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WHEN MAY ONE ASK FOR A SECOND HALAKHIC OPINION

Rabbi Aryeh Klapper, Dean

Dear Rabbi Klapper,

Yesterday, I asked the rabbi of my shul a halakhic sh'eilah, and he gave me a machmir answer that feels wrong, and that I think may damage my relationship with my husband. I think you would give a different answer. I've always felt that "shitah-shopping" lacked integrity, so I feel very stuck. Am I permitted to ask you the same question, and would you consider answering it?

Sincerely,

Jane Tzviyah

Dear Ms. Tzviyah,

Your sense that shopping for a lenient opinion lacks integrity is deeply rooted in our masoret.

The Talmud in three places (Berakhot 63b, Chullin 44b, Niddah 30b) cites the following beraita:

כחם שטמא – אין חברו רשאי לטהר; אסר – אין חברו רשאי להתיר
A sage who ruled 'impure' – his colleague is not authorized to rule 'pure'; (A sage who) forbade – his colleague is not authorized to permit.

The dominant explanation for this rule is that asking a sh'eilah to a halakhist is the moral and legal equivalent of taking a *neder* (oath) to act in accordance with that posek's answer. A secondary explanation is that issuing the second ruling is an act of disrespect toward the first scholar. So there is no question that asking for a psak creates a binding obligation to follow the answer.

A *beraita* on Eiruvim 6b provides further grounds for rejecting shitah-shopping.

לעולם הלכה כבית הלל, והרוצה לעשות כדברי בית שמאי – עושה; כדברי בית הלל – עושה. מקולי בית שמאי ומקולי בית הלל – רשע; מחומרי בית שמאי ומחומרי בית הלל – עליו הכתוב אומר "הכסיל בחשך הולך".

The law actually follows Beit Hillel, but one who wishes to act according to Beit Shammai – may do so; according to Beit Hillel – may do so. From the leniencies of Beit Shammai and from the leniencies of Beit Hillel – he is wicked; from the stringencies of Beit Shammai and the stringencies of Beit Hillel – of him Scripture says "the fool walks in darkness".

Talmud 7a explains that this applies to all disputes among rabbis of equal rank; one is entitled to follow any one rabbi or school consistently, but one who cherry-picks the leniencies of both sides is considered wicked. The problem of asking the question to a second halakhist is therefore intensified when one does so only after receiving stringent rulings, and especially if the question was originally asked to one's usual posek.

Please note, however, that the Talmud has no general objection to asking different questions to multiple rabbis. The *beraita* discusses only circumstances in which the answers of Beit Shammai and Beit Hillel were known in advance, and where the primary ground for choosing among them was leniency. There is no

objection to directing questions to rabbis who are experts in particular fields, or who know your mind and soul better with regard to specific issues, or who share your values in particular areas. The phrase "*asei lekha rav*", meaning that one should seek to have a primary Torah mentor, is often excellent advice, but pretending that such a relationship exists when it does not can do great harm. In its original contexts (Pirkei Avot 1:6 and 1:16) *asei lekha rav* it does not relate to asking live halakhic sheilot, and indeed R. Ovadiah miBartenura in his commentary there emphasizes that one should learn halakhic reasoning and application from multiple teachers.

Furthermore, a key marker of authentic Torah is that דרכיה דרכי נעם, "All her ways are pleasantness", and it violates the nature and purpose of halakhah when a psak causes unnecessary moral discomfort or emotional anguish, let alone harms a marriage. We each have a responsibility to prevent this. One way of accomplishing this is to ask again when a psak seems not to meet the "pleasantness" standard.

Is there a way to distinguish this from the "shitah-shopping" that you correctly deplore?

Let's take a few minutes to go through some of the mekorot now, and develop a preliminary theory. Maybe we can do the topic more justice together in our *iyun shiur* over the next several weeks.

On Niddah 20b, the gemara cites our *beraita* to challenge an incident in which Yalta, the wife of Rav Nachman, brought a stain to Rabbah bar Bar Channah, who declared it *tamei*; and then to R. Yitzchak son of Rabbi Yehudah, who declared it *tahor*. How could R. Yitzchak do this? The gemara says that Yalta told him that Rabbah bar Bar Channah himself had in the past ruled similar stains *tahor*, but had trouble with his eyes that day. Later the gemara suggests that R. Yitzchak thought the answer was obviously *tahor*, and so did not see himself as issuing a ruling, but rather as informing her of the definite halakhah.

The category "ruling" applies only when the posek was confronted by a genuine choice, and the *beraita*'s rule never prevents a posek from reversing a colleague's error.

Now of course the questioner cannot determine on their own that the first answer was an error, and not merely a poor use of discretion. *Tosafot* (see also *Tosafot Chullin 44b, AZ 7a*) therefore concludes that the *beraita* does not constrain people from asking; rather, it gives guidelines to halakhists as to when they can overrule the previous answer. At most, it obligates the questioner to tell the halakhist about the previous ruling.

דקפידא לא הויא אשואל אלא אחכם אבל השואל ישאל כל מה שירצה דמתוך כך ידקדקו דבדבר ופעמים שהראשון טועה ויצא הדבר לאורה

the objection is not on the asker but rather on the sage, but the asker should ask everything he wishes since as a result they will be rigorous on the issue and sometimes the first will have erred, and this way the matter will be seen in its true light

Rabbi Menasheh Klein pointed out that the possibility of double-checking is beneficial by itself, in that scholars will likely be more careful lest their errors be exposed.

Tosafot Bava Kamma 100a makes a more far-reaching claim.

