



## Ruling Under the Influence

Purim is approaching along with its Mitzva of "*Chayav Inish liVsumei...Ad d'Lo Yada*". We will discuss a relatively uncommon Halacha, namely, the prohibition of giving a Halachic ruling while drunk or even mildly intoxicated. In the following paragraphs, we will examine several aspects of this Halacha including its applicability to doctors providing medical advice or treatment.

After the death of Nadav and Avihu<sup>1</sup>, Aharon and his remaining sons were taught the laws of "*Shesuyei Yayin*" – the prohibition to enter the *Mishkan* and to perform the *Avoda* after drinking wine. Though the primary prohibition deals with the *Mishkan* and the *Avoda*, the verse continues, "*And to teach the Jewish people all the laws that God spoke to them through the hand of Moshe*". *Chaza"l* derive from this juxtaposition that one who is drunk may not give a *Hora'a* (a Halachic ruling).

This Halacha is discussed by the Gemara in several places (*Eiruvim* 64a, *Kesubos* 10b, *Nazir* 38a) and is codified by the Rambam (*Bi'as HaMikdash* 1:3):

*Just as a Kohen may not enter the Mikdash while inebriated, so too any man, Kohen or Yisrael, may not Pasken while drunk... as it says, "and to teach the Jewish people".*

This is a Torah prohibition, as evident from the Rambam (*Sefer HaMitzvos Lo Sa'aseh* 73) and *Sefer HaChinuch* (152), but there are three caveats:

First, the prohibition is only to *Pasken* while drunk. A regular person may *learn* Torah and Halacha in that state. However, a Rabbi whose primary job is *Hora'a*, may not do so. Since even his learning is for the sake of *Psak*, he may not do so while inebriated.

Second, the *Shulchan Aruch* (*C.M.* 7:5) cites a *Tosfos* (*Sanhedrin* 42a) that distinguishes between ruling on *Isur v'Heter* (e.g., *Shechita* or *Nida*) and ruling on monetary matters. According to *Tosfos*, the latter is permissible while drunk. Although this differentiation is not accepted as Halacha (see *Pischei Teshuva* *ibid.* 6), it is the "*Shuras haDin*" (letter of the law).

It goes without saying that issuing a *Psak* regarding life and death matters is more stringent; a Posek is forbidden from drinking even less than a *Revi'is* of wine when judging a capital case (*Tosfos* to *Sanhedrin* 42a, based on the Mishna *ibid.*).

Third, a Halacha that is explicitly written in the Torah does not fall under this prohibition. For example, if an intoxicated person is asked whether it is permitted to drink blood, he may answer that it is forbidden (*Rambam* *ibid.*, *Rama* *Y.D.* 242:13). The *Shach* (*ibid.* 20) explains that it is a *Machlokes Rishonim* if the Halacha must be explicit in the Torah (as the *Rambam* implies), or if it is enough that it is clear in the *Poskim* (as the *Rama* implies, based on the *Maharik*).

---

<sup>1</sup> Who entered the Mishkan in a state of inebriation according to one opinion – See *Rashi*, *Vayikra* 10:2.

In light of these limitations, we can explain the fundamental *Psul* (disqualification) of *Shesuyei Yayin* in two ways:

- 1) Intoxication is similar to a defect in a sacrificial animal (making it a *Ba'al Mum*, which is a *Psul haGuf* – an inherent physical invalidation). The *Psul* of *Shesuyei Yayin* is mentioned in the context of entering the Beis HaMikdash. Therefore, a person in this state is akin to a *Ba'al Mum* which cannot be brought into the Beis HaMikdash; in other words, he cannot “approach” to render a Halachic ruling.
- 2) Alternatively, it is not considered a total invalidation since inebriation is temporary. A similar Halacha applies to a blemished animal; if its defect is only temporary, it is not considered a *Ba'al Mum*. Instead, the reason for the *Psul* is purely pragmatic as a drunk person is cognitively impaired and may rule incorrectly.

According to the second approach, we can easily explain why the prohibition is specifically to issue a *Psak*, while learning is permitted. A mistake made while learning is not as significant as it can be corrected. This is not the case when giving a *Psak*. In fact, even according to the first approach, it can be understood that a *Moreh Hora'a* has an honorable status and a “*Mum*” would disqualify him, whereas a person who is not learning *l'Shem Hora'a* does not have that status.

