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*Review Essay*  
**JEWISH BUSINESS ETHICS AND  
THE MODERN MARKETPLACE**

*The Jewish Ethicist: Everyday Ethics for Business and Life*  
by ASHER MEIR  
(Northvale, NJ: Ktav Publishing, 2005)

**INTRODUCTION**

**T**he modern marketplace presents two distinct challenges for Jewish business ethics. One challenge is to be sensitized to moral issues amidst the dazzle of sophisticated technologies and the distraction created by blurred lines of responsibilities inherent in modern organizational forms. The second is to develop Talmudic moral principles on a more nuanced level in order to optimally frame and analyze the multi-faceted and multi-dimensional moral issues of the modern marketplace.

Our purpose in this review article will be to address these two challenges. We begin with a review of Rabbi Dr. Asher Meir's recent book *The Jewish Ethicist: Everyday Ethics for Business and Life*. This work admirably grapples with the twin challenges just raised. In addition, this work points to the need for a deeper analysis of the familiar moral principles so that those principles can be applied optimally to the modern marketplace. In this vein, we will proceed in the concluding section to offer some steps in this direction.

**THE JEWISH ETHICIST**

In *The Jewish Ethicist*, R. Meir sets out to provide a Torah perspective on how to deal with a variety of moral dilemmas encountered in commercial and social settings. The moral dilemmas addressed in the text

were adapted from the author's popular weekly Internet column, "The Jewish Ethicist." Launched in 2001, this column now reaches more than 35,000 readers. R. Meir's huge audience is eloquent testimony that his combination of erudition and style has attracted even those who are distant from our tradition seeking the Torah's perspective on the moral dilemmas of business and everyday life.

The queries and responses of the book are organized into the following topics: The Big Picture; Good Citizenship; Fair Competition; Dating Ethics; Consumer Ethics; Ethics at the Doctor's Office; The Stranger, the Widow, and the Orphan; High Finance; Human Resources; Jewish Internet Ethics; Marketing and Selling; and Schoolyard Ethics.

R. Meir, Director of the Business Ethics Center in Jerusalem, is eminently qualified to address the issues at hand. His Torah background includes many years of study at Yeshivat Har Etzion and Rabbinical ordination from the Israeli Chief Rabbinate. On the secular side, R. Meir earned a Ph.D. in economics at the Massachusetts Institute of Technology and worked in the Reagan administration on the staff of the Council of Economic Advisers.

The abiding strength of *The Jewish Ethicist* is that the author combines halakhic and hashkafic treatment of the queries at hand with a sophisticated understanding of the relevant business and social settings.

One example of this skillful blend is the author's treatment of the duty of disclosure. Perhaps the most basic point to make here is that an individual has every right to present his product, his service, and for that matter, himself, in a favorable light. To be sure, to avoid deception, one must disclose clearly the relevant debits, flaws, and defects. Carrying out this duty does not mean, however, that these disabilities must be brought out in a brutal and blunt manner to the detriment of the prospective seller.

Supporting the above notion is the disclosure duty the rabbis of the Talmud set for butchers catering to both Jewish and non-Jewish clientele. If the supply of meat for the day is not kosher, it is not necessary for the butchers to inform their customers of this by telling them directly that the meat supply is *treif* (non-kosher). The rabbis were well aware that the word *treif* repels gentiles because it tells them directly and bluntly that Jews would not touch the product the butcher is trying to sell them. Instead, the butcher can make the required disclosure without jeopardizing his ability to sell to non-Jews by relating the same thing indirectly and more elegantly by saying, "We have meat for the army." Since no announcement whatsoever is made when the day's sup-

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ply of meat is kosher, any reasonable man will understand the disclosure as telling him that the meat he is buying is not kosher.<sup>1</sup>

R. Meir applies the disclosure rule to both the modern marketplace and the dating scene. First, the commercial example: If the car *S* wants to sell to *B* has faulty brakes, it is sufficient for *S* to describe this defect to *B*, but *S* need not *dramatize* the defect by adding, “this car is a death trap.” Likewise, if one has a heart condition, the health problem must, of course, be revealed to a prospective spouse; but when the revelation is made, one need not exaggerate the condition by adding, “I’m living on borrowed time ” (81).

At times, *B*’s attitude toward a particular defect will depend a lot on what stage in the transaction *S* presents it to him. If *S* discloses the defect immediately, the revelation is a deal breaker. If on the other hand, *S* waits first to disclose it once *B* has had a chance to absorb all of the advantages of the deal, *B* will accept the flaw and close the deal. Does *S* enjoy any latitude to postpone disclosure of a defect in his product to a prospective buyer? R. Meir answers, yes. He draws support for this conclusion from the advice R. Yehuda gave a fellow who was looking to marry, but because his father was a Gentile, he could not find a local match. R. Yehuda advised the young man to seek a match in a different town where his family background was not known.<sup>2</sup> Presumably, R. Yehuda’s advice was not to withhold disclosure of his family background altogether;<sup>3</sup> such conduct would be outright deception. Instead, the plan would be to delay the revelation until the prospective marriage partner would have a chance to appreciate his finer qualities. Likewise, if *S* is selling *B* a beautiful property that has a plumbing problem, *S* has some leeway to postpone disclosure of the plumbing problem until the prospective buyer gets a chance to absorb all the advantages of the deal. Nonetheless, cautions R. Meir, *S* should not wait until the closing to reveal the flaw. By the time of the closing, the customer has already invested much time, effort, and resources in pursuing the home. Disclosing the defects at this late stage, when *S* effectively has *B* over the barrel, constitutes exploitative conduct (255-57).

To provide halakhic guidance on moral dilemmas of the modern marketplace, one must have a sophisticated understanding of the setting presented. Throughout the text, R. Meir exhibits just such an understanding. Exemplifying this sophistication is the author’s treatment of the ethics for *A* to send an email to *B* and for *A* to send to *C* a blind carbon copy (BCC) of the original email he sent to *B*. If the e-mail contains private information regarding the relationship between *A* and *B*,

Jewish privacy law prohibits *A* from sharing his message to *B* with *C* without *B*'s prior consent. However, R. Meir points out that in a number of scenarios, *C* is fully entitled to be privy to the communication and in addition, we have the right to presume that *B* prefers that *A* shares the message with *C* by means of BCC instead of the conventional carbon copy (CC) (217-19).