ולא דמי למראה דינר לשולחני שוב לא היה לו להראותו לאחר אבל גבי פרה כשאסרה לו חכם זה לא היה לו למחר להאכילה לכלבים או לערבתם עם פירות והיה לו לישאל עדיין לחכם אחר

This is not like showing a dinar-coin to a banker (to determine its authenticity), where once he showed it to the banker, he should not have shown it to another. But regarding a cow, when this sage forbade it to him (=declared it not kosher), he should not have hurried to feed it to dogs . . . rather he should yet have asked it another sage.

The question there is whether a halakhist is financially liable for incorrectly ruling something not kosher, if the financial consequences can no longer be corrected. The answer is: No, because the questioner should not have followed the incorrect ruling without asking another halakhist, especially when the consequence is that food fit for human is fed to dogs! Here Tosafot say that questioners have not only the right but the obligation to ask for second opinions on halakhic issues where the answer has real-world consequences, just as responsible people seek second opinions on medical issues.

Rabbi Hershel Reichman reports a fascinating explanation of this from Rabbi Yosef Dov Soloveitchik (Reshimot Shiurim Bava Kamma 100a):

דשאני הוראת חכם שאינה הבעת דעת מומחה בעלמא כמו הבעת דעת שולחני אלא מהווה חלות שם בפני עצמה בדיני התורה וכדכתיב (דברים י"ז: ח') כי יפלא ממך דבר למשפט בין דם לדם ובין דין לדין כו' וקמת ועלית אל המקום וכו' ובאת אל הכהנים הלוים ואל השופט אשר יהיה בימים ההם ודרשת והגידו לך את דבר המשפט ומעצם דיני ההוראה הוא שהוראת חכם ניתנת לבירור נוסף, שכל הוראת חכם הוי' חפצא של תורה וממסורת התורה היא, ותורה ניתנת לבירור לפי המשא ומתן שבין החכמים. ולכן לא היו להם לבעלים לסמוך רק על החכם ששאלו בראשונה, כי יתכן שבמשך בירור ההלכה עם חכמים אחרים הוראתו תשתנה ותבוטל, משא"כ בשולחני

The ruling of a halakhist is different. It is not the pronouncement-of-opinion of a mere expert, like the pronouncement-of-opinion of a banker, rather it constitutes the creation of an independent status in the laws of Torah, as Scripture writes (Devarim 17:8): "Should something be beyond you in judgment – between blood and blood, or verdict and verdict . . . You must rise and go up to the place . . . to the Levite Kohanim and to the judge who will be in those days you will seek and they will tell you the matter of judgment": among the very laws of ruling is that the ruling of a sage is open to further clarification/sifting, since every ruling of a sage is reified Torah and integral to Torah tradition, and Torah is given over to clarification/sifting via the give-and-take among sages. Therefore, the owners should not have relied exclusively on the ruling of the sage they first asked, since it is plausible that in the course of clarifying/sifting the law with other sages his ruling would change or be annulled, which is not the case regarding a banker.

All this makes clear that you have not only the right, but the obligation, to ask for a second halakhic opinion when the first answer you receive feels wrong.

So how is this different than shitah-shopping?

A first-level formulation is that shitah-shopping is when you have no intellectual or moral interest in the outcome, but are looking only for convenience. But that is not practically sufficient, as many people will either misidentify their motives or else be paralyzed by doubt as to their motives.

A deeper formulation recognizes that asking the question again is tantamount to asking for *batarat nedarim*, to be freed of one's oath of obedience. Under some circumstances, a formal *batarab* would be needed in order to follow the second ruling. This means that transparency with the second halakhist is vital. More importantly for our purposes, it means that the second question is not "shopping", but rather asking whether the initial psak was genuinely wrong.

You should be aware that halakhah recognizes many types of error. It is universally acknowledged that a psak can be overturned if its author missed a vital legal precedent, and reasonable to contend the same in nonfinancial cases if the author misevaluated the weight of various authorities. It is less clear how to handle answers that are technically defensible but nonetheless wrong in the particular situation for particular people.

As an example: There is unquestionably a range of legitimate positions as to whether and to what extent married women may use birth control while they complete their formal educations. But a psak that all forms of contraception are forbidden absolutely until the couple has both a male and a female child – with the concomitant risk that the mother will never be able to complete her degree – is wrong for women who have built sincere Orthodox lives to that point on very different and equally legitimate assumptions about the halakhah.

The decision to ask the sh'eilah to such a poseik, and the willingness of the poseik to answer it, likely reflects a fundamental lack of mutual understanding and dramatic overestimation of the *asei lekha rav* relationship. It happens that in the course of asking a sheilah and teshuvah a fundamental clash of values is revealed. Psak that emerges from such a clash is generally authoritarian and unhealthy.¹

My sense is that there is a sliding scale – the more "wrong" the psak is, and the worse the consequences of a psak's "wrongness", the easier to overturn it.

I therefore encourage you to re-ask your question to me, and to anyone else whose judgment, scholarship, and integrity you trust, recognizing that we must decide not only how but also whether to answer.

There is much more to say – see you in shiur!

Bivrahkah,
Aryeh Klapper

Notes:

1. It is possible, as Rav Moshe Kahn has argued, that in areas which are deeply personal, and on which the range of legitimate halakhic options is widely known, any psak will be authoritarian and unhealthy.

Great poskim often "talk through the sheilah" before answering it, and "pasken" only when it is clear that for whatever reason the questioner is "stuck". In an era and society which prize autonomy and in which halakhic knowledge has been significantly democratized, "talking through the sh'eilah" should probably be the default mode.

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