

Rabbi Zev Farber astutely commented to me last week in a different context that one cannot effectively produce extensive halakhic analysis only on “the big issues”, let alone only on ideologically charged issues. Rather, one must demonstrate broad and profound concern with getting *devar Hashem* and *ratzon Hashem* right, and enabling *klal Yisroel* to perform all *mitzvot* correctly, in order to be given halakhic authority, whether as an individual or as a community.

I suggest further that open diversity of *psak* is an important measure of the halakhic health of a community. On some issues, of course, the community is formed by its adherence to particular rulings; it is hard to imagine Modern Orthodoxy, for example, including a *psak* against women’s study of Oral Torah among its live options. But with regard to issues of *kashrut*, *Shabbat*, *shatnez*, etc., while core values affect theory and implementation, there is much room for disagreement, and our community’s halls, tweets, and emails should be filled with *milchamtah shel Torah* (intellectual Torah battles) regarding them. This can only enhance our own respect for the process of Talmud Torah, and other communities’ respect for the outcomes of our process.

To that end, I am glad and honored to use this week’s email to open a halakhic dialogue with Rabbi Dov Linzer, Rosh Yeshiva and Dean of Yeshivat Chovevei Torah, with regard to a fascinating *psak* halakhah in a particular case that he told over in his weekly public email last week. (For Vaera-centered articles from previous years, please click [here](#) and [here](#).) Owing to length and detail, sources and translations are included in the body text below.

I note up front that Rabbi Linzer’s *psak* addresses a topic that I have not previously studied in any depth. It should therefore be presumed that the answers to any objections I raise to Rabbi Linzer’s result may repose in sources that he saw but did not cite, as I am essentially just looking up his citations. Furthermore, there may obviously be personal or factual issues that I am unaware of that would support his *psak*. My comments are therefore limited to the *psak* as it is presented, factually and legally, in his email. Finally, I will not relate here to arguments presented that were not material to the final *psak*.

Here is Rabbi Linzer’s presentation, in relevant part:

This week I discussed with my Yoreh Deah students a practical *kashrut* question I had been asked just last Shabbat in shul. Someone came over to me and asked me the following question - he had marinated a 4 pound roast in wine, roasted it, and then discovered that the wine was not kosher. This was to be his Shabbat meal. What was the status of the roast?

...

So, I told him that the roast was not permitted. However, as I went to sit down, it occurred to me - what was he doing with non-kosher wine in his house? So I went back and asked him - was this really non-kosher wine, or was it just *eino mevushal* that had been handled by a non-Jew. He said it was the latter - that it was *eino mevushal* that was left over from last shabbat, and the bottle had been opened, and his non-Jewish babysitter had since been in the house. Well, I told him, that changed everything. In a case of *eino mevushal* wine, the concern is only that the non-Jew poured it, as it is impossible to stick one's finger down the neck of the bottle and touch the wine. Now, pouring wine only constitutes *kocho*, the force of the person, but not actual touching. We generally consider *kocho* like touching, but it really is less severe.

The base rule is that when non-mevushal wine is poured by a non-Jew, because of *kocho*, the poured wine is forbidden. But that is only the wine that was poured. Here the concern was for the wine that remained in the bottle. That - which was not affected by *kocho*, would only be forbidden on the basis that it was connected to the poured stream, a principle known as *nitzok chibbur*. Now it is a debate whether we say this principle by *stam yaynam*. While the Shulkhan Arukh rules this way (YD 125:1), Rema (*ad. loc.*) states that there are those who are lenient. Rema advises being strict unless we are talking about a case of great loss. The case of a 4 lb. roast for one's Shabbat meal should definitely qualify, so there is already a reason to be lenient based on not being strict for *nitzok chibbur*.

There is another reason to be lenient as well. Rema states in YD 124:24 that given that non-Jews nowadays are not true *ovdei avodah zarah*, and do not use wine for religious libations under normal circumstances, that we can be more lenient when they only touch the wine unintentionally or indirectly, and in such cases, when it is *b'dieved* and when there is a loss (or serious loss) involved, the wine does not become forbidden. Now, *kocho* is even less severe than indirect touch, and the Shach in 125:2 states explicitly that *b'dieved*, in cases of loss, even not serious loss, we can be lenient in a case of *kocho*. This was clearly such a case, so I was able to tell him that the roast was permissible . . .

