YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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**Shiur #27:**

**Fake News**

**Part I**

**Introduction**

A recent article by the Bais HaVaad posed the following question: is Facebook responsible for the fake news that is posted on it?

They introduce the topic as follows:

Is a facilitator liable for the actions of others?...

In the past 30 days, 3 out of every 10 people on the planet—some 2,227,000,000 souls—accessed their Facebook accounts. This is a staggering fact.

On November 27, at the inaugural hearing of the “International Grand Committee on Disinformation” in London, lawmakers from nine countries took turns castigating Zuckerberg and his company for disseminating “fake news.” Not showing up for the meeting probably didn’t help his case.

Arguably, the company’s troubles are largely self-inflicted. Along with other social media companies, it chose not to be a passive forum where users publish what they will. Instead, it actively polices its platform, banning and promoting viewpoints according to its own values and politics.

By contrast, there are other services that provide a forum for communication but do not concern themselves with its content. Phone companies take no interest in what is said on their lines, so it occurs to no one to punish them for the activities of prank callers or telemarketers or terrorists planning attacks. Ditto for email providers and the postal service. Because these entities claim no jurisdiction over the content they transmit, they are not held accountable for it.

From the Torah perspective, which approach is correct? If I hang a bulletin board, must I monitor what is posted there?[[1]](#footnote-1)

Before we discuss the halakhic issues that dictate whether we hold, as they write, “a facilitator liable for the actions of others,” we must discuss the question that they skip over: what is the halakhic problem with fake news?

**What is Fake News?**

Wikipedia states:

Fake news or junk news or pseudo-news is a type of yellow journalism or propaganda that consists of deliberate disinformation or hoaxes spread via traditional print and broadcast news media or online social media…

Fake news is written and published usually with the intent to mislead in order to damage an agency, entity, or person, and/or gain financially or politically, often using sensationalist, dishonest, or outright fabricated headlines to increase readership. Similarly, clickbait stories and headlines earn advertising revenue from this activity.

The relevance of fake news has increased in post-truth politics. For media outlets, the ability to attract viewers to their websites is necessary to generate online advertising revenue. Publishing a story with false content that attracts users benefits advertisers and improves ratings. Easy access to online advertisement revenue, increased political polarization, and the popularity of social media, primarily the Facebook News Feed, have all been implicated in the spread of fake news, which competes with legitimate news stories. Hostile government actors have also been implicated in generating and propagating fake news, particularly during elections.

Fake news undermines serious media coverage and makes it more difficult for journalists to cover significant news stories. An analysis by BuzzFeed found that the top 20 fake news stories about the 2016 U.S. presidential election received more engagement on Facebook than the top 20 election stories from 19 major media outlets. Anonymously-hosted fake news websites lacking known publishers have also been criticized, because they make it difficult to prosecute sources of fake news for libel.

The term is also at times used to cast doubt upon legitimate news from an opposing political standpoint, a tactic known as the lying press. During and after his presidential campaign and election, Donald Trump popularized the term fake news in this sense when he used it to describe the negative press coverage of himself. In part as a result of Trump's use of the term, the term has come under increasing criticism, and in October 2018 the British government decided that it will no longer use the term because it is "a poorly-defined and misleading term that conflates a variety of false information, from genuine error through to foreign interference in democratic processes."

Confirmation bias and social media algorithms like those used on Facebook and Twitter further advance the spread of fake news. Modern impact is felt for example in vaccine hesitancy.

There are two central issues that we will discuss:

1. The obligation to tell the truth and the prohibition to lie
2. *Hotza’at shem ra,* false *lashon ha-ra* and libel

We dealt with a third potential issue, the obligation to judge favorably, in *Shiur* #8, but we will make a few brief comments about the issue here as well.

**Falsehood[[2]](#footnote-2)**

Judaism places a high value on truth, with Rabbi Chanina even referring to it as the “seal of God” (*Shabbat* 55a). The Torah warns against falsehood in a unique manner, “Distance yourself from a false matter (*devar sheker*)” (*Shemot* 23:7).

[The Torah does warn “You shall not steal; you shall not lie; you shall not be false (*teshakkeru*) to one another” (*Vayikra* 19:11), though the Talmud contends that this verse refers to the prohibition of speaking dishonestly in monetary matters. Rav Shneur Zalman Dov Anusishky, in his *Responsa Matzav Ha-yosher* 6, argues that the simple meaning of the verse still holds legal weight. However, we will follow the view of the majority, focusing on the previously-mentioned verse.]