An endearing quality of *The Jewish Ethicist* is that each query R. Meir tackles is not a mere academic exercise for him. Instead, he often adds a personal touch by combining his halakhic analysis with sound practical advice.

Many of the scenarios with which R. Meir deals are distinctly moral dilemmas of the modern marketplace. It takes a much-nuanced understanding of halakha to apply Jewish law to business cultures, organizational structures, and marketplaces that have only recently appeared. R. Meir deftly achieves this in his treatment of such issues as multi-level marketing, the 360-degree feedback, advertorials, and Internet privacy. To be sure, some of the queries to which R. Meir responds just as easily could have been set in the socio-economic *milieu* of the Talmud, but one can easily conjure up variations of these scenarios that force the modern complexities to be taken into account.

I will now take up two of the core notions in *The Jewish Ethicist* and show that further development of these ideas will prove useful to extend the penetration of Jewish ethics into the modern marketplace.

### CREATING A HUMANISTIC SOCIETY

One of R. Meir's overarching principles is that one should look beyond the rights and duties based on the specifics of the moral dilemma and focus on the approach the Almighty wants us to take to foster harmonious and humanistic interpersonal relations (3-6). No more is this advocacy evident than in his treatment of the ethical duties a landlord has to his tenant who is renting an apartment for an indefinite term. As far as eviction is concerned, the tenant is entitled to proper notice. However, if the market rental price for the apartment has gone up, the landlord may raise the rent without notice. Because the landlord has every right to charge the competitive norm for the apartment, raising the rent suddenly to the going rate for a tenant without a lease should not be equated with sudden eviction.<sup>4</sup> However, the situation at hand, points out R. Meir, presents the property owner with an opportunity to engage in charity with regard to the poor tenant and not raise the rent (154-56).

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I would like to elaborate on this point. Charity in its highest form, as formulated by Maimonides (Egypt, 1135-1204), consists of putting a faltering individual back on his feet without revealing to him the giver's charitable intent.<sup>5</sup> The marketplace is the ideal setting for this highest form of charity. In the rental marketplace, the landlord practices charity by refraining from raising the rent of his poor tenant when the raise is otherwise justified on the basis of the market norm in the new leasing period.

However, there are limits. What is praiseworthy when done in the capacity of a principal is an abuse if done in the capacity of an unauthorized agent. To illustrate: Suppose the owner of an apartment building instructs his manager to raise rents across the board by 2%. May the manager keep the rents of the poor tenants unchanged and carry out his mandate by raising the rents of the other tenants by the necessary amount to achieve the overall goal of the 2% increase? No. By taxing the rich and subsidizing the poor, the manager has arrogated for himself the role of government. However, the manager is not a government; he is only an agent. What he has done is hence a gross abuse of his authority.

One more scenario: Suppose the apartment building is owned by a limited partnership, consisting of general partners and limited partners. The general partners manage the business and are personally liable for its debts. The limited partners contribute capital and share in profits and losses, but take no part in the management of the business and incur no liability for partnership obligations beyond their contributions to capital. Suppose the general partners decide that even if market conditions call for an increase in rents, they will raise rents, but not the rent of the poor tenants. Notwithstanding that in the limited partnership the limited partners cede all business decisions to the general partners, the policy is an abuse of authority and is therefore illegal. This is so because the limited partnership was organized for business purposes. The authority of the general partners therefore extends only to making business decisions on behalf of all the investors. The mandate for the general partners does not, however, extend to the authority to distribute the profits to a charitable cause without getting the approval of all the investors.

Supporting the above contention is a point in law relating to *iska*. *Iska* is a form of partnership consisting of an active partner and a financier who is a silent partner. Suppose it is the widespread custom for business partners to devote 10% of their *iska* profits to charity. Here, the active partner, according to R. Moshe Isserles (Poland, 1525/30-1572), has no right to take it upon himself to donate 10% of the *iska* profits to charity. Instead, the financier is entitled to receive his full pre-

tithing share of the profits and be given the opportunity to allocate his charitable funds in a manner of his own choosing.<sup>6</sup>

Proceeding clearly from R. Isserles's ruling is that even when a business entity operates under an implicit mandate to donate a specific percentage of its profits to charity, the disposition of the charity funds is a matter of individual shareholder prerogative and does not fall under the purview of the business entity. This judgment holds *a fortiori* when the business entity operates without any understanding that a portion of its profits will be devoted to charity.<sup>7</sup>

### DISTRACTING OR DECEIVING?

For any serious researcher in Jewish business ethics, the prohibition against creating a false impression (*genevat da'at*) is the first line investigative tool to analyze moral dilemmas of the marketplace. Not surprisingly, R. Meir is no exception. The applications of the prohibition of *genevat da'at* with which R. Meir deals include: whether a competitor may pose as a customer to get competitive intelligence (61-65); the prohibition of selling counterfeit items (66-68); and the ethics of making an attention-grabbing sales pitch through a "spam" mailing to millions of individuals (228). One might be tempted to conclude that *genevat da'at* has been violated whenever we hear someone cry out, "I was duped." The louder the cry, the more likely we are sure that there had been *genevat da'at*. Indeed, in his analysis of the ethics of quitting a job on short notice, R. Meir notes that the patriarch Jacob left Haran with his family without giving his father-in-law, Laban, any advance notification. Jacob did this, as the Torah relates, because he feared that Laban would try to prevent him from leaving.<sup>8</sup> But, R. Meir points out, "the Torah describes Jacob's plan as a deception, indicating that in normal circumstances we should avoid this approach" (186).

Notwithstanding the human tendency to side with the "duped" party, the talmudic principle that *genevat da'at* is not violated when the victim is guilty of "self-deception"<sup>9</sup> shows that the perception of the victim is not all controlling as far as the prohibition of *genevat da'at* is concerned. What we can infer from the "self-deception" caveat is that a range of actions exists where certain affirmative conduct will be viewed as an exercise in permissible distraction, rather than as an act of deception. A case in point is the aforementioned biblical account of the events surrounding Jacob's flight with his family from Laban. We will refer to this episode as the *beriha* (lit. fleeing) incident. The biblical exegete, R.