One more paragraph of qualifications before we get to the substance. In “real life”, I might think about a host of pastoral and factual questions not explicitly mentioned above: How wealthy is the person? What would they otherwise eat for Shabbat? Is any wine left in the bottle? What pot was this cooked in, and what was it eaten on/with the night before? How often does this kind of accident happen in this household? How will the household relationship to halakhah be affected by this psak? How will household relationships be affected by this psak? Is the babysitter aware of the issue? etc. But here I will address only the halakhic issues Rabbi Linzer presents..

As I understand him, Rabbi Linzer saw room for leniency based on the following halakhic considerations:

- a) The concern here is not that the nonJew actually *touched* the wine, but only that s/he poured it. This is because the neck of the wine bottle is too narrow to allow a finger to reach down and touch the wine.
- b) The roast was marinated in the wine that remained in the bottle after it was restored to Jewish supervision. Therefore it was not actually poured by the nonJew. As such, it is forbidden only via the principle of *nitzok chibbur* (prohibition travels upstream). RAMO records that some dispute the application

of this principle to *stam yaynam* (wine ‘touched’¹ by nonJews without obvious idolatrous intent), and concludes that one can rely on this lenient position in a case of *hefsed merubah* (great loss). Our case is one of *hefsed merubah*.

- c) A nonJew pouring wine forbids the wine via the principle of *kocho* (applied force). Shakh YD 125:2 permits such wine in the event of *hefsed* (loss); he does not even require *hefsed merubah* (serious loss).

Addressing the first point requires me to first give some basic background on the issue of *stam yaynam*.

We assume nowadays, on the precedent of the Tosafists, that gentiles nowadays do not in fact pour libations to their gods. Thus the biblical category of *yayin nesekh* (wine dedicated to idolatry for libation) is presumptively inapplicable nowadays. However, while *stam yaynam* is formally an extension of that category – we forbid it lest the Gentile may have dedicated it to idolatry while touching it – in practice it is applied even when there is no possible issue of *yayin nesekh*, and various rationales have been offered for the prohibition of *stam yaynam* that have no direct relationship to the concern about libation-dedication. The interplay between the formal nature of the law and its underlying purposes is intricate and a compelling object of study.

For our purposes, however, the key point is that the status of *stam yaynam* applies to any wine to which a nonJew has had unsupervised access for an extended period. The formal rationale for this is a concern that he may have done something to render it prohibited; here again, however, the formal rationale cannot be the real reason, as we treat the wine as definitely rather than possibly forbidden. Nonetheless, we do need to ask formally: What are we concerned has been done? If that concern is physically impossible, does the Halakhah change to reflect that impossibility?

Shulchan Arukh Yoreh Deah 128:4 states the following:

בית שאין בו אלא יינו של ישראל, ונמצא עובד כוכבים בתוכו –
אם אין הדלת נעול, מותר בשתייה.
ואם הוא נעול במפתח מבפנים –
אם אינו נתפס כגנב, אסור בהנאה,
ואם הוא נתפס כגנב על הכניסה, מותר בשתייה.

הגה:

וי"א דבזמן הזה שאין העו"ג מנסכין, אפילו אינו נתפס כגנב שרי,
אלא א"כ יש לחוש שנגעו לשתות ממנו או להנאה אחרת (כך הוא בהגהות אשרי פ' השוכר ועיין ס"ק ד').
מיהו אם פי החבית רחב, או שהוא בקנקן, שיש לחוש שמא נגע בו דרך מתעסק - חיישינן (מרדכי
פ' השוכר ובב"י בשם התוספות ובסמ"ג).

If an idolater is found in a house which contains only Jewish-owned wine –

if the door is locked – the wine may be drunk.

But if the door is locked from the inside –

if the idolater is not afraid of arrest for theft – all benefit from the wine is forbidden;

but if he is afraid of arrest for theft – the wine may be drunk.

RAMO (=Rabbi Moshe Isserles' glosses):

Some say that in this time, when idolaters do not make wine libations - the wine is permitted even if he is not afraid of arrest for theft,

unless there is room for concern that they touched it to drink from it or for some other benefit.

