only to prevent momentary pain for his father, and does not prevent a rift that would otherwise break out between the couple, Rav objected to Hiyya's conduct.<sup>31</sup>

Another limitation of the *darkhei shalom* principle is that *A* may not lie to *B* to promote peace if the consequence is to make *B* feel an unwarranted debt to *A*.<sup>32</sup>

Another consideration in evaluating the legitimacy of invoking the *darkhei shalom* defense is the long-run impact *sheker* has on promoting peace. Recall the menu-switching case discussed on *Yevamot* 63a. Why did Rav reject Hiyya's ploy and see no element of *darkhei shalom* in it. In the opinion of R. Jacob b. Joseph Reicher (Austria, d. 1733), Rav rejected Hiyya's ploy because he felt it would explode in his face and fail. Consider that when Hiyya was not around to act as intermediary, Rav directly communicated to his wife his menu request for dinner. Given that Rav never switched his dinner order to get what he really desired, Rav's wife was able to detect the anguish Rav felt as a result of her spiteful conduct. When Hiyya was around to act as intermediary, Rav was spared this anguish. Rav's wife would surely pick up this difference in her husband's demeanor and catch on to her son's ploy. Because Rav assessed that Hiyya's *sheker* would eventually be exposed, he felt it was not a valid *darkhei shalom* plan.<sup>33</sup>

Commenting on R. Reicher's understanding as to why Rav rejected Hiyya's *darkhei shalom* plan, R. Nahum Yavrov finds it problematic. If Hiyya's plan would relieve Rav of anguish for a short while, it should not be nixed on the ground that the ploy would eventually be discovered. The consideration that a lie will eventually be discovered should not invalidate the *darkhei shalom* plan unless the assessment is that when the lie is discovered relations between the parties will be worse than before.<sup>34</sup>

In the opinion of this writer, R. Reicher's understanding of Rav's objection to Hiyya's plan can be reconciled with the parameters R. Yavrov sets for *darkhei shalom*. Consider that Hiyya's ploy did not address the underlying reason for his mother's spiteful conduct. Instead, he essentially took his father's side and adopted a bandaid approach to relieve him of anguish. Because Hiyya's approach was both superficial and one-sided, Rav feared that discovery of the ploy by his wife would only antagonize her and deteriorate his relations with her in the end.

## PROMOTING LONG TERM HARMONIOUS RELATIONS

In evaluating proper conduct for Rabbi Samson in the above scenarios, consider which course of action would best promote harmonious long-term relations for Rabbi Samson with his congregants. The requirement to enter this factor into the analysis follows from several moral imperatives. One is the Divine mandate of *Bakesh shalom ve-rodefehu*

## TRADITION

(“Seek peace and pursue it”, *Psalms* 34:15). A related principle is the duty to emulate God’s attributes of mercy in our interpersonal conduct. This latter duty will be referred to as the *imitatio Dei* principle. First, we will proceed to show how the obligation to promote harmonious relationships is derived from these principles. Then, we will proceed to draw out the implication of these principles for the above scenarios.

Interpreting the verse “Seek peace and pursue it”, *Midrash Tanhuma* comments:

The Torah does not command [us] to pursue the mitsvot, but rather—If you come across a bird’s nest . . . you must first chase away the mother, and only then may you take the young . . . (Deuteronomy 21:6-7); If you come across your enemy’s donkey going astray, bring it back to him (Exodus 23:4); If you see the donkey of someone you hate lying under its load...you must make every effort to help him [unload it] (Exodus 23:5) (emphasis added). In all these cases, if they [the precepts] come to your hand, you are commanded to carry out what the Torah requires, but you are not enjoined to discover these mitstva opportunities actively. But, in respect to peace—seek peace and pursue it—seek out peace in your place and pursue it in another place. And this is what Israel did, even though the Almighty told them: “Now set out and cross the Arnon Brooks. See, I have given over Sihon, the Amorite King of Heshbon, and his land into your hands. Begin the occupation! Provoke him into war!” (*Deuteronomy* 2:24), [Nevertheless, Israel] pursued peace, as it says: “Israel sent emissaries to Sihon, King of the Amorites, with the following message, Let us pass through your land. We will not turn aside to the fields and vineyards . . .” (*Numbers* 21:21-22).

Note that the biblical source of the *mitsva* to promote peace, according to R. Isaac of Corbeil (France, d. 1280) is the verse: “You must love your neighbor as [you love] yourself.” (*Leviticus* 19:18).<sup>35</sup> Now, if the *mitsva* to promote peace is rooted in *Leviticus* 19:18, then, *bakesh shalom* speaks not only of an obligation to promote peace among strangers, but *a fortiori* of a duty to take initiative to promote peace and harmony in his own interpersonal relations. The selfsame *a fortiori* reasoning can be applied to *Mekhilta’s* teaching as well: If *bakesh shalom* is understood as a mandate to seek peace with our enemies, e.g., Sichon, then *a fortiori* it should be understood as a mandate to *foster* peace and harmony in our interpersonal relations.

## IMITATIO DEI

In Judaism, the guidepost for interpersonal conduct is the duty to emulate God's attribute of mercy. The following texts provide both the sources for this behavioral imperative as well as what specifically this duty denotes for interpersonal conduct:

*After the Lord your God shall you walk (Deuteronomy 13:50—[R. Hama b. Hanina asks]—Is it then possible to “walk after” the Divine Presence? Has not Scripture already said, “for the Lord your God is a devouring fire” [Deuteronomy 4:24]? But it means, walk after the attributes of the Holy One. Even as He clothes the naked [clothing Adam and Eve with the garments of skins (Genesis 3:21)] - so must you provide clothes for the naked. The Holy One visited the sick [appearing to Abraham after his circumcision (Genesis 18:1)]; so must you visit the sick. The Holy One consoled the bereaved [blessing Isaac after Abraham's death (Genesis 25:11)]; so must you console the bereaved. The Holy One buried the dead [interring Moses (Deuteronomy 34:6)]; so must you bury the dead.<sup>36</sup>*

*To Walk In All His Ways (Deuteronomy 10:12)—These are the “ways of the Lord”: as it is written [Exodus 34:6-7], *The Lord, the Lord, God, merciful and gracious, long-suffering and abundant in goodness and truth, keeping mercy unto the thousandth generation, forgiving iniquity and transgression and sin.*<sup>37</sup>*

*. . . And it shall come to pass that whosoever shall call on the Name of the Lord shall be saved (Joel 3:15). Is it, then, possible for a man to be called by the name of Holy One? But this means: Just, as He is called “merciful and gracious,” . . . so must you be merciful and gracious, and give of your gifts freely to all; just as the Holy One is called “righteous” . . . so must you be righteous. The Holy One is called loving, “. . . so must you be loving. That is why it is said, *And it shall come to pass that whoever shall be called by the name of the Lord shall be delivered (Joel 3:5).* And it also is said, *Everyone that is called by My name, and whom I created for My glory, I formed him, yea I made him (Isaiah 43:7).* And it also is said, *The Lord has made everything for his own purpose. . . (Proverbs 16:4).*<sup>38</sup>*