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Ovadia b. Jacob Seforno (Italy, 1475-1550), explicitly calls Jacob's conduct upright and ethical.<sup>10</sup> To boot, none of the classical commentators criticize Jacob's conduct on ethical grounds. I contend that this episode provides the parameters for the legitimate use of *genevat da'at* for protecting one's legitimate rights against infringement.

We begin by asking whether the *beriba* incident falls into the ambit of the model case where halakha permits bluffing. This model case relates to an employer-worker matter and is referred to as the *mat'an* (lit. he deceives them) case.<sup>11</sup> Before spelling out the basic elements of the *mat'an* case, let's take note that workers can be classified into two categories. A worker who is hired by employer *E* for fixed hours is called a *po'el* (*P*). A worker who is paid for the completed job is called a *kabbelan*.<sup>12</sup> Ordinarily, by dint of Torah law, *P* has a right to withdraw without penalty from his or her contract to work.<sup>13</sup> *P*'s retraction right is not recognized, however, when leaving work will generate a material loss to *E*. This circumstance is referred to as the *davar ha-avud* case. An example of *davar ha-avud*, cited in the Talmud, is the hiring of a worker to remove flax from its steeping. If the task is not performed immediately, *E* will suffer material loss.

In the *davar ha-avud* case, *E* has the right to cajole the reneging *P* to stay on the job by offering him or her a raise. If the tactic succeeds, *E* bears no responsibility to make good on his promise for a raise. Moreover, if *P* demands the extra fee up front, the differential pay is recoverable in a *bet din* (Jewish court).<sup>14</sup>

The salient feature of the *mat'an* case is that *E* faces an *immediate and concrete* threat to his or her property. Here, to prevent loss, *E* is permitted to bluff *P*. Had Laban put in place an impediment preventing Jacob's leaving, this would have qualified as a *mat'an* setting. However, this was not the case and Jacob merely faced a concern that discovery of his plan would trigger action on the part of Laban to block his departure.<sup>15</sup> If Jacob's conduct in the *beriba* incident was ethical, its permissibility must be found in an ethical norm other than *mat'an*.

The ethical norm we are looking for, in my opinion, is the principle: "With the crooked act crookedly" (2 Samuel 22:27). For Jacob, this principle was already his guidepost when he sought Laban's permission to marry Rachel.<sup>16</sup>

Before applying "with a crooked person act crookedly" to the *beriba* incident, clarification of the type of conduct this principle allows is in order. Consider that the biblical imperative "with righteousness shall you judge your fellow"<sup>17</sup> requires us to judge a fellow favorably

even when the conduct involved is questionable.<sup>18</sup> A logical extension of this behavioral norm, referred to as the *kaf zekhut* (lit. scales of righteousness) imperative, is that we should not interact with a fellow in a manner that makes it clear to that person that we do not trust him. We offer the proposition that what “with the crooked act crookedly” says is that we may take “defensive measures” against someone who we legitimately suspect is bent on depriving us of our entitlements. In doing so we need not fear that we have infringed upon the *kaf zekhut* imperative.

Let us now proceed to show that the conduct Jacob engaged in to ensure that Laban would not subvert his plan to marry Rachel communicated to Laban that he did not trust him. In engaging in this conduct, Jacob relied on the ethical norm of “with the crooked act crookedly.”

One measure Jacob took was to arrange with Rachel passwords for the purpose of identifying her.<sup>19</sup> To see that with this ploy Jacob communicated to Laban that he did not trust him, we need only show that Jacob never meant the password scheme to be kept as a secret between himself and Rachel. Consider that to be optimally effective as a deterrent against Laban’s duplicity, Laban should be put on notice as soon as possible that any scheme to substitute Leah for Rachel will fail because a password scheme is already in place. Moreover, is it not reasonable that Jacob would never devise a scheme to thwart duplicity on the part of Laban at the expense of embarrassing Leah?<sup>20</sup> This makes it essential that Leah get wind of the password scheme as soon as possible. Knowledge of the password scheme would communicate to Leah clearly that Jacob’s plans to marry Rachel are *absolutely and irreversibly definite* and she should therefore not allow herself to be substituted for Rachel.<sup>21</sup> Now, if Jacob intended his password scheme to become known to Laban and Leah, Jacob’s intention was clearly to communicate to Laban that he did not trust him.

Support for the thesis that Jacob’s intent was that the password scheme should not remain a secret is found in the Sages’ commentary to the reason that the ploy ultimately failed. The ploy failed because when Rachel got wind of Laban’s plan to substitute Leah for her, Rachel chose not to thwart the plan, but instead to insure that it would succeed. Rachel did so by giving Leah the passwords. Commenting on this episode, the Talmud characterizes Rachel’s conduct as exhibiting *modesty* on her part.<sup>22</sup> The characterization of modesty is apparently astonishing. What stands out is colossal sacrifice and concern not to embarrass her sister, but where is the element of modesty?



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The enigma is readily resolved under the reasonable assumption that Jacob's purpose in devising and giving Rachel the passwords was to put in motion an *effective* plan to *thwart* possible duplicity on the part of Laban. To be effective, both Laban and Leah should know in advance that any subterfuge to substitute Leah for Rachel is doomed to failure because a password plan is already in place. Given the fear that Rachel had that her cunning father, Laban, would try his best to substitute her sister, Leah, for her, it would seem inevitable that in the seven years between getting the passwords and the official marriage ceremony, Rachel would, at the very least, "slip" the information of the passwords to someone, with the result that Leah and Laban would get wind of it. Because Laban and Leah's knowledge of the existence of a secret password system is essential for "nipping in the bud" any scheme to substitute Leah for Rachel, it is reasonable to theorize that Jacob should have anticipated that the password scheme would become a matter of public knowledge in short shrift. Now the element of modesty becomes clear. The only reason why the plan was never effective from the beginning was that Rachel was a *modest* person. Her modesty consisted of not drawing attention to herself and Jacob by inadvertently "slipping" knowledge of the password scheme to *anyone for the entire seven years*.