However, if the opening of the barrel is wide, or of the wine is in a pitcher, such that there is room for concern lest he touched it without thinking, we adopt that concern legally.

¹ We will define “touch” somewhat more clearly later on.

The implication here is that we assume the worst – anything a Gentile could have done, assuming they have the run of the house licitly, we assume they have done. In the instant case, therefore, we should presume that the nonJew actually drank a drop of the wine, and so it is certainly prohibited. If that is so, the fact that the wine cannot be touched by a finger accidentally, which seems to be Rabbi Linzer's point a), is irrelevant.

If this argument is true, I think it renders Rabbi Linzer's other points irrelevant as well.

One might assume that since winedrinking is generally a violation of babysitting norms, we need not be concerned that the babysitter drank the wine – this is the equivalent of fear of arrest. But it seems to me that if we need to be formally concerned for pouring, we need to be formally concerned for drinking.

It is possible that Rabbi Linzer is referring instead to Shulkhan Arukh.124:14, which reads as follows:

שולחן ערוך יורה דעה סימן קכד:יז
חבית שנטלה ממנו הברזא, והכניס בה עובד כוכבים אצבעו עד שנגע ביינ - כולו אסור.
וכן אם הוציא הברזא התחובה בנקב והיתה נוגעת עד היין,
שא"א שלא שכשך.

הגה:

ודוקא כשידע שהברזא עוברת כל השולים,
אבל אם לא ידע - הוה ליה מגע עובד כוכבים שלא בכונה על ידי דבר אחר, דמותר אפילו
בשתייה (מרדכי פרק רבי ישמעאל והגה"מ פי"ב, ופשוט הוא, כדלקמן סעיף כ"ד, כמו שיתבאר לקמן).
אבל אם אינה עוברת כל עובי השוליים, בעניין שאי אפשר לו לשכשך כשמוציא, הוי כמו כחו,
ומה שנשאר בחבית מותר אפילו בשתייה, ומה שיצא אסור בשתייה.

הגה:

ואם הוציא שלא בכונה, אף מה שיצא לחוץ שרי, דכח עובד כוכבים שלא בכונה, שרי,
ועיין לקמן סי' קכ"ה.

A barrel from the spigot has been removed, and an idolater inserted his finger (through the resultant hole) until it touched the wine – all the wine in the barrel is forbidden.

Similarly, if an idolater removed a spigot that was jammed into a hole and touched the wine – all the wine in the barrel is forbidden,

as it is impossible that he did not stir.

RAMO:

This is the case only when the idolater knew that the spigot passed through the wall of the barrel, But if he did not know - this becomes a case of "unintentional indirect idolatrous touch", which is permitted even to drink (as per 124:24 below).

But if the spigot does not traverse the whole thickness of the barrel-wall, so that it is impossible for the idolater to stir the wine as he removes it – this becomes a case of *kocho* (applied force), so what is left in the barrel is permitted even to drink, but what has left the barrel (as a result of the installation of the spigot) is forbidden to drink.

RAMO:

But if the idolater caused wine to leave the barrel unintentionally, even what has left the barrel is permitted, because unintentional *kocho* is permitted;

see below 125.

Here we have specific reference to a situation being considered *kocho* because the opening is too narrow for a finger to be inserted. However, the case is not analogous to our own; it deals with a case in which we know what the idolater did, not a case in which the idolater was left alone to do as s/he willed, and therefore may have poured the wine to his or her finger, or inserted a straw and stirred, or even drunk from the barrel.

Rabbi Linzer's second argument is derived from YD 125:1-2, which reads as follows:

שולחן ערוך יורה דעה סימן קכה:א-ב
נטל עובד כוכבים כלי של יין והגביהו ויצא היין, אף על פי שלא שכשך - נאסר בשתייה,
שהרי היין בא מכחו;
ומה שנשאר בכלי אסור גם כן,
משום נצוק.
(ו"א דלא אסרינן נצוק בכח עובד כוכבים) (טור והרא"ש ומרדכי ור"ן בשם רש"י ותוספות
וראב"ן ותשובת מ"י המ"א סימן י"א)
(ומכל מקום יש להחמיר אם לא בהפסד מרובה כדלקמן סימן קכ"ו).
ואם הוא שלא בכוונה,
שלא ידע שהוא יין,
(או שלא הגביה הכלי) (בית יוסף סימן קכ"ד),
הכל מותר אפילו בשתייה.