As a behavioral imperative, *imitatio dei* extends beyond a duty to emulate those attributes of God's mercy explicitly enumerated at *Exodus*

34:6-7. By the exegesis of *Joel* 3:5, a duty to emulate God in every manifestation of His mercy is established.<sup>39</sup>

One manifestation of God's mercy is *shalom* (peace).<sup>40</sup> A particular nuance of this Attribute is the mercy God shows us in preventing the outbreak of discord. In this regard, R. Shimon b. Halafta observes that in the first five days of creation, God created an equal number of items for the heaven and for the earth:

On the sixth day, when He came to create man, He said: "If I create man as one of the upper elements of the universe, the upper elements will outnumber the lower by one created object, and if I create him as one of the lower created objects, the lower will outnumber the upper by one created object." What did He do? He created man of the upper as well as of the lower beings; this is proved by what is written: The Lord God formed man of the dust of the ground (*Genesis* 2:7), i.e., out of the lower parts of creation; And he breathed into his nostrils the breath of life (*ibid.*), i.e., out of the upper spheres.<sup>41</sup>

The very essence of *bakesh shalom* and *imitatio Dei* conduct is to choose the course of action that will best promote long term harmonious relations with one's fellow. Consider the following dilemma that relates to our case study: Suppose *A* knows that *B* erroneously thinks he conferred him with some favor. Now, if *B*'s erroneous impression is the product of *B*'s own "unreasonable assumption," *A* is not obligated to disabuse *B* of his misimpression. But, suppose *A* is convinced that *B* will in any case soon realize his error. Since *B* will be set straight soon, perhaps *A* is obligated not to pass up the opportunity to disabuse *B* of his error. Not doing so will cause *B* to be angry and resentful at *A* for not setting him straight when he had the opportunity to do so. On the other hand, perhaps the best course of action is not to disabuse *B*. Passing up the opportunity to disabuse *B* avoids smashing for *B* his delusion in his face. When *B* will later come on his own to recognize the error of his ways, he will *not* be angry at *A* because he will realize that his error was his own fault and will be glad that *A* handled his unreasonable assumption with silence rather than by smashing his delusion in his face. We offer the thesis that the latter course of action represents the *darkhei shalom* approach for the dilemma.

The formulation that the Sages adopted to inform the townspeople that a supply of meat was not kosher supports the above assertion. Recall that the announcement consisted of *nafla bisra le-vene'i heila*. Because the announcement did not explicitly tell the marketplace that

the meat supply was *tereifa*, some Gentiles would surely be misled into thinking that the day's supply was kosher. Nevertheless, the Talmud regards those who are misled as guilty of self-deception. Consider, however, that the Gentiles who are misled will eventually discover the truth. Why are we not concerned that when the truth is discovered, the Gentiles will harbor enmity toward the Jewish butchers? Taking measures to prevent Gentiles from harboring enmity toward us is a legitimate concern of halakha. It is an aspect of the *darkhei shalom* principle. The general rule here, according to R. Moshe Sofer (Hungary, 1762-1839), is that if infringement of a prohibition which is only rabbinical in nature must be transgressed in order to prevent enmity from erupting against us, violation of the prohibition is sanctioned.<sup>42</sup> Now, if a rabbinical decree is suspended in order to prevent enmity from erupting, how could the Sages sanction *nafla bisra*, which entails the possible creation of enmity? The above difficulty disappears under the assumption that the predictable reaction on the part of those who were deceived when they are set straight is not enmity, but, rather self-blame. This is so because deception here is the result of a failure on the part of the victim to inform him or herself minimally of the workings of the marketplace. The *darkhei shalom* principle hence has no application here.

Further support for our theory can be derived from an analysis of the Mar Zutra incident, discussed above. Recall that Mar Zutra imagined that Rava and Rav Safra came to greet him when he encountered them on the roadside. Rav Safra immediately set him straight, and told him that had they known that he was coming they would have extended themselves even further. Rava, offering the normative view here, told Rav Safra that they bore no disabusing obligation because Mar Zutra was guilty of self-deception. Because R. Safra's conduct preempted Rava, the exact course of action Rava would have preferred is left missing. Two options are open. One is that Rava's preference was for the rabbis to keep their silence and spontaneously change their travel plans. What this would entail would be to escort Mar Zutra to Mahoza and invite him to one of their homes as a guest, just as Mar Zutra had imagined their original intent was. The other is that Rava would have preferred that the rabbis graciously sidetrack Mar Zutra's presumptuous comments and continue on their planned journey to Sikara. This course of action would have resulted in Mar Zutra soon realizing on his own that he had mistakenly sized up the situation that the rabbis were a greeting party for him. In the opinion of this writer, the first option discussed must be rejected. One reason for this is that

## TRADITION

continuing the charade back to Mahoza amounts to affirmatively misleading Mar Zutra that the original encounter was not fortuitous, but instead was a planned act to honor him. Another reason for rejecting this approach is that the Talmud, as will be recalled, cites the Mar Zutra incident as a proof for validating the *nafla bisra le-vene'i heila* formula for announcing that the day's supply of meat is not kosher. But, if the correct course of action in the Mar Zutra incident is to perpetuate his delusion by accompanying him in silence back to Mahoza, then, the incident does not serve to validate the *nafla bisra* announcement. This is so because the harm *nafla bisra . . .* causes is of a different order than the harm non-disclosure by the rabbis' causes. In the former case, the victims will initially feel an unwarranted sense of indebtedness to the Jewish butchers for the bargain sensation they feel. But, this sense of bargain will eventually turn into an enmity toward the butchers when they eventually realize that they were duped. In sharp contrast, accompanying Mar Zutra to Mahoza without disclosing to him that they did not originally intend to form a greeting party for him, leaves Mar Zutra with a permanent unwarranted sense of indebtedness to Rava and Rav Safra.

Perhaps the first approach can be rescued from the above difficulties. True, on the face of it, silently escorting Mar Zutra back to Mahoza makes Rava and Rav Safra guilty of affirmatively deceiving him that they originally came as a greeting party. But, if certain heroic assumptions were in place, this would not be so. Consider the possibility that Rava and Rav Safra were accompanied by students, and the students carried for them the provisions and personal effects they would need for their journey to and stay in Sikara. Because the students stood in the background, Mar Zutra did not immediately take notice of them in all detail. Sometime during the trip back to Mahoza, Mar Zutra would surely take notice of the provisions and suitcases the students were carrying, and thereby disabuse himself of the notion that the rabbis came to the roadside to greet him. Moreover, if Rava and Rav Safra came as a greeting party, then Mar Zutra should expect to find prepared—as opposed to makeshift—hospitality when he arrives in either Rava or Rav Safra's home. Finally, given that the rabbis spontaneously changed their travel plans, would they not encounter many surprised faces as they made their way back to Sikara and to their respective households. Given the impossibility for Rava and Rav Safra to orchestrate the entire gamut of events and reactions necessary to perpetuate the charade, Rava felt that silently escorting Mar Zutra back to Mahoza would not make the rabbis guilty of affirmatively deceiving Mar

Zutra. Some way along the journey back to Mahoza, Mar Zutra would surely disabuse himself of his original misperception.