The flip side of the above explanation of why the password scheme manifested *modesty* on the part of Rachel is that the scheme amounted to conduct by Jacob that communicated to Laban that he did not trust him. Whether Jacob intended the password scheme to become public knowledge or not, its spreading was inevitable and Jacob, therefore, bears responsibility for its spreading. Notwithstanding that the plan failed, the password scheme should therefore be regarded as conduct by Jacob *designed* to tell Laban that he did not trust him.

Another aspect of Jacob's conduct based on "with the crooked act crookedly" is the guarded precision Jacob uses in formulating his marriage proposal to Laban for Rachel, . . . " *I will serve you seven years for Rachel your younger daughter.*"<sup>23</sup>

In the Midrashic exposition of Jacob's dialogue with Laban, Jacob prefaces his marriage proposal by saying: "Knowing that the people of your town are deceivers, I make my demands absolutely clear. . . ." <sup>24</sup> It is clear that Jacob includes Laban in this characterization as well and the general description of the townspeople is selected only for softening the blow to Laban. There can be therefore no doubt that the precision of language Jacob used in making his marriage proposal communicates to Laban that he does not trust him.

The upshot of the above analysis is that because Jacob suspected that Laban would sabotage his plans to marry Rachel, Jacob treated Laban suspiciously. Jacob's conduct consisted of defensive *measures*. By dint of the ethical norm of "with the crooked deal crookedly," Jacob had the right to take these defensive measures despite that by doing so he communicated his suspicions to Laban. Accordingly, we may exercise caution against someone who we suspect will do us harm without concern that acting in a guarded way communicates suspicion and hence might infringe upon the *kaf zekhut* mandate.

By extension, the ethical norm of "with the crooked act crookedly" should allow *A* to protect his privacy against the infringement of a "crooked person" whose identity is unknown to him. Since the "unknown crooked person" (*B*) is not entitled to acquire the private information, *A* may protect his privacy by creating a distraction. If *B* chooses to use the distraction as a guidepost of how to acquire the information and suffers a detriment as a result, *A* is not responsible for the detriment. Since *B* seeks to be a misappropriator, *A* need not be concerned that his distraction might "mislead" *B*. Quite to the contrary, if *B* is misled, *B* is guilty of self-deception.

We will now proceed to show that the conduct Jacob adopted in the *beriha* episode was a continuation of the defensive measures he used earlier in his dealings with Laban. Commentators differ as to what was "deceptive" about Jacob's conduct during the *beriha* incident. If we are correct that Jacob had only a limited defensive license, all opinions must describe conduct that does not fall into the category of *mat'an*.

Crucial in making the case that the *beriha* plan does not constitute *mat'an* behavior is the proposition that Jacob had *no duty* to inform Laban that he intended to leave. Were Jacob to have had such a duty, evasive conduct to "throw off" Laban is considered affirmative action to deprive Laban of his entitlement and is thus forbidden.

Consider that Jacob and his family observed the mitsvot of our faith before God gave the Torah to the Jewish people.<sup>25</sup> Based on the Torah lifestyle the family adopted, the *mitsvot* to honor one's father (*kibbud av*) and one's father-in-law (*kibbud hamiv*) should have compelled Jacob and his entire family to say goodbye to Laban. Magnifying the indignity was the fact that Jacob was leaving for good with his entire family. From the standpoint of fulfilling their filial duty to Laban, Jacob and his entire family were apparently glaringly deficient. When Laban catches up with Jacob, he, indeed, seizes on the "filial responsibility" issue as his major complaint. Laban, however, rubs in the filial matter

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further by saying that “running away” deprived him of the opportunity to kiss his daughters and grandchildren goodbye.<sup>26</sup>

Relevant to the *kibbud* issue is the dispute whether this duty applies when the father is a *rasha* (wicked person).<sup>27</sup> To be sure, normative halakha adopts the view that *kibbud av* remains intact even when the father is a *rasha*.<sup>28</sup> However, Laban was no ordinary *rasha*; he was rather a master deceiver,<sup>29</sup> an inveterate idolater,<sup>30</sup> and, in the final analysis, what stands out is the description of the author of the *Hagada*, “Laban wanted to uproot everything (i.e., Jacob and his entire family).” For a *rasha* in Laban’s category, all opinions may very well agree that *kibbud* is inapplicable.<sup>31</sup> Consider also, that even for an ordinary *rasha*, the duty to honor one’s father-in law does not apply.<sup>32</sup> Jacob hence had no duty to honor Laban with a goodbye. Once Jacob had no duty to say goodbye, any *kibbud* Rachel and Leah might theoretically have had toward their father as single girls became subsidiary to Jacob’s will once they married him. This is so because the duty of a woman to her spouse always takes precedence over any *kibbud* duty she owes her parents.<sup>33</sup>

This only argues that Jacob had no duty to bid goodbye to Laban. Consider that earlier, when Jacob completed the fourteen years of work for Laban to get the hand of his two daughters in marriage, Jacob did extend the courtesy to Laban to ask his permission to leave.<sup>34</sup> Based on Jacob’s past behavior, it would therefore not be unreasonable to theorize that absent his fear that Laban would try to prevent his departure, Jacob, as a matter of courtesy, would have taken the family over to say goodbye.

The upshot of the above analysis is that Jacob and his family had no duty to say goodbye to Laban. What this does is make the *beriba* plan private information. Consequently, Laban has no right to pry into Jacob’s affairs to discover this plan. That the *beriba* plan is private information did not, of course, give Jacob a license to protect his privacy by lying. However, there should be nothing wrong for Jacob to take action to *divert* Laban’s attention from discovering the plan. This is so because creating a smokescreen is deception only if the tactic diverts the target from seeking information to which he or she is fully entitled. In contrast, if the smokescreen is directed at diverting someone from seeking information to which that person is not entitled, the conduct distracts, rather than misleads and should therefore be permitted. By extension, *A* may feel that *B*’s observable conduct gives away that person’s private information. If *A* relies on his hunch for some purpose and his impression turns out wrong, *B* is not guilty of misleading *A*, notwithstanding the *reasonableness* of *A*’s inferences. Instead, *A* is guilty of *self-deception*.