An idolater took a container of wine and lifted it, and wine left the container, even though he did not stir – the wine is forbidden to drink,

since the wine came from *kocho*,
and what remains in the barrel is also forbidden,
since it is *nitzok*.

RAMO:

But some say that we do not forbid *nitzok* of wine that left a container via *kocho* of an idolater.
But nonetheless, one should be strict if the case is not one of *hefsed merubah*, as in below 126.

But if the idolater did not have intention,
as he did not know that the barrel contained wine
or did not lift the container,
all the wine is permitted, even to drink.

RAMO here apparently states that one can be lenient in a case of *nitzok* that is *hefsed merubah*. Wine poured from a bottle, but not directly touched, by an idolater is forbidden via *kocho*, but what is left in the bottle would only be forbidden via *nitzok*. Rabbi Linzer sees this as the proper rubric for our case.

Here some further basic background is necessary:

Jews are forbidden to derive any benefit from wine that has actually been dedicated to idolatry, and this prohibition is rabbinically extended to cover wine that *might* have been so dedicated. However, as noted above, the prohibition of *stam yaynam* applies even in cases where there is no concern for such a dedication. However, *stam yaynam* is only forbidden for Jews to drink; they may derive benefit from it in other ways, for example selling it to nonJews.

I contend that RAMO's comments above relate to wine that, if prohibited, could not be sold. Because this case had the potential to cause great economic harm – an entire wine barrel could be utterly forbidden if an idolater opened the spigot – RAMO permitted it in cases of *hefsed merubah*. Somewhat ironically, this means that the permission may not apply to our *stam yaynam*; since the wine can be resold, the economic risk was far lower, and so the permission was unnecessary.

Furthermore, I think there is room to question whether the *hefsed merubah* category as used here applies to any issue arising from *nitzok*, or only to the wine itself. If it applies only to the wine itself, then the loss of the roast would be halakhically irrelevant.

Finally, I am interested in whether the standard of *hefsed merubah* is objective or subjective, and how exactly it is fixed. It seems to me likely that for significant segments of the Riverdale community, the loss of 4 pounds of meat is not of great economic significance.

All these issues seem to me to emerge from YD 126:2, which follows, with the parts I see as relevant underlined in the English:

שולחן ערוך יורה דעה סימן קכו:א-ב
המערה יין לתוך כלי שיש בו יין עובד כוכבים האסור בהנאה - נאסר כל היין שבכלי העליון,
שהרי העמוד הנצוק מחבר בין היין שבכלי העליון ובין היין שבכלי התחתון, ורואים כאלו יין של
איסור מעורב בשל היתר.
ואם עירה וקיטף, שקודם שנגע בשל האיסור הפסיק קלוח היורד מהיין של היתר - מותר.

הא דנצוק חבור, ה"מ בהפסד מועט,
אבל בהפסד מרובה, כגון שהוציא מהחבית לכלי שיש בו יין נסך - מותר.
הגה:

ואין חילוק בין אם היה הרבה יין בחבית או לא.
ואפילו יכול למכרו לעובד כוכבים.
וכל מה שהוא בקנקן או בכוס, מקרי הפסד מועט.
ודוקא ביין נסך,

אבל בשאר איסורים, אם יכול למכרו לעובד כוכבים ואין בו הפסד מרובה, לא מקרי הפסד מרובה
(מסקנת ת"ה סימן ר"ד)

One who pours wine into a vessel which contains wine-of-idolaters which one is forbidden to benefit from – all the wine in the upper vessel is forbidden,

as the pillar of flow connects the wine from the upper vessel to the wine in the lower vessel, and we see this as if forbidden wine is mixed with permitted wine.

But if he poured and then cut it off, meaning that before it touched the prohibited wine, the flow of permitted wine had been interrupted – the wine in the upper vessel is permitted.

When we say that *nitzok* combines-to-prohibit – that applies only to a *hefsed muat* (minor loss), but in a case of *hefsed merubah*, such as if he poured from a barrel to a vessel containing *yayin nesekh* – the wine in the barrel is permitted.

