

HALOCHOSCOPE

Congregation Shaaray Teffilah, Pittsburgh, PA 15217

As in previous issues, we caution you to consult with a Rabbi before acting on any information given here.

The question:

Someone enlisted the help of a non-observant Jew in their house. Together they lifted and moved a table that had an opened bottle of wine on it. Since wine touched by a gentile or one who desecrates Shabbos publicly is forbidden, may this wine be drunk?

The issues to be discussed:

- (A) *Stam Yeinom* - The prohibition against non-Jewish wine.
- (B) *Kocho* - Which actions of a gentile result in Stam Yeinom?
- (C) To which non-observant Jews does this also apply?
- (D) *Mevushal* - boiled wine

(A) Stam Yeinom

Literally translated, this means "their ordinary wine". That is, wine not known to have been used for libations as a form of idol-worship. It was the usual practice of pagans to remove some wine from its container and to pour it back in the name of their diety. It is forbidden Scripturally both to drink and to gain any benefit from wine used in this way. It is also forbidden to use the wine that it was poured back into. This is known as *Yayin Nesech* - libation wine. [See Parshas Ha'azinu 32,38. Avoda Zora 39b.]

However, this only applies to wine known to have been used for libation. If it is unknown whether the gentile indeed used the wine in his idolatry, it is still forbidden Rabbinically. This is for two reasons: Firstly, as a precaution against the Scriptural prohibition, and secondly, to discourage socializing with the gentiles as a deterrent to intermarriage. [See Shabbos 17b, Avoda Zora 31a and Rashi there. Avoda Zora 36b.] According to the first reason, it should also be forbidden to gain any benefit from it, whereas according to the second reason, only drinking it is forbidden. [See Avoda Zora 29b Tosafos.] Therefore, today, when gentiles are not considered genuine pagans, there is an opinion that it is permitted to benefit from Stam Yeinom. We may rely on this opinion only where a heavy loss will be incurred by refraining from using it. [See Shulchan Aruch Yoreh De'ah 123,1. Rema, Taz, Shach, etc.] Some authorities extend this leniency to cases where it was permitted to benefit from but forbidden to drink the wine at the time of the Mishna, whereas today we may be allowed to drink it. [See shul. Aruch Y.D. 124,24, Rema, Shach 71 and elsewhere.]

In addition, any Jewish-owned wine that is touched by a gentile is

forbidden. [See e.g. Avoda Zora 55a to end of fourth Perek. See also Shul. Aruch, Y.D. 123,1. 124,11.] If the gentile did not touch the wine, but raised the container holding the wine and shook it even slightly or moved the wine in any other way, it could be forbidden, depending on a number of variables, primarily on whether or not it is normal to do libation in this manner. [See Avoda Zora 59b, 60a, etc. Shul. Aruch Y.D. 124, 17-18,25; 125, 8-10. Taz 125,11-12; Darkei Teshuva 18, etc.]

Accordingly, one cannot entrust wine into the care of a gentile because he may touch or move it. If the container has a seal which must be broken in order to open it, the question arises: do we suspect the gentile of breaking the seal then resealing it?

The Talmud cites two opinions regarding this: both agree that wine thus entrusted to the care of a gentile is permissible for benefit, but they disagree regarding the permissibility of drinking it. [See Avoda Zora 31a, Tosafos, Rambam Hilchos Ma'acholos Asuros 13,9. Shul. Aruch Y.D. 130,2, and Rema.]

Once the wine of a Jew is sealed with two seals ("a seal within a seal"), it can be safely entrusted to a gentile. If the seals are intact when it is returned we need not assume that they were broken and resealed. [See Shul. Aruch Y.D. 130, Shach 5.]

(B) Kocho, Indirectly touching and moving the wine

If a gentile does not intend to touch the wine and does not touch it directly, but by way of another object such as the end of a stick or his clothing, one may use the wine even for drinking purposes. The same is true if the gentile intentionally touches it with the end of a stick but is not aware that it is wine. [See Tur and Shul. Aruch Y.D. 124,24, based on Avoda Zora 57b-58. See Taz there. See also Rema and Shach 71.] However, all this is true only for touching; moving the wine is more stringent. If the gentile raised a container of wine and pours it, or if he makes the wine move indirectly, such as pushing a table with a cup wine on it, it is as if he touched the wine directly. If it is done very indirectly by pushing one thing which sets off a chain-reaction which moves the wine, it is permitted. If the gentile was being helped by a Jew such as a Jew and gentile pouring together from a barrel of wine, it is also permitted to use and drink this wine. Ideally, of course, one should not allow this to happen. It is also important to know exactly how much effort each person was exerting and whether each one's action would have been sufficient alone in the circumstances. [See Avoda Zora 60a, Tosafos and 72b Tosafos. Shul. Aruch Y.D. 125, 2-4; Darkei Teshuva 5.] Furthermore, if a Jew is watching the gentile closely, there are cases where we permit the wine even though only the gentile was holding it. [See Shul. Aruch. Y.D. 125,10.]