We now turn to an examination of the various opinions as to why Jacob's conduct in the *beriha* incident made Laban feel that he was misled. Our purpose will be to show that Jacob did not engage in *mat'an* conduct. The first three opinions we will discuss understand Laban's feeling of betrayal to be rooted in something Jacob withheld.

In Seforno's view, Jacob suppressed the emotions he felt when he realized that Laban had accepted the evil report of his sons.<sup>35</sup> By not acknowledging that he felt Laban's hostility, Jacob gave Laban no reason to suspect that he was planning to flee.<sup>36</sup>

Seforno's explanation of the *beriha* incident requires further elaboration. What was Jacob's motive in suppressing the frayed feelings he harbored against Laban? One possibility is that this conduct was entirely innocent and reflected the highest level of piety: "those who take insult and do not respond and are happy even in the suffering caused by those insults and disgrace."<sup>37</sup> If Jacob's suppression of his frazzled feelings reflected pious conduct, Laban's accusation that the conduct was deceptive makes Laban guilty of self-deception.

Another possibility is that Jacob deliberately suppressed his frazzled feelings with the aim to *deflect* Laban from his plan to leave with his family without notice. This interpretation puts Jacob's conduct in the category of "one thing with the heart (*ahat ba-lev*) and another thing with the mouth (*ve-ahat ba-peh*).<sup>38</sup> Henceforth, we will refer to such conduct by the shorthand notation of *ahat ba-lev*.

Is *ahat ba-lev* conduct inherently falsehood and therefore unethical behavior? Relevant here is the comparison *Bereshit Rabba* draws between the conduct of Absalom (son of King David) and Joseph's brothers:

"His (Joseph's) brothers saw that it was him whom their father loved most of all his brothers so they hated him, and they were not able to speak to him peaceably" (Genesis 37:4). From this disparaging remark, we may learn their praise: They did not speak one thing with their mouth and another with their heart. Elsewhere it says, "And Absalom spoke unto Amnon neither good nor bad" (2 Samuel 13:22), keeping in his heart what he felt in his heart. Whereas here, what was in their hearts was on their tongues.<sup>39</sup>

This Midrash teaches us that Joseph's brothers' conduct of not speaking to him in a friendly manner was praiseworthy because friendly comportment toward him would have lulled Joseph into a false sense of security that they were not planning to possibly harm him. Because the

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brothers were building a case of *rodef* (pursuer) against Joseph, it was praiseworthy that they put him on notice to be on guard that they might harm him. Hence, when Joseph ventured alone to Dotan at his father's bidding to inquire of his brother's welfare,<sup>40</sup> it could not be said that the brothers *ensnared* Joseph into a trap. Quite to the contrary, because his brothers did not engage with him in a friendly manner, Joseph should have been on guard for the possible harm he might face when he would run into his brothers alone. In sharp contrast, Absalom's *ahat ba-lev* conduct is abhorrent because this conduct successfully cloaked both his rage against Amnon and his plan to kill him for raping his sister. Absalom's *silent treatment* of Amnon produced nothing less than tragedy for both of them. Specifically, had Absalom only confronted Amnon, Amnon might have been moved to repent and feel a need to placate Absalom and reconcile with him. Similarly, because Absalom did not express his anger against Amnon openly, Amnon never guarded himself against Absalom and hence became an easy target for Absalom to murder.

Proceeding from the above analysis is that *ahat ba-lev* is abhorrent conduct because it conveys a false message. However, this should apply only if the false signal deprives someone of a right that person is otherwise entitled to. Jacob employed *ahat ba-lev* conduct neither to cloak a planned ambush against Laban nor to otherwise deprive him of an entitlement. Instead, Jacob employed *ahat ba-lev* only to prevent Laban from detecting his plan to leave with his family without saying goodbye. Jacob's *ahat ba-lev* conduct hence should not be regarded as deception but rather only as a distraction he created to protect his privacy.

In R. Hayyim Ibn Attar's (*Or ha-Hayyim*, Morocco, 1696-1743) opinion, what threw off Laban was that Jacob forthrightly informed Laban of his intention to leave after completing the fourteen years of labor to marry Rachel and Leah. Laban simply assumed that Jacob would repeat this protocol if he wanted to leave.<sup>41</sup> *Or ha-Hayyim's* understanding of the *beriha* incident places Jacob's behavior outside the ambit of *mat'an* conduct. Once Laban accepted the evil report of his sons and bore hostility toward Jacob, Laban should have had no reasonable expectation that Jacob would repeat his protocol of informing him of his intention to leave.<sup>42</sup> Expecting this same protocol from Jacob when his attitude toward Jacob had changed for the worse is a straightforward example of the principle that the prohibition against creating a false impression does not apply when the duped party is guilty of self-deception.<sup>43</sup>

R. Don Isaac Abarbanel (Spain, 1437-1508) understands Laban's feeling of betrayal to be rooted in Jacob's failure to inform him that he had fled from his brother, Esau. Had Laban only known this, he would have suspected that Jacob might flee with his family from him as well.<sup>44</sup> But, Jacob bore no duty to inform Laban that he was a *bore'ah* from Esau. Consider that just before Jacob entered Haran, God promised him: "Behold, I am with you; and I will *guard you wherever you go*, and I will return you to this soil; for I will not forsake you wherever you will go, and I will return you to this soil. . . ." (Genesis 28:15). Jacob had every right to take this blessing in all its fullness. The Divine blessing hence communicated to Jacob that during his sojourn in Haran, he neither had to worry about a physical attack or even mental anxiety from Esau. Because the locals were in no danger, Jacob bore no responsibility to disclose that he was a *bore'ah*.<sup>45</sup>