On the one hand, one could take this language to indicate that this prohibition is particularly egregious or otherwise dangerous. The *Ha-ketav Ve-hakabbala* argues that there is no sin that is more common; thus, it requires extra warning. The Seforno understands this verse as demanding a higher level of sensitivity – not only forbidding lying, but insisting that people not speak in ways which will teach others how to lie (as judges are warned in *Avot* 1:9). The *Orechot Tzaddikim (Shaar Ha-emet)* argues that this verse indicates that one must take care not to lie even inadvertently. Rav Zalman Sorotzkin (*Oznayim La-Torah* to this verse) argues that the notion of keeping distance from falsehoods means that even in cases in which it is halakhically permitted to lie, one should try to avoid that situation. The *Sefat Emet* (*Sefat Emet al Ha-Torah, Shoftim* 5639) argues that this indicates that this sin is particularly severe. The *Sefer Ha-chinnukh* (Mitzva 74) writes that this language indicates how revolting falsehood is:

The root of this commandment is well-known, as falsehood is abominable and vile in the eyes of all. There is nothing more disgusting than it, and malediction and curse are in the house of its lovers. [This is] because God, may He be blessed, is a truthful God, and everything that is with Him is true. And blessing is only found and resting upon those that make themselves similar to Him in their deeds: to be truthful, like He is truthful; to be merciful, like He is merciful; and to be purveyors of kindness, like He is of great kindness. But [regarding] anyone whose deeds are the opposite of His good traits and are masters of falsehood — which is exactly the opposite of His traits — the opposite of His traits will similarly always rest upon them. And the opposite of the trait of blessing which is with Him is malediction and curse; and the opposite of joy and peace and enjoyment which are with Him is worry, strife and pain. (translation from Sefaria)

On the other hand, the lack of a clear statement “Do not lie” may indicate that this prohibition is not a sweeping one. Indeed, the classic Talmudic texts focus on the prohibition of lying in court settings, and this is noted by many of the commentaries on the verse. However, in that context, it is also clear that the prohibition entails more than simply refraining from telling an untruth; it requires maintaining a high standard of ethics in the courtroom. The passage in the Talmud continues over several pages, but let us take a few emblematic cases:

**From where** is it derived that **a judge who knows that another** judge **is a robber** and is disqualified from serving as a judge; **and likewise, a witness who knows that another** witness **is a robber** and is disqualified from serving as a witness; **from where** is it derived **that he should not join him** in judgment or testimony? It is derived as **the verse states: “Distance yourself from a false matter.”**

**From where** is it derived that in a case where **a judge who knows** that the witnesses testifying before him are lying even though he is unable to prove it through their cross-examination and **with regard to the verdict** the result will be **that it is fraudulent, that he should not say: Since the witnesses are testifying** and I cannot prove their deceit, **I will decide** the case based on their testimony, **and let the chain [*kolar*]** of culpability for the miscarriage of justice **be** placed **around the neck of the** false **witnesses?** It is derived as **the verse states: “Distance yourself from a false matter.”**

The Gemara provides **a mnemonic** for additional *halakhot* derived from the verse: “Distance yourself from a false matter.” **Three** relating to **a student; and three** relating to **creditors;** and three relating to a judge: **Rags, hears, and explain.**

From these cases, we see that the warning against falsehood includes cases in which the legal process is tainted, even when there is no guarantee that the result with be false. Additionally, it forbids one from hiding behind procedural truth — requiring one to seek the actual truth, even when one could not formally be blamed for a false outcome.

The Gemara continues to stress that truth requires people to set aside normal obligations of respect, seeking truth even when it demands asserting oneself over his teacher, and even prohibits one from trusting authority when the law forbids it:

**From where** is it derived with regard to **a student who is sitting before his teacher and sees** a claim that provides **advantage for a poor** person **and disadvantage for a wealthy** person **that he shall not remain silent?** It is derived as **the verse states: “Distance yourself from a false matter.”**

**From where** is it derived with regard to **a student who sees his teacher who is erring in judgment that he shall not say: I will wait for** my teacher **until he concludes** the trial **and** then **I will contradict him and construct** a ruling **of my own so that the verdict will be attributed to my name?** It is derived as **the verse states: “Distance yourself from a false matter.”**

**From where** is it derived with regard to **a student whose teacher said to him: You know concerning me that** even **if** one were to **give me one hundred** times **one hundred dinars, I would not fabricate** a claim. Now, **I have one hundred dinars in the possession of so-and-so,** to whom I lent money, **but I have only one witness** of the two required to testify **about** the loan and enable me to collect payment; **from where** is it derived **that** the student **shall not join with** the other witness and testify? It is derived **as the verse states: “Distance yourself from a false matter”** ([Exodus 23:7](https://www.sefaria.org.il/Exodus.23.7)).