RAMO:

There is no difference whether there is a lot of wine in the barrel, or not,
and you can even sell it to an idolater.

But anything that is in a bottle or a cup is called *hefsed muat*.

And all this is only true regarding *yayin nesekh*.

but with regard to other prohibitions, if he can sell it to an idolater and there is no *hefsed merubah*, this is not called *hefsed merubah*.

The key point here is that *hefsed merubah* is determined by the size of the container, not by the amount of wine in it. This suggests to me that here the exception for *hefsed merubah* is literally a wholesale deal, and has no relevance as precedent for retail cases. In particular, it was addressed to wine merchants, and not to consumers. If this is so, it clearly would not be applicable to the roast in our case.

Rabbi Linzer's third argument is that Shakh YD 125:2 permits wine which has been poured, but not touched, by a nonJew, and therefore is forbidden only via the principle of *kocho*, in the event of any *hefsed* (loss). Here is the text of Shakh, commenting on RAMO's statement quoted above that one can permit wine that is *nitzok* from wine forbidden via *kocho* in a case of *hefsed merubah*:

ש"ך יורה דעה סימן קכה ס"ק ב
"אם לא בהפסד מרובה" –
קשה

דהא בלאו הכי מותר, ואפי' בהפסד מועט כמ"ש לעיל סימן קכ"ד סכ"ד,
מטעמא דעובדי כוכבים בזמן הזה לאו עובדי עבודת כוכבים הן,
וכן מגען הוא שלא בכוונה

ודוחק לומר
דכחו שאני,

דהא נתבאר שם דכל מה שאסור מן הדין בשתייה, לדין שרי לגמרי
ועוד
דהא ר"ת וסייעתו ס"ל דמגע עובד כוכבים על ידי דבר אחר חשיב כחו, דאינו אוסר מן הדין אלא
בשתייה,
ואנן קי"ל דלא כר"ת בהא,
כמו שנתבאר בב"י סימן קכ"ד ובש"ע שם סי"א,
דמגעו ע"י דבר אחר גרע מכחו ואסור אפי' בהנאה,
ואפ"ה קי"ל לעיל סימן קכ"ד סכ"ד דמגע עובד כוכבים ע"י ד"א בזמן הזה שרי אף בשתייה,
א"כ כ"ש כחו

וצ"ל

דהרב לא כ"כ אלא מן הדין
ונ"מ במקום שידוע שהעובדי כוכבים עובדי עבודת כוכבים הן,
גם שלא לפרסם הדבר,
כמ"ש שם בהג"ה דאין מפרסמין הדבר בפני ע"ה,
וכן בכמה דוכתי צ"ל כן לדעת הרב ז"ל

אבל לדין,

שרי כאן אפי' שלא במקום הפסד מרובה,
וכ"כ בספר אפי' רברבי ריש דף פ' שנראה להקל בזמן הזה דלא רגילים לנסך אף בלא הפסד
מרובה:

This is difficult,

as even without this, this should be permitted, even when there is only *hefsed muat*, as we see earlier in YD 124:24,

on the ground that nonJews in our day are not idolaters,
and furthermore they do not touch wine with intent-to-prohibit.

And it seems forced to say

that *kocho* is more stringent than direct touch,

as it is explained there that everything which, in Talmudic times, generated a prohibition against drinking but not other benefit (such as *kocho*), is in our time completely permitted.

and also because

Rabbeinu Tam and those with him hold that touching-through-something-else is considered *kocho*, which only generates a prohibition against drinking, but we do not hold like Rabbeinu Tam in this,

as is explained in Beit Yosef 124 and Shulkhan Arukh 124:11,
rather we hold that such touching is worse than *kocho*, and forbids all benefit,

and nonetheless we hold in YD 124:14 that that such touching nowadays is permitted even for drinking,
so all the more so *kocho*!?

So we must say

that the Shulkhan Arukh here wrote only the classical Halakhah,
which has practical application in a place where one knows that the nonJews are
actually idolaters,
and also has the practical application that one should not publicize the
permission,
as RAMO wrote there that one should not publicize this before the *amei
haaretz*.