R. Moshe Alshikh (Adrianopolis, 1508-1600) understands the *berihah* incident differently. In his opinion, Laban's feeling of deception stemmed not from something Jacob withheld, as the other commentaries understand it, but rather from a particular mode of conduct in which Jacob engaged during his entire relationship with Laban. It consisted of reacting to every small matter that upset him with a threat that he would return to his father's home. Alshikh reads this understanding into the phraseology the Torah employs to describe Jacob's conduct: "And Jacob stole Laban's heart"—how?—"by telling *on a nothing*"—by turning *every nothing* into a threat "that he was fleeing." Because Jacob never carried out these threats, Laban never took seriously the possibility that Jacob would ever flee from him with his family for any reason.<sup>46</sup>

Alshikh's understanding of the *berihah* incident does not, however, characterize Jacob's behavior as *mat'an* conduct. Consider that a threat to uproot one's family based on some trifling matter has no credibility and hence is nothing but a transparent bluff. The analogue here is the case where a buyer (*B*) and seller (*S*) are locked in a negotiation and one of the parties, say, *S*, declares that if he accepts anything less than his (*S*'s) asking price, the money received should be prohibited to himself as a *konam* (consecrated animal). The ruling is that if *S* ends up accepting something less than *B*'s asking price, the money *S* receives is not a *konam*. Referred to as *nidrei zerizin* (vows of motivation), *S*'s vow does not take effect<sup>47</sup> because everyone *recognizes* that *S* did not intend to utter a vow, but merely to communicate to *B* that an impasse has been reached in their negotiation and a "contest of wills" will now ensue.<sup>48</sup> One caveat should however, be noted. When one does not

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intend to make a vow, one should not express an intention in the form of a vow, even though the vow has no validity anyway.<sup>49</sup>

What we can derive from the law of *nidrei zerizin* is that provided the language of vows is avoided, one can make a transparent bluff. Because everyone understands that the transparent bluff is merely an expression to convey anguish and annoyance, a reasonable person should not be misled by the gesture. In addition, we do not worry about the tiny minority that would be misled. Given that Laban accepted the evil report of his sons regarding Jacob and as a result felt hostility toward him, Laban should have taken into account the possibility that Jacob would abscond with his family. Laban's conclusion that Jacob would not flee *even now* based on the *history* that he never made good on his threats in the past makes him guilty of self-deception.

The upshot is that in his dealings with Laban, Jacob never engaged in *mat'an* conduct. Instead, to ensure that Laban would not prevent him from fleeing with his family, Jacob took measures to ensure that Laban would not learn of his plan. His conduct, depending upon which commentary we follow, consisted of distracting Laban or withholding information that would have driven him to discover the plan.

Jacob's comportment with Laban in the *beriba* incident has much relevance for providing a firm with guideposts for protecting its trade secrets from infringement. For example, suppose Einhorn is a kitchen contractor who plans to attract customers with a cold call. The objective of the cold call is to convince the contacted party to allow a salesperson to visit her home and display different kitchen designs in various price ranges. Part-time personnel make the cold calls and there is considerable turnover of these employees. Einhorn wants to compile a good prospect list, which he can use to cold call customers for his other home improvement businesses. He therefore instructs his cold callers to grade each household they contact. Those contacted who agree readily to give a salesperson an appointment are to be assigned a grade of 5. The grade of 4 is given to those households who need to be persuaded before they agree to the appointment. If the cold caller spends a lot of time with the contact, but ends up with no agreement for an appointment, the householder receives a grade of 3. Those who abruptly hang up get a grade of 2. Finally, those who are abusive and mocking or deliberately waste the time of the cold caller with no results receive a grade of 1. To protect his customer list from theft, Einhorn compiles a number of sub-lists, with different headings. The best prospect list has no heading at all. The gold-star customer list consists of 1 and 2-rated prospects. Einhorn classifies such prospects

as gold star because a cold caller gets a lot of abuse when dealing with this group and therefore deserves a gold medal for his/her trouble. Now, if some person steals the gold-star list, Einhorn is not guilty of deception by making the culprit believe he or she was stealing something valuable when this was not the case at all. Since the thief is not entitled to the list, the judgment the thief makes that the list is valuable is at his or her own risk and if the thief's judgment turns out to be wrong, the thief is guilty of self-deception. Put differently, since the thief has no right to the list, labeling the "bad" customer list gold-star is nothing but a *distraction* Einhorn employs to protect his property from theft.

In concluding this "Review Essay," let me say that R. Dr. Asher Meir's work, *The Jewish Ethicist* is an outstanding addition to the expanding Jewish business ethics literature. We can anticipate ongoing work by this distinguished Jewish ethicist that will show how the wisdom of the Torah is relevant for the most innovative developments in the marketplace.

#### NOTES

1. See *Hullin* 94b and Rashi, ad loc.
2. *Yevamot* 45a.
3. See, however, R. Yaakov Yisrael Kanievsky (Israel, 1899-1986), *Kehillat Ya'akov*, *Yevamot*, no. 38.
4. *Bava Metsi'a* 101b.
5. *Mishneh Torah*, *Hilkhot Mattenot Aniyyim* 10:7.
6. Rema, *Yoreh De'ah* (YD) 177:22.
7. For a treatment of various nuances of the issue of corporate social responsibility from the standpoint of halakha, see Aaron Levine, *Case Studies in Jewish Business Ethics* (Hoboken, NJ: Ktav/Yeshiva University Press, 2000), 350-65.
8. Genesis 31:31.
9. *Hullin* 94a.
10. Seforno, Genesis 31:1.
11. Elsewhere, I have shown that the rationale behind the *mat'an* principle is the dictum *avid inish dina le-nafshei*. See, Aaron Levine, *Moral Issues of the Marketplace in Jewish Law* (New York: Yashar Books, 2005), 77-80.
12. R. Meir b. Barukh (Rothenburg, 1215-1293), *Responsa Maharam*, no. 477; R. Isaac b. Moses (Vienna, ca. 1180-1250), *Or Zaru'a* 3, *Bava Metsi'a*, no. 242; R. Meir ha-Kohen (end of 13th century), *Hagahot Maimoniyot*, *Sekhirut* 9:4; R. Jekuthiel Asher Zalman Zausmir (d.1858), *Responsa Mahariats*, no. 15.
13. *Bava Metsi'a* 10a; Rif, *Bava Metsi'a* 77b; *Mishneh Torah*, *Sekhirut* 9:4; Rosh, *Bava Metsi'a* 6:6; *Tur*, *Hoshen Mishpat* (HM) 332:2; *Shulhan Arukh*, HM 333:3; *Arukh ha-Shulhan*, HM 333:6.