The Gemara asks: Is it from the verse **“Distance yourself from a false matter” that this** matter **is derived? But** isn’t **he certainly lying** in that case, **and** this is already stated, as **the Merciful One states: “You shall not bear false witness against your neighbor”** ([Exodus 20:13](https://www.sefaria.org.il/Exodus.20.13))? **Rather,** the reference is to a case **where** the teacher **said to him:** It is **certain** that **I have one witness, and you come** and **stand there** beside him **and do not say anything, as** in that manner **you do not express a lie from your mouth.** Your silent presence will create the impression that I have two witnesses and lead the debtor to admit his debt. **Even so,** it is **prohibited** to do this, **due to that** which **is stated: “Distance yourself from a false matter.”** ….

Finally, the command demands that the courts creates an atmosphere that encourages truth-telling — by not allowing litigants to speak with the corrective presence of the opposing party:

**From where** is it derived **that a judge should not hear the statement of** one **litigant before the other litigant comes** to court? It is derived **as the verse states: “Distance yourself from a false matter.”**

**From where** is it derived that **a litigant shall not explain** the rationale behind **his statements to the judge before the other litigant comes** to court? It is derived as **the verse states: “Distance yourself from a false matter.” Rav Kahana teaches** that this halakha is derived **from** that which is written: **“You shall not accept [*lo tissa*]** a false report” ([Exodus 23:1](https://www.sefaria.org.il/Exodus.23.1)), which he interprets as though it is written: **You shall not cause** others [*lo tassi*] to accept a false report. (*Shevuot* 30b-31a, Koren translation)

Other texts do accept this verse as presenting a general obligation to be honest, and if the standard is high outside the court as it is within, as the sampling of laws above indicates, then the demands for honesty would be quite high indeed.

Take, for example, the following passage:

One recites praise of **the bride as she is,** emphasizing her good qualities. **And Beit Hillel say:** One recites: **A fair and attractive bride. Beit Shammai said to Beit Hillel:** In a case **where** the bride **was lame or blind,** does **one say** with regard **to her: A fair and attractive bride? But the Torah states: “Keep you from a false matter”** ([Exodus 23:7](https://www.sefaria.org.il/Exodus.23.7)). (*Ketubot* 17a, Koren translation)

While the Talmud goes on to explain why Beit Hillel permit lying in this case, it is clear that under normal circumstances, they would agree that lying is prohibited. Based on this, many Poskim assume that the prohibition applies even outside the context of a courtroom.[[3]](#footnote-3)

The *Chafetz Chayim* (*Peticha* 11) takes this as obvious. He further argues that from the discussion in the courtroom we can extrapolate that even outside the court, it is even forbidden to say anything that **seems to be false, and obviously anything that has any falsehood mixed in.**

Some argue that it takes the form of a positive commandment rather than a prohibition.[[4]](#footnote-4) Others agree, though they quote a verse in Tehillim, that “He who deals deceitfully shall not live in my house; he who speaks untruth (*dover shekarim*) shall not stand before my eyes” (*Tehillim* 101:7, JPS).[[5]](#footnote-5) The use of this verse, however, may indicate that the prohibition outside of court may be less strict.

It should be noted that the vast majority of Poskim assume that the prohibition applies equally whether one lies verbally or in writing.[[6]](#footnote-6) *Sefer Chasidim* (47 and 1058) adds that even nodding in such a way that a false impression is created causes one to violate this sin. Admittedly, there are dissenters (see, for example, the Chida in his *Brit Olam* to *Sefer Chasidim*), but we will assume for our purposes that this is the case.

**When the Victim Is Not Present**

Rav Efrem Goldberg notes that the laws of falsehood in the courtroom setting provide particular insight into the world of social media. The *Sefer Ha-chinnukh* explains that the reason the court cannot listen to the claims of one litigant without the other present is not (only?) so that the judges will not be biased, but rather because “people will speak idle words when not in front of their adversary.” In other words, the litigants will feel freer to lie about their opponent if they don’t need to look into their eyes as they dissemble. As Rav Goldberg notes, the anonymity of the internet makes it easier to lie; even if one is identifiable, the somewhat impersonal nature of social media make it easier to lie, knowing that one will not have to look the victim in the eyes.[[7]](#footnote-7) We noted this insight in *Shiur* #17 (<https://www.etzion.org.il/en/shiur-17-lashon-ha-ra-digital-age-part-ii-lashon-ha-ra-front-three>), as we addressed the view of Rabbeinu Yona, who argues that negative information which it is necessary to publicize must be disseminated without anonymity; otherwise, people will doubt the veracity of the information, knowing that anonymity helps lower people’s inhibitions.