In his treatment of the Mar Zutra incident, R. Joseph Hayyim b. Elijah al-Hakkam (Baghdad, 1834-1909) understands that the rabbis, at the initiative of Rav Safra, actually escorted Mar Zutra back to Mahoza. Rav Safra's initiative preempted Rava. What would Rava have done? He, too, according to R. Joseph Hayyim would have taken the initiative to spontaneously change his and Rav Safra's travel plans and escort Mar Zutra to Mahoza. What Rava objected to was that Rav Safra revealed to Mar Zutra that he and Rava did not come to greet him. In Rava's opinion, The rabbis should have silently escorted Mar Zutra to Mahoza.<sup>43</sup> Without invoking the heroic assumptions outlined above, the above approach makes Rava and Rav Safra guilty of affirmatively deceiving Mar Zutra.<sup>44</sup>

Take note that no practical difference in halakha arises between the competing theories as to what Rava's proposed action consisted of. Both theories must be formulated in a manner as not to make the rabbis guilty of affirmatively deceiving Mar Zutra. Because the theory that makes the least assumptions is preferred, our working hypothesis will be that the rabbis graciously sidetracked Mar Zutra's remark and continued on their planned journey.

Understanding Rava's proposed prescription to call for the rabbis to graciously sidetrack Mar Zutra's presumptuous remarks and continue along with their original travel plans to Sikara clarifies an apparent difficulty. Rava rejected Rav Safra's approach because this rabbi's approach hurt Mar Zutra's feelings. But, Rava's proposed approach of graciously sidetracking Mar Zutra's presumptuous remarks and continuing with his original travel plans would mean that Mar Zutra's delusion that the rabbis came to greet him would be soon shattered. Rava's approach hence also entailed hurting Mar Zutra's feelings. The difference is, however, clear-cut. Explicitly telling Mar Zutra that they did not come in his honor deflates Mar Zutra and casts him as someone who is so possessed with a sense of self-importance that he expects the rabbis to know of his itinerary, although he gave them no advanced notice of it. Graciously sidetracking Mar Zutra's comments and continuing with their original travel plans communicates this same deflating message to Mar Zutra, albeit in a much softer tone. Here is another example of the Talmudic adage *milla be-sela mashtuka be-terein* ("a word is worth a *sela*, silence two *selas*"; *Megila* 18a). Moreover, once Mar Zutra realizes the truth, he should take the rabbis' original silence as a kindness rather than as a reason to bear ill feel-

ing toward them. Silence is a very fungible commodity. It allows Mar Zutra to read into it that the rabbis wished that circumstances were different and regretted that they were not in fact a greeting party.

What proceeds from the above analysis is that the rabbis of the Talmud assessed that under certain conditions a duped individual will not harbor ill feeling toward the individual who originally failed to correct his misconception. This results when the duped feeling is essentially the victim's own doing. In such a case, when the victim discovers his error he will either blame himself for it, or even be happy that he discovered the error himself, instead of having someone correct him.

### THE REASONABLENESS CRITERION AND THE HOSPITAL VISIT CASES

Central to analyzing the various scenarios presented is the reasonable-ness criterion with its various nuances. Before applying this criterion to the specific scenarios presented, let's relate this principle in general terms to the hospital visit cases. One salient feature to consider in applying the "reasonableness" criterion is a consideration of Rabbi Samson's job description and the demographics of his shul. With the aim of facilitating the analysis, let's assume that visiting the sick was part of the job description that Rabbi Samson received when he accepted his position as the rabbi of Beth Kodesh. Let's further assume that Beth Kodesh is a small synagogue and the occurrence that two members of the synagogue are in the same hospital at the same time is rare. For a patient to assume that Rabbi Samson made a special trip to the hospital to see him or her is, therefore, reasonable.

#### *Farbstein:*

The Farbstein scenario breaks down into two considerations. One is whether Samson is entitled to the goodwill his visit generated. The second is whether Samson should forego the opportunity to capture this goodwill if he feels that his silence might have an unfavorable impact on his long-term relationship with Farbstein.

With respect to the first issue, one cannot make a strong case for relieving Rabbi Samson of a disabusing responsibility to Mr. Farbstein. The most basic point to make here is that Farbstein's assumption that Samson made a special trip to the hospital to see him is reasonable.

Perhaps, Samson should be relieved of a disabusing responsibility to Farbstein on the basis of his assessment that had Tsevi not been in the

hospital that day he would have made a special trip to Bet Miriam to visit Farbstein. Is Rabbi Samson's assessment in this regard reliable? No. Consider that Samson has no consistent practice regarding hospital visits for congregants. In practice he responds to the demands of *bikkur holim* sometimes with a telephone call, sometimes with a hospital visit and sometimes with a call or home visit following the hospital stay. Given the variety of these responses, Samson's assessment that he would have made a special trip to visit Farbstein had circumstances not made this unnecessary relates to the realm of the hypothetical. Unless Farbstein had a previous hospital stay and Samson visited him, Samson's assessment should be regarded as unreliable.

The circumstance that Farbstein was surrounded by his family when Rabbi Samson made his visit creates a *hever ir* situation. Nevertheless, *hever ir* is not an extenuating factor unless we are reasonably certain that the individual who is the target of the honor will not catch on later to the misimpression. This is certainly not the case here. Consider that a sizable crowd of curious onlookers watched as Refuah brought Tsevi to the hospital. The likelihood is that the entire community, Farbstein included, will soon know of Tsevi's accident in all its minutiae. Because Farbstein will soon learn of primary reason Samson came to Bet Miriam that day, the *hever ir* leniency does not apply.

Reinforcing the judgment that Rabbi Samson should disabuse Mr. Farbstein of his erroneous impression is that the *bakesh shalom* and *imitatio dei* principles require him to consider the impact his silence will have on his long-term relations with Farbstein. To be sure, playing along with the notion that he made a special trip to visit Farbstein will buy that man's goodwill in the short run. But as soon as Farbstein gets wind of what brought Samson to the hospital that day, the goodwill he originally felt toward Rabbi Samson would dissipate into resentment for being misled. Moreover, when the Farbsteins learn of Tsevi's accident they might even feel slighted that the rabbi did not share the event with them, especially, in view of the fact that the entire episode would soon become a matter of public knowledge.

The upshot of the above analysis is that Samson bears a disabusing responsibility to Farbstein. Because the goodwill Samson reaps is undeserved, listening to Farbstein's false statement without protest makes Samson guilty also of accepting a false report.

*Plotkin:*

The salient feature of the Plotkin scenario is that Rabbi Samson *affirmatively* misleads Plotkin into thinking that he made a special trip to

## TRADITION

the hospital to visit him. Samson does this by saying to Plotkin, “I came to Bet Miriam to visit you.” On the face of it, this statement is not false. Specifically, Samson did leave his home with the intention to visit Plotkin. Consider, however, that Samson’s main purpose in coming to Bet Miriam was to visit Dubchek. His statement hence violates the interdict against *sheker*. Moreover, by conveniently omitting mention of the main reason for coming to Bet Miriam, Samson, at least temporarily, reaps from Plotkin more goodwill from his visit than he deserves. Consequently, Samson violates *geneivat da’at* law as well as *sheker*.