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14. Mishna, *Bava Metsi'a* 6:1; Rosh, *ibid.*; *Mishneh Torah*, *ibid.*; *Tur*, *ibid.*; *Shulhan Arukh*, *ibid.*; *Arukh ha-Shulhan*, HM 333:19.
15. Genesis 31:31.
16. *Megilla* 13a.
17. Leviticus 19:15.
18. *Shevu'ot* 30a; R. Isaac b. Jacob Alfasi (Algeria, 1012-1103), Rif, *ad loc.*; R. Asher b. Jehiel (Germany, 1250-1327), *Shevu'ot* 4:3; R. Isaac b. Sheshet Perfet (Spain, 1325-1408), *Responsa Ribash*, nos. 446-47.
19. Another version of the password scheme is quoted in *Midrash Eikha, peti-ha* 24. In this version, it is Rachel, not Jacob that takes the initiative in devising and giving passwords. In addition, in this version, Rachel first gives Jacob the passwords close to the wedding date when she learns of Laban's plot to substitute Leah for her.
20. In his analysis of the password scheme, R. Shalom Morekhai ha-Kohen Shwadron (Jerusalem, *Lev Shalom*, vol. 1, 262-85) makes this point.
21. One of the biggest mysteries of the story of how Laban substituted Leah for Rachel is the ethics for Leah to be party to the ruse when she apparently knew that Jacob and Rachel were set to be married. Shedding light on this is Laban's response to Jacob when Jacob discovers the ruse: "Such is not done in our place to give the younger before the older" (Genesis 29:26). Notwithstanding the disingenuousness of Laban's response, his explanation, according to *Midrash ha-Gadol* (Genesis 29:25), had the effect of pacifying Jacob. Because Jacob was a righteous person, he was very concerned that his living with Leah constituted a promiscuous relationship. Jacob takes Laban's response that "such is not done in our place..." to say that local custom overrides personal decisions that contradict that custom. Consequently, Jacob feels reassured that his living with Leah was not promiscuous. Relatedly, in another teaching, the Rabbis take Laban's response as the source of the aphorism "*minhag mevattel halakha*" (custom overrides the law, *Yalkut Temani* at Genesis 29:26). Perhaps Laban used the same argument of "such is not done in our place to give the younger before the older" as a means of persuading Leah that Jacob's specific marriage proposal to Rachel should be regarded as only tentative and, accordingly, local custom should override it and legitimize the substitution. See R. Meir Yehuda Leibish b. Yehiel Michel (Malbim, Russia, 1809-1880), *Ha-Torah ve-haMitsva*, Genesis 29:19.
22. *Megilla* 13b.
23. "Said he (Jacob) to him (Laban): 'Knowing that the people of your town are deceivers, I make my demands absolutely clear.' Thus: And He said: 'I will serve you seven years for Rachel your younger daughter. For Rachel, not for Leah; your daughter—you are not to bring some other woman from the marketplace named Rachel; younger—you are not to exchange their names.'" However, even if you fix a wicked man in a carpenter's vice, it will avail you naught (*Bereshit Rabba* 70:17).
24. See *supra*, note 23.
25. *Yoma* 28b and R. Samuel Eliezer Judah ha-Levi (Poland, 1555-1623), Maharsha, *ad loc.* For an extensive treatment of this issue, see R. Hayyim Hezekiah (Russia, 1832-1904), *Sedei Hemed*, 1:186 §186. See, however,

- Nahmanides (Spain, 1190-1270), *Ramban al ha-Torah*, Genesis 26:5.
26. Genesis 31:28.
27. Maimonides (Egypt, 1135-1204, *Mishneh Torah, Mamrim* 6:11) takes the view that the son's *kibbud av* duty remains intact even when the father is a *rasha*. R. Joseph Caro (Israel, 1488-1575, *Shulhan Arukh, YD* 240:18) follows Maimonides' view. R. Jacob b. Asher (Spain, 1270-1343, *Tur, YD* 240), however, takes the position that the son's *kibbud av* duty becomes inoperative when the father is a *rasha*. *Tur's* view is quoted by R. Moshe Isserles (Poland, 1525 or 1530-1572), Rema, *Shulhan Arukh, YD* 240:18.
28. For sources and explanation, see R. Moshe A. Panili, *Kevod Horim, Hilkhot Kibbud Av va-Em*, 121-22.
29. *Megilla* 13a; *Bereshit Rabba* 22:9.
30. Genesis 31:31; *Pirkei de-Rabbi Eli'ezer* 36; *Bereshit Rabba* 31:33.
31. R. Hayyim b. Attar (quoted by R. Hayyim Joseph Azulai [1724-1806], *Birkei Yosef, YD* 241 n. 4) avers that Maimonides' position that the *kibbud av* duty remains intact even when the father is a *rasha* holds only if the father sinned once. However, if the father persists in his sin, the *kibbud av* duty no longer applies. Disputing this view, R. Azulai maintains that the *kibbud av* duty remains intact even when the father is an inveterate, incorrigible sinner. R. Azulai draws support for his position from the midrashic teaching that although the Torah records Terah's death (Genesis 11:32) before God commanded Abraham to emigrate from Haran (Genesis 12:1), Terah's death occurred sixty-five years after Abraham's departure. To allay Abraham's fears that people would say that he "left his father in old age and departed," God reassured him and said, "I exempt you (*lekha*) from the duty of honoring your parents, though, I exempt no one else from this duty" (*Bereshit Rabba* 12:1). Without quoting the dispute between R. Hayyim b. Attar and R. Azulai, R. Avraham Yitshak Sorotzkin (New Jersey, *Gevurat Yitshak Al ha-Torah, Bereshit-Shemot*, 21-23) posits that Abraham's concern was not *kibbud av* per se, but rather the circumstance that Terah was at that time an old man and leaving an *elderly* father (who presumably needed his son's service) would amount to profaning God's name (*hillul Ha-Shem*). To allay Abraham's concern for *hillul Ha-Shem*, God granted Abraham an exemption, but told him that the exemption is for him and for no one else. Proceeding from this interpretation of the Midrash is that the *kibbud av* duty is suspended when the father is an incorrigible *rasha*.