We can utilize these two approaches to explain the *Machlokes* as to the types of *Hora'a* that are forbidden. The reason why monetary cases are less strict than *Isur v'Heter* is that the money can be returned in the case of an erroneous ruling, whereas a mistake in *Isur v'Heter* may lead to an *Aveira* that cannot be undone. This explanation accords with the second approach that the problem of *Shesuyei Yayin* is a potential error in *Hora'a*. Those who do not distinguish between *Dinei Mamon* and *Dinei Isur v'Heter* seem to hold that *Psak* necessitates an honorable state, as per the first explanation, therefore *Shesuyei Yayin* are forbidden to rule in all cases.

These two approaches also explain the *Machlokes* between the *Rambam* and the *Maharik* and *Rema* as to what constitutes a straightforward ruling that may even be rendered by *Shesuyei Yayin*. The *Rambam* would say that inebriation is an inherent *Psul* – akin to a blemish on an animal – therefore, a drunk person can only inform us of something explicit in the Torah as that is relating simple facts, not *Hora'a*. However, if it is not an explicit *Pasuk* in the Torah – even if the Poskim agree unanimously – it would constitute *Hora'a*. The *Maharik* and *Rema* would argue that the concern is only that a drunk person might make a mistake. Therefore, if the matter is explicit in the Poskim, he is permitted to give a *Psak* since there is no concern for error.

The Gemara in *Eirubin* 64<sup>a</sup> explains that the amount of wine necessary for this prohibition to take effect is a *Revi'is*. (The *Terumas haDeshen* (1:42) asserts that it is apparent from the Gemara that we can distinguish between the stronger wine used in the time of the Gemara and the wine we drink today which is weaker and less intoxicating. Therefore, the measure of wine required for the prohibition to take effect nowadays is greater. Many dispute the *Terumas haDeshen's* assertion.)

The Gemara in *Beitza* (4a) relates that after eating his Yom Tov meal, Rav refrained from teaching Halacha in public until the following day. The *Rashba* (*Shu"t* 1:247) deduces from this that it is forbidden to give a *Psak* after drinking a *Revi'is* of wine until the next day. However, he then rejects the proof:

*We can say that this only applies on Yom Tov when one drinks liberally. This is why it says that he (Rav) did not appoint an Amora (a person to repeat his Shiur loudly to the audience) from Yom Tov until the next day. This implies [that he] only [acted in this way] from Yom Tov until the next day; on other days he would appoint [an Amora].*

What is the *Rashba's* intent in rejecting the proof? Does he mean that on a day when we drink liberally, such as Yom Tov, the prohibition of *Hora'a* applies even if a person only drinks a *Revi'is*, since we are concerned that he may come to drink more? Or does he mean that the prohibition only applies if a person drinks liberally, but not if he drinks only a *Revi'is*?

The *Beis Yosef* (C.M. 7) describes the *Rashba's* position in the following manner: "The *Rashba* states in a *Teshuva* that if a person drank a **Revi'is** he is prohibited from *Hora'a* that day." The *Beis Yosef* then comments: "This does not seem correct; rather, when he no longer feels the influence of the wine it is permissible [to rule]."

The *Beis Yosef's* citation of the *Rashba* seems surprising. The *Rashba* only (explicitly) prohibited *Hora'a* for an entire day if it is Yom Tov, not on other days. But leaving this aside, we see from the *Beis Yosef* that the prohibition applies even with a *Revi'is* (see the *Prisha* and *Drisha ibid.*). The *Beis Yosef* also disagrees with the *Rashba's* view that the *Isur* extends for the entire day and holds that it matters only if the person still feels intoxicated.

This is also implied by the majority of the Poskim. Immediately after drinking a *Revi'is*, a person is prohibited from *Hora'a* even if he feels no influence from the wine because this is an explicit *Isur Torah*. Once some time has passed, it is only when he is certain that the effects of the alcohol have completely worn off that he is permitted to issue a *Hora'a*.

A fascinating aspect of this Halacha is that it applies not only to wine but also to other substances that may cloud a person's judgment. The Gemara in *Kesubos* (10b) cites Rav who rules: "A person who ate dates may not issue a *Hora'a*" because dates may cause slight intoxication. *Tosfos* ask that the Gemara in *Krisos* (13b) records a *Machlokes Tana'im* as to whether a Kohen who performed the *Avoda* after ingesting an intoxicating food or substance other than wine transgresses a *Lo Sa'asei*. The Halacha follows the opinion that he does not. Given that the Halachos of *Avodas haMikdash* and *Hora'a* are the same in this regard, why does the Gemara prohibit issuing a *Hora'a* after eating dates? *Tosfos* answer that we must conclude that there is a distinction between these two Halachos. In *Krisos*, *Tosfos* after another answer: Perhaps there is no difference between these Halachos; performing the *Avoda* and issuing a *Hora'a* after drinking wine is *Asur mid'Oraisa*. Doing so after other foods, such as dates, is an *Isur d'Rabbanan*.