The *darkhei shalom* principle provides only limited defense here. One gives legitimacy to *sheker* and *geneivat da’at* to promote peace only when the objective is to end discord or prevent a rift. Telling Plotkin that “you certainly deserve a special visit” prevents a strain with him and hence should be said even if Samson does not himself *believe* the statement. Samson, nonetheless, should have stopped right there! The use of *sheker* and *geneivat da’at* is, however, not legitimate when the objective at hand is only to mollify or prevent the occurrence of a momentary ruffled feeling. Telling Plotkin that he “came to Bet Miriam to visit him” hence violates for Samson the prohibition against *sheker*. Moreover, if the consequence of promoting peace by the use of a lie is to secure a benefit for oneself, the tactic is prohibited. This is the case here; as Samson buys with his lie not only peace with Plotkin, but also an unwarranted feeling of indebtedness from him to boot. Last, Samson’s lie surely will explode in his face in the end, when Plotkin learns that Dubchek was in Bet Miriam the same time he was there. When Plotkin gets wind of this, the original cynicism he expressed to the rabbi might very well turn into smoldering hatred. Moreover, consider the distinct possibility that as soon as Plotkin hears that Dubchek was in Bet Miriam at the same time he was there, he will begin to tell his friends that the rabbi was a “liar” for saying he came to Bet Miriam to visit him. Hence, the risk Samson runs by not telling Plotkin the truth is that his conduct might very well provoke Plotkin to “badmouth” him. If, in fact, Plotkin does snarl about Rabbi Samson, Plotkin violates the biblical prohibition against *lashon ha-ra* (tale bearing).<sup>45</sup> In fact, it was Rabbi Samson’s conduct that provoked Plotkin to carp about him. If *A* provokes *B* to speak *lashon ha-ra*, *A* violates the prohibition of *lashon ha-ra* on a rabbinical level, called *avak lashon ha-ra*.<sup>46</sup>

Given these nasty long-term consequences for Samson’s relationship with Plotkin, both *darkhei shalom* and *imitatio Dei* reinforce the

above judgment that Samson should not withhold from Plotkin his primary reason for coming to Bet Miriam.

*Lemnick:*

The Lemnick scenario bears a striking affinity to the Mar Zutra incident discussed above. Recall that Beryl Lemnick bumped into Rabbi Samson as he was being wheeled into his room at Royal Blue Hospital and imagined that the rabbi had rushed to his side to be there for him. Consider that Samson lives and works in Eden Commons, and in no more than twenty minutes after Lemnick was brought to Royal Blue, a 40-minute drive from Eden Commons, the rabbi was already at his side. What an amazing feat! Given that Lemnick's sizing up of the situation was unrealistic, *geneivat da'at* law does not require the rabbi to set Lemnick straight and inform him that he just happened at the time to be in the hospital to visit his uncle and was not even aware of the accident.

Because Rabbi Samson is entitled to any goodwill he reaps from the incident, the false assessment Lemnick makes of the nature of Samson's visit will not result in any injustice or perversion of interpersonal relations. Accordingly, listening to Lemnick's misimpression of his hospital visit without protest does not make Samson guilty of accepting a false report.

Suppose we inject a *hever ir* element into the Lemnick scenario. Specifically, let us assume that when Rabbi Samson encountered Lemnick, the patient was surrounded by his family. Does *hever ir* provide additional grounds for relieving Samson of a disabusing responsibility in the Lemnick scenario? No. Recall that Samson's encounter with Lemnick was fortuitous. Hence, injecting a *hever ir* element into the case does not introduce an extenuating element for the rabbi not to disabuse Beryl of his misperception. *Hever ir* is legitimate to invoke only when *A sets out to honor B* and devises a scheme to make *B* imagine that he honored him more than was actually the case. But, in the case at hand, the fact remains that the encounter between Samson and Lemnick was fortuitous, notwithstanding that Lemnick was surrounded by a *hever ir* at the time of their encounter.

Now let us relate *bakesh shalom* and *imitatio Dei* to the Lemnick scenario. Will Lemnick eventually come to realize that Samson did not rush to his side? If this likelihood is strong, then, should we not be concerned that Lemnick, as a result, will bear ill feeling toward the rabbi for not disabusing him immediately of the notion that he rushed to his side? In assessing this likelihood, we assume that Lemnick will tell his friends that Rabbi Samson rushed to be at his side shortly after his acci-

dent. Precisely because Lemnick's interpretation of events is unreasonable, his friends will probably react to the story incredulously. Because his story is met with disbelief, Lemnick will soon reinterpret events and realize that his encounter with Rabbi Samson was fortuitous. At that juncture, Lemnick will feel assuredly that his indebtedness to the rabbi was all along mistaken, but should we be concerned that Lemnick's reassessment will also lead him to harbor anger toward the rabbi for not disabusing him immediately? No. Given that Lemnick's false belief was produced by his own unreasonable assumption and Samson did nothing to affirmatively reinforce the false belief, Lemnick should logically bear no ill feeling toward the rabbi. Moreover, playing along with Lemnick's false belief is probably the most gentle and kind way to deal with an awkward social situation. When Lemnick realizes on his own that his original assessment was wrong, he will be glad that Samson did not react to his emotional—but irrational—outburst by shattering his delusion in no uncertain terms.

*Drake:*

The basic issue the Drake scenario presents is the "reasonableness" of Drake's assumption that Rabbi Samson came to the breakfast to honor him. Arguing in the negative is the consideration that the sponsor of the breakfast was the Rabbinical Board of Eden Commons. Should Drake not consider that some of the rabbis of the Board would attend no matter what? A loyalist will plan to attend the event even if it turns out that he has no or little connection with this year's honoree. Actually, Samson fell into this category. Counterbalancing this argument is that only an insider or someone who attends the breakfast on a regular basis would notice this. Another factor supporting the reasonableness of Drake's assumption is that Rabbi Samson realized almost immediately that he was the only rabbi in attendance who had any semblance of a social relationship with Drake. Consider also that the event took place in the Hidekel section of Eden Commons, which was within walking distance of Samson's home. Consider also that Rodef Hessed charged no covert for attending the breakfast. Instead, all contributions at the breakfast were voluntary. Hence, coming to the affair involved no extraordinary expenditure of time or money for Samson. The balance of the above considerations argues that Drake's assumption that Rabbi Samson came to the breakfast in his honor was reasonable. Based on the reasonableness criterion, Samson should have disabused Drake of his misimpression. *Geneivat da'at* law, therefore, apparently calls for Samson

to disabuse Drake on the spot of his erroneous impression of the goodwill he conferred him.

*Hever ir* should, however, find a straightforward application here. To be sure, Samson's *primary* motive in coming to the breakfast was to socialize with his colleagues. Nevertheless, before he stepped into the breakfast hall, Samson was aware that Rodef Hessed would honor Solomon Drake at this event. Samson came to the breakfast to honor Drake also, albeit not on the level of honor Drake imagined. Moreover, the purpose of the breakfast was to bestow public recognition to Solomon Drake. Every attendee is a part of this public recognition and contributes to it by his or her mere presence. Since *hever ir* licenses someone who sets out to honor a fellow to affirmatively maneuver the honoree into believing that the honor he is bestowing is more than it actually is, Samson should be free of a disabusing responsibility to Drake.