(C) Mumar - the Non-observant Jew

Mumar literally means "exchanged" - he has exchanged his religion. A Jew who violates all the mitzvos in the Torah *Bemaizid*, intentionally, is called a *Mumar Lechol Hatorah* which equates him with a gentile with regard to a number of Halachic issues including his wine. A Jew who intentionally practices idolatry is called a *Mumar Leavoda Zora*, and even if he keeps the rest of the Torah, he is considered a Mumar Lechol Hatorah. There are two motivations to become a Mumar: *Mumar Lehachis*, someone who intentionally violates any commandment of the Torah or disregards the words of the Sages out of spite and not out of convenience. An example would be someone who, given a choice between kosher and non-kosher meat of equal price and quality, will purposely choose the non-

kosher meat. A Mumar Lehachis is so considered even if he practices the whole Torah meticulously except for this one Aveira. He is equated by the Talmud to a Mumar Lechol Hatorah. The second type is a *Mumar Lete'avon*, one who intentionally transgresses out of convenience. If he does one particular Aveira, he is not a Mumar Lechol Hatorah and, most times he is still considered a Jew regarding his touching wine. The exception to this rule is one who desecrates the Shabbos publicly, even Lete'avon, violating any of the Shabbos laws before a number of Jews. Some say that ten Jews must be present, or that it is done such that ten Jews will find out about it. For example, someone who drives on Shabbos only when it is too hard to walk. A person who does not believe in the Chazal, is likewise a Mumar Lechol Hatorah. [See Eruvin 69a-b, Sanhedrin 27a, Chulin 5a etc. Shul. Aruch Orach Chaim 385 Y.D. 2, 119, 124,159,251, etc and commentaries.]

There is an opinion that nowadays even if someone deliberately buys non-kosher food over equal kosher food he is not considered Lehachis because he has simply become totally unfamiliar with kosher food and because his environment has influenced him. [See Aruch Hashulchan Yoreh De'ah 251.]

It appears that one may neither drink nor benefit from the wine since the Rabbis consider these Mumorim to be like gentiles. However, Chasam Sofer [Teshuvos Y.D. 120] maintains that the reasons for the Rabbis equating a Mumar with a gentile are neither because of intermarriage, obviously, nor because of libation but as a punitive measure and so one can deal more leniently with the wine they touch and also with regard to concluding that one is indeed a Mumar.

All of this refers to a Jew who intentionally violates Torah law, a *Meizid*. A *Shogeg*, who unintentionally violates Torah law, is never considered a Mumar. Consequently, if a person is unaware that he is violating a Mitzva, even if it is public desecration of Shabbos, he is not like a gentile with regard to the wine he touches. Unfortunately, due to lack of education, a lot of our brethren today fall into the category of Shogeg. Even those who are aware of Shabbos are unaware of its gravity. The common term applied to these people today is *Tinok Shenishbo Bein Hagoyim* - a child captured and brought up by gentiles who never learned about Shabbos. [See Shabbos 68b.] The Talmud says that one who is embarrassed to show his disrespect for Shabbos in the presence of the Jewish leader, even if he otherwise publicly violates Shabbos is not considered a Mumar of the kind mentioned here. [See Eruvin 69a.] Based on this, some authorities are of the opinion that one who is embarrassed to be seen violating Shabbos by any Rabbi is also not to be considered a public violator of Shabbos. [See Darkei Teshuva Yoreh De'ah 2 and 119, 29-37 and 124,10-13.] There is another opinion that Shabbos in the times of the Talmud was taken so seriously that anyone who publicly desecrated Shabbos was automatically considered a Mumar Lechol Hatorah because Shabbos would be the last Aveira one would consider. Today, however, since non-observant people are doing Aveiros out of convenience, Shabbos is one of the first things people stop observing. Therefore, today, public desecration of Shabbos does not necessarily mean that someone is Mumar Lechol Hatorah. [See Divrei Binyomin No. 5.]

(D) Mevushal-

Boiled wine is not used in libation and consequently is not forbidden if it was touched by a gentile or Mumar. [Avoda Zora 30a. See Shul. Aruch. Y.D. 123,3.] If, therefore, one anticipates having gentiles or Mumarim working in his house, he should either conceal the wine or seal it, or he can buy only Mevushal.

In summary: Our case has many reasons for leniency. Firstly, there was an observant Jew watching the wine as it was being moved. Moreover, he was helping to move it. Furthermore, the supposed Mumar did not necessarily know what was on the table at the time, since it has a lot of other things on it. Lastly, as we have seen, one cannot conclude that a person is a Mumar and not considered a Shogeg. Although one should not rely on this *Lechatchilah* - before the situation, *Bide'eved*, once the situation has occurred, one may rely on this.

c 1993 Rabbi Shimon Silver

ANNOUNCEMENTS

SCHEDULE:

SHABBOS MINCHA	6:15 PM
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY - FRIDAY	7:00 AM
MINCHA SUNDAY - THURSDAY	6:30 PM
CANDLE-LIGHTING TZAV	6:27 PM
MINCHA EREV SHABBOS TZAV	6:20 PM

SHIURIM:

GEMORO MAKOS	SUNDAY	7:15 AM
HALACHA B'YUN	MONDAY	9:00 PM
HILCHOS SHABBOS	SHABBOS	8:15 AM

Rabbi Silver is available to arrange Mechiras Chometz after Shacharis or Mincha in Shul or call 521-5419 to arrange an appointment.

This issue of HALOCHOSCOPE is sponsored by Dr. and Mrs. Yehuda Gologorsky.

Any and all comments and suggestions are welcome and can be addressed to :
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