This Halacha is codified by the *Rambam* (*ibid.*):

*Even if a person ate dates or drank milk and his mind became slightly confused – he may not issue a Hora'a.*

The *Rama* similarly includes “*wine or other intoxicating substances*” (Y.D. 242:13).

However, one difference between the *Rema's* rendition of this ruling and the *Rambam's* is that the *Rambam* adds “*and his mind became slightly confused*”, which implies that there is a difference between wine and other substances. Wine is considered an intoxicating substance in all cases. Other substances depend on the individual – their influence varies from person to person. This is why the *Rambam* qualifies that these substances only pose a problem if they cloud a person's judgment.

Some say that this is why milk is not considered *Chamar Medina* despite its supposed intoxicating properties. According to the *Rambam*, this Halacha is subjective; intoxicating substances other than wine depend on the individual. The same applies to time and place; since milk nowadays clearly does not cloud a person's judgment, it is not considered *Chamar Medina*.

In this light, Rav Ovadia Yosef *zt"l* commented (*Yabia Omer, O.C. 4:12*): “*It is understandable that we see great people drinking coffee with milk and then issuing Hora'a to all who ask*”.

In conclusion, if a doctor drank a *Revi's* of wine, may he advise a patient (based on his interpretation of lab results and other testing) to undergo a medical procedure? (We should point out that doctors often deal with life-and-death situations. If we compare medical advice to *Hora'a*, even a negligible amount of wine should preclude him from offering a recommendation, as in capital cases before *Beis Din*.)

Some infer from the famous comments of the *Ramban* (*Toras Ha'adam, Sha'ar haMeichush, Inyan haSakana, 6*) that a doctor does have the same status as a judge. The *Ramban* poses a contradiction. In *Bava Kama* (85b), the Gemara states that the Torah gave permission to a doctor to heal, yet the *Tosefta* (*Bava Kama, Chapter 9*) states that a skilled doctor who erroneously advises a sick person and causes his death must go to exile for his mistake. The *Ramban* resolves the contradiction:

***A doctor is like a Dayan who is commanded to judge. If he makes a mistake, he is not punished, as the Gemara states (Sanhedrin 6b): “Lest the Dayan say, “Why do I need this difficulty?” the Torah responds with the words: “With you in judgment<sup>2</sup> – the Dayan can only rule based on how he sees [the case]”. Nevertheless, if he errs and it becomes known to the Beis Din, he must pay from his own money even though if he judges with permission of the Beis Din, he is exempt. Here too, he is exempt from paying miDinei Adam, but he is required to pay and to go into exile miDinei Shamayim since it is known that he erred and caused damage or death by his own hands. Similarly, they said in the Tosefta (Bava Kama 6:6) regarding exemption miDinei Adam and liability miDinei Shamayim that a skilled***

<sup>2</sup> “*v'Imachem biDvar haMishpat*”, *Divrei HaYamim 2, 19:6*

*doctor who treated [a patient] with permission of the Beis Din, is exempt miDinei Adam and his case is handed over to Shamayim. Nevertheless, without knowledge of the mistake, he is completely exempt, like the judge, both miDinei Adam and from punishment of Shamayim, provided that he took appropriate care in a life-and-death matter and did not cause harm due to negligence.*

The *Ramban* implies that the status of a doctor is similar to that of a judge. He compares them not only semantically, but also regarding their level of responsibility to judge carefully and cautiously. It is certainly reasonable to assume that the *Ramban* would similarly equate them with regard to the prohibition of drinking wine before issuing a recommendation or *Hora'a*.

According to the view that inebriation is a *Psul haGuf* (rather than a concern for making an error), the *Isur* should not apply to a doctor. However, this is not the case. Even in the absence of an *Isur d'Oraisa*, there would still be an *Isur d'Rabbanan*, as evident from *Tosfos* who state that even if the *Isur d'Oraisa* only applies to wine, there is still an *Isur d'Rabbanan* to issue a *Hora'a* after ingesting other intoxicating substances. Apparently, even if the *Isur d'Oraisa* is due to a *Psul haGuf*, there is an *Isur d'Rabbanan* due to the concern of error and this would seemingly apply to a doctor as well.