We must mention, however, one caveat. Since Samson's main purpose in coming to the Rodef Hessed function is to socialize with his colleagues, it should surprise no one that Samson's usual practice is to discreetly slip away from the affair before the official program begins. Not this year! Beginning from the moment that he failed to disabuse Drake of the reasonable assumption that he came to the breakfast to honor him, the event becomes for Samson much more than just a medium for socializing with his colleagues. To avoid making his earlier conduct and remarks to Drake a mockery, Samson should be hostage to the breakfast until Drake receives his plaque.

Given the fact that Drake, in all probability, will never get wind of the truth that Samson's primary reason for attending the annual breakfasts is to socialize with his colleagues, *bakesh shalom* and *imitatio Dei* do not require him to disabuse Drake on the spot of his erroneous belief.

***Belzag:***

The Belzag scenario bears a striking resemblance to the Mar Zutra incident. Consider that the covert per person was \$250. Coming to the Banquet would have entailed a \$500 expense for the Samsons. This sum represents a sizable chunk of Rabbi Samson's weekly salary at Beth Kodesh. Given that Torah Academy is not an Eden Commons institution and Samson is not an alumnus of the yeshiva, is it reasonable to assume that the Samsons would incur such a large expense to be at the banquet? Because of the considerable expense involved, almost all of Belzag's close friends came to the affair without their spouses. If nothing else, Matilda's presence at the affair should have been a "giveaway"

to the “reasonable” man that the Samsons were the guests of one of the other honorees. Perhaps Belzag erroneously assumes that rabbis attend the affair either on a complimentary or cost basis. Consider, however, that anyone who operates under this assumption would concede readily that this applies only to either a rabbi whom the honoree tells the yeshiva to invite in his or her honor or to a rabbi who is connected to the yeshiva. In any case, the privileged rabbi theory does not explain the presence of Matilda. Moreover, as a former member of Beth Kodesh, Belzag should know that the usual practice is for the honoree to treat Rabbi Samson with a complimentary ticket. Belzag knows fully well that he neither asked Rabbi Samson to be his guest at the affair, nor did he request that the yeshiva send an invitation. Does Belzag assume that Rabbi Samson got wind of the affair through a newspaper ad, called the yeshiva, and requested an invitation? Highly unlikely! Should Belzag not consider the reasonable possibility that his lack of action sent a clear signal to Samson that he was not interested that the rabbi attends the affair? Given this backdrop, it is unreasonable for Belzag to imagine that Rabbi and Mrs. Samson came to the banquet in his honor. Because Belzag’s assumption is unreasonable, Samson bears no responsibility to correct his misperception.

Let’s explore whether the *hever ir* leniency applies to the Belzag scenario. To be sure, Eytan Kramer’s largess is what makes it possible for Rabbi Samson and his wife to attend the Torah Academy banquet. There can be no doubt that the primary purpose for the couple in going to the banquet is to honor Eytan Kramer. Nevertheless, they come to the affair to honor Belzag, also. Moreover, coming to the banquet automatically bestows honor on Belzag. This is so because part of the honor Torah Academy bestows upon its honorees consists of the public recognition it gives to them. Each dinner attendee is an integral part of that public. By gracing the affair with their presence, each attendee contributes to the honor that is being bestowed on the honorees. Thus, the Samsons presence at the affair confers honor on Belzag, although not anywhere to the degree Belzag imagines. Given that Torah Academy’s banquet is a *hever ir* setting for each of its honorees, there should be no objection for an attendee to affirmatively make an honoree imagine that he is conferring him with greater honor than is the case. But, one can surely object to this line of reasoning. Before the evening is over, Belzag will surely realize that the Samsons were Kramer’s guests. Because he, himself, is an honoree, Belzag surely will peruse the Dinner Journal the yeshiva gives out to each attendee. If

he bothers to read Kramer's message, he will see that Kramer gives honorable mention to the rabbi. What Belzag may not know is that many years before Kramer's meteoric rise in the financial world, Rabbi Samson was his youth leader at Torah for Teens, an outreach program for youth in public schools. Samson knew all this when Belzag thanked him and his wife for coming to the affair in his honor. Moreover, Samson knew that Kramer would be one of the speakers that evening. Is it out of the realm of reasonable possibility that Kramer would give him honorable mention in his speech? Finally, precisely because Belzag's assumption that the Samsons primarily came to honor him is unreasonable, many of Belzag's friends will be wondering what in the world the Samsons are doing at this banquet. The drive to solve this puzzle will undoubtedly sprinkle the chitchat of the cocktail hour. Someone will hit upon the idea of taking a peak at the banquet journal to solve this mystery. Soon the secret will be out and everyone will know, including Belzag. Since Samson should realize in advance that before the evening is out Belzag will discover that Eytan Kramer is the primary reason for his coming to the Banquet, *hever ir* does not supply an extenuating factor for excusing him from disabusing Belzag of his error at the beginning of the affair.

The judgment made earlier that *geneivat da'at* law does not require Samson to disabuse Belzag is reinforced by the *bakesh shalom* and *imitatio Dei* behavioral imperatives. Consider that Belzag's false belief was produced by his own "unreasonable" assumption. Take note also that Rabbi Samson did nothing to affirmatively reinforce Belzag's erroneous belief. Against this backdrop, when Belzag learns on his own later in the evening that Rabbi and Mrs. Samson did not come to the affair in his honor, he will not be angry at them for not disabusing him immediately of his error. Rather, he will blame himself for the "unreasonable" assumption he made. To boot, he may even be glad that they chose not to embarrass him by disabusing him on the spot in no uncertain terms.

*The Friday Night Lecture:*

The reasonableness criterion provides the starting point for analyzing the ethics for Samson not to disclose to his audience that he made use of *Berit Yehuda* to prepare his lecture. Consider that thorough preparation combined with the knowledge of which sources to consult will assuredly generate for Samson goodwill for the lecture he delivers. There can be no doubt that this goodwill is his legitimate entitlement. Accordingly, if the audience generally presumes that Samson makes use

of secondary sources and eclectic works to prepare his lecture, his failure to give attribution to *Berit Yehuda* does not project him as more scholarly and erudite than he actually is. Does halakha give Samson a license to rely on his own intuition that this is in fact the case? Recall that the Sages devised a proclamation for people to announce that the day's supply of meat was not kosher in the form of the statement: "Meat for the army has fallen into our hands" (*nafla bisra le-vene'ei beila*). The rabbis relied here on their *intuition* that this formulation would not deceive non-Jews into thinking that the meat was actually kosher. The difference between the two cases is, however, clear-cut. Intuition is reliable only when the decision-maker faces the certainty of adverse consequences should circumstances prove he was in error. The prospect that an erroneous judgment will inflict punishment on the decision-maker works to thrust that person into the realm of unbiased thinking. This was the case in the *nafla bisra* incident. If circumstances would prove that the Rabbis erred in their judgment and that *nafla bisra* misled non-Jews into believing that the meat they were buying was kosher, then the marketplace would become unsettled and the number of complaints against Jewish butchers would proliferate. In addition, the rabbis themselves would be accused of profaning God's name (*hillul ha-Shem*). The knowledge that these frightening consequences follow on the heels of error objectifies the Sages' thinking and enhances the reliability of their original assessment.