**Damaging Lies, or All Lies?**

The *Yere’im* (235) seems to limit the prohibition to lies that harm others. However, the majority of Poskim, as noted by Rav Feldman, argue that the prohibition to lie holds even when no damage will be caused. (The question of when it permitted to lie for the sake of peace or other valid reasons is beyond the scope of the shiur; see *Yevamot* 65b, *Ketubot* 17a and *Bava Metzia* 23b). The *To’afot Re’em* (Comments to *Yere’im* 235:1), however, argues that even the *Yere’im* would concede that lying which causes no harm would constitute a rabbinic violation. This however, is challenged by Rav Yerucham Fischel Perlow (Commentary to the *Sefer Ha-mitzvot* of Rav Saadia Gaon, Positive #22), who suggests that according to this position, it would be permitted to lie when no harm is caused, and no prohibition, biblical or rabbinic, would be violated.

**Why Is Lying Prohibited?**

Many halakhic authorities note that there are two trends among Poskim in terms of the rationales they offer for this prohibition. Some argue that the central issue is the problem of virtue: the Torah wants us to be honest. Others, the extreme example being that of the *Yere’im* cited above, focus on the problem of damage. As Rav Feldman notes, a potential difference that may emerge is whether or not later telling the truth fixes the problem. While it may help reverse the damage, it cannot change the fact that one has spoken an untruth (see Feldman, page 67; and *Responsa Shevet Ha-Kehati* 3:299).

**The Value of Truth**

From all of the above, it seems clear that the even if fake news is not created in order to cause damage, it remains problematic to write and disseminate such stories, as assumed by the article we began with. Furthermore, creating a culture in which truth is devalued by cavalierly accusing all who say things that are contrary to one’s own interests as propagating fake news violates the sanctity of the truth and undermines the very seal of God. The extent to which social media has enabled this is objectively negative, whether or not one concludes that it is the responsibility of Facebook or any other company to stop its platform from being used for these purposes. A situation in which falsehood is tolerated and truth left unrecognized is objectively a travesty.

Rav Goldberg notes that it is the value of truth that leads the *Sefer Ha-chinnukh* to write that it is not only the speaker who must avoid falsehood; the audience must eschew untruths too. This is the “distancing” that the verse demands:

And from the side of distancing, it warned us not to bend our ears at all to anything that is considered falsehood — and even if we do not know with certainly that it is a false matter. And [this is] similar to what they, may their memory be blessed, said ([*Chullin* 44b](https://www.sefaria.org.il/Chullin.44b)), "Distance yourself from what is ugly, and from what is similar to it."

The Gemara writes that the society of liars is among those which will never merit to see the Divine Presence (*Sota* 42a). From that perspective, the culture of fake news, whatever other violations it may entail, definitely runs counter to some of the most deeply-held Torah values.

When damage is intended, and a particular victim is the subject of the story, we must add the potential prohibitions of *lashon ha-ra* and its derivatives to the picture. We will return to these next week.

1. https://www.baishavaad.org/hosting-postings-is-facebook-responsible-for-its-content/ [↑](#footnote-ref-1)
2. Much of this section is based on Rav Daniel Feldman’s *The Right and the Good* (Yashar Books, 2005), Chapter Five: “More than the Best Policy: Honest.” [↑](#footnote-ref-2)
3. See, for example, *Yad Ha-ketana, De’ot,* Chapter10. [↑](#footnote-ref-3)
4. See, for example, Semag, *Positive* #107; *Semak* #227; and sources quoted by Feldman, pp. 64-65. [↑](#footnote-ref-4)
5. See *Orach Meisharim* p. 67. [↑](#footnote-ref-5)
6. See Feldman, pp. 69-70, especially note 44. [↑](#footnote-ref-6)
7. <https://www.yutorah.org/lectures/lecture.cfm/873480/rabbi-efrem-goldberg/fake-news-and-absent-presence-the-dangers-of-technology/> [↑](#footnote-ref-7)