Indeed, one must give this answer for Shulkhan Arukh in several places.
But for us,

this case is permitted even without *hefsed merubah*,
as is written in Apei Ravrivei, that it seems proper to be lenient in our day, when
the nonJews do not regularly pour libations, even without *hefsed merubah*.

Rabbi Linzer suggests that according to Shakh, the wine left in a bottle poured by a
nonJew is permitted to Jews if any loss at all is involved. His argument tends to the
position that even the poured wine would be permitted (post facto). His argument is that
a) RAMO 124:14 permits wine nowadays which has been deliberately but indirectly
touched by a nonJew; his rationale is that the fact that they are not idolaters allows us to
consider all their touching unintentional even when it is deliberate
b) Shakh explicitly says that *kocho* is less severe than indirect touch
c) therefore Shakh must believe that RAMO would permit *kocho* as well.

There is a somewhat amusing point here, in that RAMO says that this ruling
should not be publicized beyond the scholarly community, but I suspect that nowadays,
while I am unaware of a complete translation of Shulkhan Arukh, the content of this
ruling is readily available to those interested, even if they do not subscribe to Rabbi
Linzer's email.

More directly, I think it is worth comparing Shakh above to Shakh's comments to
YD 124:14, which follow:

מיהו –
כבר נתבאר לעיל ר"ס קכ"ג דשלא במקום הפסד קי"ל דאף בזמן הזה עובדי עבודת כוכבים הן,
וגם בתשובת מהרי"ל סימן ל"ח מצאתי דכתב דמגע עובד כוכבים בכוונה ע"י ד"א בזמן הזה אין
להתיר אלא במקום הפסד מרובה.
ונהי דהרב והנמשכים לדעתו לא ס"ל הכי, אולי לא ראו דברי מהרי"ל, שהרי לא הביאו דבריו, ואפשר אי הוי
שמיע להו לא הוּוּ מקילין כ"כ,
ועוד, שקולא זו לא הזכירוה הפוסקים הקדמונים או האחרונים המפורסמים,
וגם בספר אפי רברבי דף ע"ט ע"ב הביא דברי הרב וכתב עלה "ואין להקל בזה רק בהפסד מרובה" . . .

However –

I already explained above at the beginning of YD 123 that when there is no *hefsed* we rule nowadays that
nonJews are treated as idolaters.

I also found written in Responsa Maharil 38 that deliberate indirect touch by gentiles in our day
should not be permitted without *hefsed merubah*.

While RAMO and those who follow his opinion disagree, perhaps they did not see Maharil's words, as they
do not cite him, and perhaps if they had heard his words, they would not have been so lenient.

Furthermore, this leniency is not mentioned in any of the early decisors or famous later decisors.

Also, Apei Ravrevei cites this position of RAMO and writes "One should not be lenient in this matter
except in a case of *hefsed merubah*".

It should be evident that in 125, Shakh quotes Apei Ravrevei as being lenient even
without *hefsed merubah*, and therefore wonders why RAMO was strict, whereas in 124,

Shakh quotes Apei Ravrevei as requiring *hefsed merubah*, explicitly rejecting RAMO's leniency!

Obviously, therefore, Shakh sees the two contexts as discussing different cases. The solution, I think, is that Apei Ravrevei, and Shakh, accept and even go beyond RAMO's leniency with regard to nowadays when *nitzok* and *kocho* are combined, but that both Shakh and Apei Ravrevei are unwilling to accept RAMO's willingness to permit the case of intentional indirect touching.

It emerges, then, that if Rabbi Linzer's first argument is correct, and our case involves only *nitzok* plus *kocho*, Shach would in fact have a lower standard than RAMO, and require only loss, perhaps not even that, rather than *hefsed merubah*. However, he is not offering a new rationale, merely disagreeing with RAMO's requirement of *hefsed merubah*. He would likely hold the same thing about indirect touching plus *nitzok*, but with regard to either indirect touching or *kocho* without *nitzok*, he would invoke the *hefsed merubah* standard.

The third argument, then, depends on the correctness of the first argument, and is not independently sufficient.

I look forward very much to learning from Rabbi Linzer's reply.

Shabbat shalom!

Aryeh Klapper

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