A different judgment must, however, be made for the case at hand. What adverse consequences does Samson face in the event his assessment is wrong? Because punishing consequences do not follow on the heels of error, Samson's intuition in the matter must be regarded as self-serving and hence unreliable.

Why is it wrong for Samson to rely on his intuition in this matter? The operative principle here is the *mi'ut ha-matsui* (small, but significant minority) rule. This rule states that Halakhah regards a condition as prevailing even though it is not based on observed fact but only on a small, but significant statistical probability.<sup>47</sup> To illustrate: The rule is that the majority of those who engage in ritual slaughter are presumed to be competent and certified. Nonetheless, a small, but significant minority of ritual slaughterers is not competent and is not certified. Because the number of those not certified constitutes *mi'ut ha-matsui*, we may not rely on the majority rule when the would-be ritual slaughterer stands in front of us. Here, we may not allow him to proceed without first investigating his credentials.<sup>48</sup>

The *mi'ut ha-matsui* rule tells us that there will certainly be some people in the audience that will gather a overly favorable impression of Samson's scholarship on account of the rabbi's failure to disclose that he used *Berit Yehuda* to prepare his lecture. Failure to make the disclosure hence puts Samson at risk of violating the *geneivat da'at* interdict. But, what of the principle, discussed earlier, that an individual is not responsible to disabuse a false impression when it is the product of self-deception? What this points to is a need to come up with a quantitative measure for *miut ha-matsui*. If the percentage of people in the audience left with the misimpression falls below this threshold number, then, the judgment will be that these people were guilty of self-deception. If, on the other hand, the percentage left with the misimpression is higher than this benchmark, then, Samson's non-disclosure of his sources is not acceptable.

How is *miut ha-matsui* translated in quantitative terms? Addressing himself to this issue, R. Jacob b. Aaron (Karlin, d. 1844) regards *mi'ut ha-matsui* as generally to translate into a 10% benchmark.<sup>49</sup> Disputing R. Jacob b. Aaron, R. Yosef Shalom Elyashiv (Israel, contemporary) feels that *mi'ut ha-matsui* translates into a 15-20% range. The specific issue R. Elyashiv dealt with is the prohibition to eat fruits and vegetables without first being sure that the produce is free of worms. If 15-20% of a particular species is known to contain worms, it is prohibited to eat the species without first ascertaining that the fruit or vegetable at hand is free of worms.<sup>50</sup>

Let us adopt R. Elyashiv's benchmark of *mi'ut ha-matsui* for the case at hand. Accordingly, if Samson does not want to disclose to his audience that he used *Berit Yehuda* to prepare his lecture, he must first conduct a scientifically valid survey to confirm that less than 15-20% of his audience does not presume that he uses secondary works in preparing his lecture.

Suppose that Samson conducts the necessary survey and the data confirm his intuition. What the outcome of the survey does is only to make Samson's non-disclosure of *Berit Yehuda* free of a *geneivat da'at* violation. Not telling the audience of his debt to *Berit Yehuda* may, however, violate other ethical duties.

One problem Samson's non-disclosure entails is that his conduct falls short of the demands of the law of attribution. Repeating a saying in the name of the person who said it is counted by the Tanna in *Avot* as one of the forty-eight qualities necessary to acquire the Torah. The Tanna goes on to say: "Whoever repeats a thing in the name of the one who said it brings redemption to the world, as it is said: 'And Esther said to the king in the name of Mordecai' "(*Avot* 6:6).<sup>51</sup> To be sure,

Samson gives proper attribution to the originators of all the concepts and ruling he mentions. But, he does not look up these sources in their original works, but instead relies on R. Bloi's summaries of these works. R. Bloi hence assumes the role of the first teacher in a chain of teachers. In this regard the Talmud at Nazir 56b informs us that for a teaching reported in a chain of three or more teachers, we mention, in the attribution, the first and last conveyors of the law, but we need not mention the intermediate conveyors. Thus, R. Yehuda haNasi presents in his Mishna a teaching of R. Elazar in the name of R. Yehoshua b. Hananya; even though R. Elazar did not learn the dictum directly from R. Yehoshua b. Hananya, but instead only from R. Yehoshua b. Mamal, who, in turn, learnt it from R. Yehoshua b. Hananya. Since R. Bloi is for Rabbi Samson the first teacher in a chain of teachers, the law of attribution requires Samson to mention R. Bloi.

A variation of the above case occurs when Samson looks up all the sources R. Bloi quotes and studies them in the original. Because Samson is now in a position to directly report on what these authorities have to say, these authorities now become Samson's first teachers in a chain of teachers and the role R. Bloi plays here is reduced to someone who made Samson aware of their teachings. In the latter scenario the law of attribution does not require Samson to make mention of R. Bloi.

Samson's failure to acknowledge R. Bloi not only violates the law of attribution, but also bespeaks of ingratitude and disrespect for someone who has effectively become his teacher of Torah. We need only take note of the dictum of the Tanna in Avot (6:3): He who learns from his fellowman a single chapter, a single Halakhah, a single verse, a single Torah statement, or even a single letter, must treat him with honor . . . .

The upshot of the above analysis is that without a validating survey to confirm his intuition that the audience is well aware without being explicitly told that he uses secondary sources to prepare the lecture, Samson's silence on the role *Berit Yehuda* played in preparing his lecture violates *geneivat da'at* law. Moreover, even if Samson has this validating survey in hand, not to acknowledge R. Bloi does injustice to the law of attribution and bespeaks of ingratitude and disrespect to someone who has effectively become his teacher of Torah. The extent of this acknowledgment will depend on the extent that Samson relied on *Berit Yehuda* in preparing his lecture. The greatest acknowledgment will be owed if *Berit Yehuda* both practically laid out his lecture for him and this work made him aware of the issues he spoke about for the first time.

NOTES

I would like to thank Leon M. Metzger for his comments and editorial suggestions.