In his treatment of the issue whether the *kibbud av* imperative remains in force when the father is an inveterate *rasha*, R. Moshe Panili (*Kevod Horim*, 122-23) quotes many modern authorities, including R. Ovadiah Yosef, who agree with R. Azulai's position. Nonetheless, if the father sins out of spite or displays a negative attitude towards the child who is observant, no *kibbud* is due. Although these authorities do not discuss Laban, he fits well into the latter category.

Another factor to consider in making the judgment whether Rachel and Leah had a *kibbud* duty toward their father is the halakhic relationship they had to their biological father, Laban. In his treatment of the issue of how Jacob was permitted to marry two sisters, R. Judah Rosanes (*Parashat*

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*Derakhim, derush alef*) posits that Jacob converted Rachel and Leah to the faith of Judaism before he married them. Based on the principle of “one who converts is as if he (she) is newly born,” Rachel and Leah were no longer related as soon as one of the sisters converted. A corollary of R. Rosanes’ thesis is that once the conversions took place, Rachel and Leah were no longer legalistically related to their biological father, Laban. To be sure, on a rabbinic level, a convert is still bound to honor his/her biological father (see *Mishneh Torah, Mamrim* 5:11). Nevertheless, if the biological father is an inveterate sinner and idolater, no duty of *kibbud* exists.

The upshot of the above analysis is that a case can be made that Rachel and Leah owed no *kibbud* duty to Laban. The case is based on two independent arguments. One argument is that Laban’s brand of wickedness put him in a category of *rasha* where all opinions agree that the *kibbud av* duty is not operative. The second argument is that once Rachel and Leah converted, they no longer were in a legal sense related to Laban.

We take note, that for the modern scene, the circumstance that a *rasha* was raised in a secular and anti-religious home makes for an extenuation as far as treating that person as a *rasha* (cf. R. Abraham Isaiah Karelitz [Israel, 1878-1953], *Hazon Ish, YD* 2:28).

32. *Kevod Horim*, 204.
33. *Kiddushin* 30b; *Shulhan Arukh, YD* 240:17; R. Abraham Hirsch b. Jacob Eisenstadt (Poland, 1813-1868), *Pithei Teshuva, YD* 240:2; R. Betsal Shtern, *Be-Tsel ha-Hokhma* 1:69.
34. Genesis 30:25-26.
35. Genesis 31:1.
36. Seforno, *ibid*.
37. *Yoma* 23a and Rashi, *Shabbat* 88b.
38. *Bava Metsi’a* 49a.
39. *Bereshit Rabba* 37:4.
40. Genesis 37:12-36.
41. Genesis 30: 25-26.
42. Laban’s acceptance of the evil report of his sons against Jacob marks a watershed in their relationship. Up to that point, Jacob stoically tolerated deception and underhanded treatment from Laban, but, on his part, displayed only the highest level of integrity and supererogatory conduct. Now, by conveying hostility to Jacob on how the wage deal between them was working out in practice, Laban turns the tables on Jacob and comports himself with Jacob *as if Jacob is the deceiver*. Because Laban’s new attitude and comportment toward Jacob marks a qualitative new level of anguish for Jacob, Laban has no reasonable basis to conclude that because Jacob never made good on his threats to leave in the past, he will *never* actually leave without first asking permission.
43. *Hullin* 94a.
44. R. Don Isaac Abarbanel, Genesis 31:1. See, however, *Rashi* at Genesis 29:13.
45. *Midrashic* accounts of Jacob’s departure from Be’er Sheva describe amazing and supernatural events that protected him from the murderous clutches of Esau. See *Tanhuma Yashan* at Genesis 28:11; *Midrash Tanhuma* at Genesis

28:10 and *Midrash ha-Gadol* at Genesis 28:20. Jacob's license to take God's promises for protection to convey that he would have nothing to fear from Esau should have been bolstered by these events. It is only twenty years later when Jacob leaves Haran and learns that a confrontation with Esau is imminent that his faith in the Divine blessings begins to falter: "And Jacob became very frightened, and it distressed him. So he divided the people with him. . . . (Genesis 32: 8). For explanations as to why Jacob faith in the Divine blessing began to waiver here, Cf. R. Meir Yehuda Leibish b. Yehiel Michel, *Ha-Torah ve-haMitsva*, Genesis 32:8.

46. R. Moshe Alshikh, Genesis 31:1.
47. *Nedarim* 21a; Rif, ad loc.; *Mishneh Torah*, *Nedarim* 4:3; Rosh, *Nedarim* 3:1; *Tur*, *YD* 232; *Shulhan Arukh*, *YD* 232:1-2. Given the negotiating intent of both buyer and seller, some authorities take the view that the respective vows are not legally binding even in regard to the original positions that prompted the vows. Hence, the buyer would not be prohibited by force of his vow from settling to conclude the deal at the initial four-dinar asking price of the seller. Similarly, the seller's vow would not prohibit him from concluding the transaction at the initial two-dinar bid of the buyer. Other authorities regard the vows as legally not binding only in respect to some compromise sum. By force of these vows, each party, however, would be prohibited from concluding the transaction at the opening price of his opposite number. (See R. Nissim b. Reuben Gerondi [Spain, 1310-1375], Ran, *Nedarim* 21a and Rema, *Shulhan Arukh*, *YD* 232:2. R. Joel Sirkes (Poland, 1561-1650, *Bah*, *Tur*, *ibid.*) points out that common practice is in accordance with the lenient view.
48. *Tosafot*, *Nedarim* 20b; R. Yom Tov Ishbili (Spain, 1270-1342), Ritva, *Nedarim* 20b.
49. *Tosefta*, *Nedarim* 4:4; *Mishneh Torah*, *ibid.*, 4:4; *Tur*, *ibid.*, 232; *Shulhan Arukh*, *YD* 232:13.