1. *Mo'ed Katan* 26b; Nahmanides (Spain, 1194-1270), *Torat haAdam, Sha'ar haSof*; R. Jacob b. Asher (Germany, 1270-1343), *Tur, Yore De'a* 337 on understanding of R. Joel Sirkes (Poland, 1561-1650), *Bah, ad locum*; R. Joseph Caro (Safed, 1488-1575), *Shulhan Arukh, Yore De'a* 337; R. Jehiel Mikhel Epstein (Belorussia, 1829-1908), *Yore De'a* 337:1-2.
2. R. Jehiel Mikhel Epstein *Ar. ha-Sh., op. cit.* 337:2.
3. *Leviticus* 25:17.
4. Mishna *Bava Metsia* 4:10.
5. R. Menahem b. Solomon Meiri (Perpignan, 1249-1316), *Bet haBehira, Bava Metsia* 59a. Pricing an article with no intention to buy it is prohibited, according to R. Samuel b. Meir (France, ca. 1080-1174, *Rashbam, Pesahim* 114b) on account of the possible loss this behavior might cause the vendor. While the vendor is preoccupied with the insincere inquiry, serious customers may turn elsewhere.
6. R. Solomon b. Isaac, *Rashi, Leviticus* 25:17.
7. R. Aaron haLevi (Barcelona, 1235-1300), *Sefer haHinnukh* 338.
8. R. Aaron Levine (Toronto, 1942-, *Zikhron Meir*, p. 83, nn. 83-84) makes this point in general terms without drawing a distinction between what the standard halakha prescribes for interaction with the seriously ill and the ordinary standard prescribed by the *ona'at devarim* interdict.
9. Supportive of the notion that the extra sensitivity halakha prescribes vis-à-vis the seriously ill does not apply across the board to all hospital patients is the definition halakha adopts for the seriously ill in connection with a related issue, i.e., the transfer of property. Ordinarily, the transfer of property is effected only by means of the execution of an appropriate symbolic act (*kinyan*). The Sages, however, simplified the process for the seriously ill. The simplification becomes operative in the instance where the seriously ill person communicates a desire to transfer his entire property, without specifically expressing that he is doing so in anticipation of his death. This case is referred to in the talmudic literature as *mattenot shekhiv me-ra* (lit. the death bed gift). Out of concern that the *shekhiv me-ra's* condition will deteriorate if he feels that his instructions will have no legal effect, the Sages ruled that the instructions of the *shekhiv me-ra* are retroactively binding should he die, without the need for any symbolic act. *Shekhiv me-ra* is defined by Maimonides (Egypt, 1135-1204, *Zekhiyya uMattana* 8: 1-2) as follows:

A blind, lame or handless person, and similarly, one who feels pain in his head, his eye, his hand, his foot or the like, is considered to be a healthy person with regard to all matters that concern his purchases, his sales or gifts that he gives.

However, when a person becomes ill to the extent that he feels weak throughout his entire body—indeed, because of his illness, his strength has dwindled to the extent he cannot walk on his feet in the marketplace, and he is confined to his bed—he is referred to as a

*shekhiv me-ra*. The laws applying to his gifts differ from those applying to the gifts given by a healthy person.

Maimonides' text, according to R. Joshua b. Alexander ha-Kohen Falk (Poland, 1555-1614, *Derisha, Tur, Hoshen Mishpat* 250:8), lends itself to the interpretation that qualifying as *shekhiv me-ra* is a patient whose general weakness in strength does not allow him to venture outside his home, even if that person is not actually bedridden. If this person gives an instruction regarding the distribution of his entire property, his instructions become retroactively legally binding if he dies, with no need for a *kinyan*. If, however, the patient is so weak that he is actually bedridden, any instruction he gives regarding the disposition of his property, whether it relates to his entire wealth or not, becomes legally binding without need for a *kinyan* because we assume that the instruction was made in anticipation of imminent death.

Another view is expressed here by R. Yom Tov Vidal (Toloso, 14<sup>th</sup> cent., *Maggid Mishne, Yad*, loc. cit.). In his understanding, Maimonides' definition of *shekhiv mera* is more narrow. In the latter's thinking, *shekhiv me-ra*'s status obtains only if the patient (*P*) is actually bedridden. A special variant of *shekhiv me-ra* obtains when an illness suddenly befell *P* and the condition worsened. Here, any instruction *P* gives regarding the disposition of his assets, whether in full or in part, is presumed to have been made in anticipation of death, and therefore becomes effective without the usual legal requirements. (See *Yad, ad loc.* 8: 24).

Let us take note that the rationale behind both the extra sensitivity prescribed for the seriously ill and the easing of the usual procedures required for the transfer of property for the *shekhiv me-ra* is the same, namely, the concern that the condition of the patient may deteriorate. (*shema ti-taraf da'ato*). Given that the rationale behind the two laws is the same, the medical condition the two laws refer to should also be the same. What all definitions describing the *shekhiv me-ra* portray is an illness that has so generally debilitated the strength of the patient that he anticipates death. The definition we have adopted in the text for a seriously ill person in respect to when the extra sensitivity requirement kicks in is therefore consistent with both R. Vidal and R. Falk's views' on Maimonides.

10. R. Jonah b. Abraham Gerondi (Spain, ca. 1200-1264), *Sha'arei Teshuva, sha'ar 3, ot 184*.
11. R. Yom Tov Ishbili (Seville, ca. 1250-1330), *Ritva, Hullin 94a*.
12. *Rashi, Hullin 94a*.
13. Aaron Levine, *Economic Public Policy and Jewish Law* (Hoboken, New Jersey: Ktav Publishing House Inc., Yeshiva University Press), pp. 69-72.
14. The *Mishna* is divided into six orders (*sedarim*). These are (1) *Zera'im* ("seeds"), (2) *Mo'ed* ("festivals"), (3) *Nashim* ("women"), (4) *Nezikin* ("damages"), (5) *Kodashim* ("holy things"), and (6) *Taharot* ("purities"). The various tractates of the Babylonian Talmud fit into these orders. For the Jerusalem Talmud, the *Kodashim* and *Taharot* orders are missing.
15. *Economic Public Policy and Jewish Law, op. cit.*, pp. 72-77.
16. R. Solomon b. Abraham Aderet (Barcelona, 1235-1314, *Rashba, Ketubot 34a*) explicitly espouses this position. The specific case he deals with is the following: *A* becomes aware that *B*'s animal is lying in his courtyard. *A*

decides not to return the animal to *B* and instead to acquire it unlawfully by virtue of the fact that the animal is lying in his property (*kinyan hatser*). Notwithstanding that *A* committed no affirmative act of misappropriation (*ma'ase geneiva*), his acquisition of *B*'s animal by means of *kinyan hatser* makes him a thief. In the opinion of R. Aryeh Loeb b. Yosef haKohen Heller (Poland, 1745-1813, *Ketsot haHoshen, Shulhan Arukh, Hoshen Mishpat*, 348:2), a person does not legally become a thief unless he commits an affirmative act of misappropriation (*ma'ase geneiva*). If we follow *Ketsot*'s line, we should formulate the *geneivat da'at* interdict in terms of the prohibition against *sheker*.

17. *Betsa* 16a.
18. *Rashi, Betsa* 16a.
19. Illustrating the phenomenon of cognitive dissonance is the Kassarian and Cohen study, which investigated the effect the Surgeon General's Report, had on smokers' attitudes and behavior. The findings showed that 36.5 percent of the surveyed smokers did not believe that the report had established a linkage between smoking and cancer. Moreover, the figure among heavy smokers was 41 percent, suggesting that the more committed one is to a product, the greater the dissonance and the less likely one is to admit the product's adverse effect. Study cited in Richard L. Oliver, "An Interpretation of the Attitudinal and Behavioral Effects of Puffery", *Journal of Consumer Affairs* 13, no. 1, (March 1979), pp. 8-27.
20. *Economic Public Policy and Jewish Law*, op. cit. pp. 78-80.
21. R. Aryeh Judah b. Akiba, *Lev Arye, Hullin* 94a.
22. R. Moshe Mordecai Epstein, *Resp. Levush Mordecai* 24.
23. R. Eliezer Meir Preil, *Ha-Me'or* 1:26-27.
24. R. Moshe Feinstein, *Iggerot Moshe, Yore De'a* 2:61.
25. *Economic Public Policy and Jewish Law*, op. cit. pp. 69-73.
- 25a. See R. Isaac b. Jacob Alfasi (Algeria, 1012-1103), *Rif, ad loc.*; R. Asher b. Jehiel, *Rosh, Hullin* 7:18; *Tur, Hoshen Mishpat* 228:7; *Sh. Ar., Hoshen Mishpat* 228:8; *Arukh ha-Shulhan, Hoshen Mishpat* 228:3.  
R. Hayyim David ha-Levi (Israel, 1924-1998, *Ase Lekha Rav* 4:61) contends that a *baraita* cited in *Jerusalem Talmud, Demai* 4:3 stands in opposition to the *hever ir* leniency. Maimonides' omission of the *hever ir* leniency is therefore taken by him to amount to a rejection by Maimonides of this dictum, in accordance with the *Jerusalem Talmud*.
26. R. Samuel Eliezer b. Judah ha-Levi Edels, *Maharsha, Hullin* 94a.
27. R. Yom Tov Ishbili, *Ritva, Yevamot* 65b.
28. *Rashi* on *Exodus* 23:1.
29. R. Aaron ha-Levi, *Sefer haHinnukh* 74.
30. R. Nahum Yavrov, *Niv Sifatayim*, p.70.
31. R. Menahem b. Solomon Meiri, *Bet haBehira, Yevamot* 63a; R. Joseph Epstein (New York, contemporary), *Mitsvat haShalom*, 547.
32. R. Yehezkel Abramsky, (London, 1886-1962), *Hazon Yehezkel, Tosefta, Bava Kamma* 7: 3.
33. R. Yaakov Reicher, *Iyyun Ya'akov, Yevamot* 63a.
34. R. Nahum Yavrov, *Niv Sifatayim*, p. 41.
35. R. Isaac of Corbeil quoted by R. Aaron ha-Kohen of Lunel in *Orhot Hayyim* vol. 1, *siman* 5 ot 5.

36. *Sota* 14a.
37. *Sifrei*, *Deuteronomy* 10:12.
38. *Ibid.*
39. R. Naftali Zevi Yehuda Berlin (Russia, 1817-1893), *Emek Netsiv*, *Sifrei* on *Deuteronomy* 10:2; *piska* 13.
40. Cf. *Psalms* 29:11; *Sanhedrin* 37a; *Uktsin* 3:11; *Leviticus Rabba* 9:9; *Deuteronomy Rabba* 5:12.
41. *Genesis Rabba* 12:7.
42. Moshe Sofer, *Resp. Hatam Sofer*, *Yore De'a* 131.
43. R. Joseph Hayyim b. Elijah al-Hakkam, *Ben Yehoyada*, *Hullin* 94b.
44. In his work *Mitzvot haShalom* (p. 243), R. Joseph D. Epstein posits that the essence of the *geneivat da'at* interdict is the stolen feeling of indebtedness. In his view the interdict does not stand suspended until the duped party (*D*) actually returns an unwarranted favor to his imagined benefactor (*B*), but instead is violated immediately. What follows as a corollary to this thesis, R. Epstein continues, is that *B*'s infraction of *geneivat da'at* remains intact even when it turns out that *D* in actuality never returns a favor to *B* on account of the latter's *geneivat da'at* conduct. This would be the case for example if *D* discovers that he was duped before he got a chance to return a favor to *B* for his imagined generosity. This is so because the circumstance that *D* will not return a favor to *B* does not remove the fact that *B* was guilty of either causing or failing to remove *D*'s stolen feeling of indebtedness up until that moment of discovery. If we accept R. Epstein's thesis, it would be incorrect to theorize that Rava's intent was for the rabbis to silently accompany Mar Zutra back to Mahoza. Such conduct would have amounted to affirmatively misleading Mar Zutra. The certainty that before Mar Zutra reached Mahoza he would himself come to realize that the rabbis did not come as a greeting party does not excuse the conduct of the rabbis up to that point of affirmatively generating a false sense of indebtedness on the part of Mar Zutra to them. R. Epstein's thesis hence can apparently not be reconciled with R. Joseph Hayyim's understanding of Rava's intent in the Mar Zutra incident. But, perhaps, reconciliation can after all be made. *D*'s discovery that in reality he owes *B* nothing does not remove for *B* his *geneivat da'at* infraction only when the unwarranted sense of indebtedness was the product of *D*'s reasonable expectation. Here, *B*'s initial action generated a stolen feeling of indebtedness for *D*. In sharp contrast, when *D*'s false sense of indebtedness is the product of his own unreasonable assumption, *D*'s feeling of indebtedness to *B* is all along nothing but a tentative feeling of gratitude toward *B*. Because *D*'s feeling of indebtedness to *B* was the product of *D*'s own unreasonable assumption, *D*'s feeling never rises to anything more than what could be called wishful thinking. At the point in time when *D* disabuses himself of his erroneous impression of *B*'s generosity, *D*'s tentative feeling of gratitude toward *B* dissipates; but this feeling of gratitude never took on the character of a stolen feeling of indebtedness to begin with. Given the certainty that Mar Zutra would disabuse himself of his erroneous impression before he reached Mahoza, silently accompanying him back to Mahoza therefore does not amount to affirmatively misleading him.
45. *Leviticus* 19: 16. Depending upon the circumstance, tale bearing, according to R. Israel Meir haKohen (Radin, 1838-1933, *Hafets Hayyim*, *Lavin*

- 1-7, *Essin* 1-14), may involve the violation of a total of thirty-one Pentateuchal positive commands.
46. *Erekhin* 16a; R. Isaac b. Jacob Alfasi (Algeria, 1013-1103), *Rif*, *Shabbat* 14a; *Yad*, *De'ot*; *Hafets Hayyim Hilkhoh Issurei Lashon haRa* 9:1
  47. For a comprehensive treatment of *mi'ut ha-matsui*, see R. Shmuel ha-Levi Wosner (Israel, contemp.), *Resp. Shevet haLevi* 4 *Yore De'a* 81.
  48. *Hullin* 12a and R. Nissim b. Reuben Gerondi (Barcelona, ca. 1290-ca. 1375), on R. Isaac b. Jacob Alfasi (Algeria, 1013-1104), *Rif*, *Hullin* 12a.
  49. R. Jacob b. Aaron, *Mishkenot Ya'akov*, *Yoreh De'ah* 17.
  50. Ruling of R. Yosef Shalom Elyashiv as reported by R. Joseph I. Efrati in a letter to Rabbi A. Panet, dated 1995. I am indebted to R. Yosef Eisen of the Orthodox Union for making this letter available to me.
  51. The duty to repeat a Torah teaching in the name of the originator proceeds from ethical principles other than *Avot* 6:6. For these sources see R. Ahron Maged, *Bet Aharon* vol. 3, pp. 376-94.