A. Non-Religious Jew Who Touches Wine

In this section, we will discuss the status of wine touched by non-religious Jews. At first glance, such wine should be permitted, since there is no concern for intermarriage, and benefiting from it should also be permitted because non-religious Jews do not perform libations to *avoda zara*. As with every *sugya,* we will start will the earliest sources and work our way down to the modern-day *posskim.*

The 4) (ה.) **גמרא חולין**) derives from the verse מן ... "אדם כי יקריב מכם הבהמה" – three *halachos* regarding whose *korbanos* may be accepted in the Beis Ha'Mikdash: 1) A *mumar* (one who intentionally transgresses the laws of the Torah out of ideology) is rejected from offering a *korban.* 2) A non-Jew is allowed to bring a *neder* or *nedavah* offering. 3) A Jew who sins out of temptation is allowed to bring an offering because we want to encourage him to be *chozer b'teshuva*. The Gemara concludes that in addition to a *mumar,* one who libates wine as an offering to *avoda zara* and one who publicly transgresses Shabbos also may not bring an offering.

The 5) (שו"ת ח"ז-קעט) **רשב"א**) explains that one who publicly transgresses Shabbos is considered a heretic and if he touches wine, he renders it forbidden. However, in order to be considered one who publicly transgresses Shabbos, it must be performed three times in front of at least ten people.

The S"A in **סעיף ח'** *passkins* that one who pulls his foreskin (to conceal his *bris*) does not forbid the wine he touches. The י) **באר היטב**) explains that in order to forbid wine, the one touching it needs to believe in *avoda zara*, whereas this individual still believes in Hashem. However, the S"A continues, based on the above Gemara,[1] that a *mumar* has the status of a non-Jew, and when he touches wine, he renders it forbidden, even if he has a *bris milah,* although he is believed to say that he did *teshuva.*[2]

The S"A notably mentions only the *halacha* of a *mumar* touching wine, but he omits the *din* of someone who publicly transgresses Shabbos. Nevertheless, the **ש"ך**, in נקודת הכסף at the beginning of our *siman,* quotes the רשב"א and

[1] See גר"א (טז).

[2] The יא) **באר היטב**) *passkins* that he is only believed if he was the one who informed us that he was not religious, but if we already know he was not religious, he is not believed to say that he did *teshuva.*

passkins that if one who publicly transgresses Shabbos touches your wine,[3] the wine becomes forbidden. He adds that the בית יוסף himself quotes this רשב״א and accepts it *le'halacha.* In addition, we find other places where the S"A accepts this רשב״א. For example, in סימן ב-ה regarding *hilchos shechita,* the S"A *passkins* like the רשב״א that one who publicly desecrates Shabbos is disqualified from *shechting*. Furthermore, the S"A in 6) **או״ח שפה-ג**) *passkins* that a Jew who publicly transgresses Shabbos, even by violating a rabbinic prohibition, has the status of a non-Jew. (He clarifies there that if he privately transgresses Shabbos, even by violating a biblical prohibition, he is considered a *mumar* only with regard to Shabbos, but he still has credibility for all other matters.)[4]

The ש״ך in נקודת הכסף concludes that if one who publicly transgresses Shabbos touches your wine, it is forbidden to drink, but you may still benefit from it, since there is no concern for libation.

There are two questions that need to be asked: 1) Why would the wine be forbidden to drink if the prohibition of drinking *stam yeinam* was enacted to prevent intermarriage, and this individual is Jewish and his *kiddushin* is valid? 2) What is the *halacha* today, when unfortunately, many Jews were never educated about their rich and beautiful heritage? Is wine touched by such individuals also forbidden?

I. Wine forbidden even if no concern for intermarriage

The 7) (ח״ב-ת) **תשובות והנהגות**) explains that a מחלל שבת בפהרסיא is *halachically* worse than an actual non-Jew. Today, the non-Jews in our vicinity generally do not worship idols (and certainly do not know how to perform libations), but Chazal gave a Jew who transgresses Shabbos in public the status of an actual idol worshiper. Therefore, even though there is no concern for intermarriage, wine touched by such a Jew is still forbidden. (We will learn below that according to the תשובות והנהגות, Chazal equated the *halachic* status of a non-religious Jew with that of a non-Jew so that we are not influenced by his negative behavior.) Although it would seem from the תשובות והנהגות that since such individuals are given the full status of a non-Jew, their wine should also be forbidden for benefit, the ש״ך cited above already *passkined* that one may benefit from their wine because Chazal gave them a more limited status of a non-Jew. In fact, the תשובות והנהגות (ח״א-תעג) writes this explicitly: since giving them the status of a non-Jew is a *chiddush,* they receive only the status of a lower-level

[3] The ש״ך is specifically addressing *Karaim*, but his arguments apply to anyone who is מחלל שבת בפהרסיא.

[4] The S"A is discussing the *halacha* of עירוב חצירות and rules, based on the Gemara, that Chazal prohibit making an עירוב חצירות if one of the neighbors is a non-Jew or is מחלל שבת בפהרסיא (since Chazal wanted to prevent Jews from living among people who could potentially have a negative influence on them).

non-Jew, whose wine remains permitted for benefit. (Nevertheless, he writes that when there is no need, it is best to be *machmir* not to benefit either.)

II. What is the status today?

The second question that must be addressed is whether Chazal gave those who publicly transgress Shabbos the status of a non-Jew even if they were never educated to observe Shabbos or if they observe only certain aspects of Shabbos. Today, there are three categories of Jews who transgress Shabbos: 1) "Traditional" Jews, who would go to shul and recite *kiddush,* but transgress the 39 *melachos* of Shabbos publicly (though not in front of a Rav). 2) Those who are completely secular and do not observe any of the *mitzvos* of Shabbos (including *kiddush*)*,* but would not transgress Shabbos in front of a Rav. 3) Those who are so secular that they would deliberately transgress Shabbos, even in front of a Rav. Many in this group had little or no Jewish upbringing, and sometimes received an anti-religious upbringing – they are therefore considered תינוקות שנשבו.[5] What is the status of wine touched by these three groups of individuals?

1) Traditional Jews

The 8) (כג) **בנין ציון**), in a *teshuva* written over 160 years ago, discusses the status of Jews who, on one hand, go to shul and recite *kiddush*, but on the other hand transgress Shabbos – what many commonly refer to as "traditional Jews." He explains that one who transgresses Shabbos receives the status of a non-Jew because he demonstrates that he does not believe in a Creator. An individual who drives to shul or publicly transgresses Shabbos is, on one hand, proclaiming that there is no G-d, while on the other hand reciting *kiddush* and proclaiming that Hashem created the world. Therefore, he concludes that one who is careful not to drink their wine should be blessed, but those who are lenient have a basis on which to rely. **Rav Ovadya,** in 9) (יביע אומר (יו״ד ח״א-יא), quotes בנין ציון and accepts his opinion completely. He adds that since the *halachos* of a *mumar* being considered as a non-Jew and the prohibition of *stam yeinam* are rabbinic, we can be lenient in this case involving two rabbinic prohibitions, but as we will see below, some are *machmir* on this category.

2) Respectful Jews

What is the status of non-religious Jews today who do not even recite *kiddush,* but would not transgress Shabbos in front of a prominent Rav?

[5] Lit. "babies that were taken captive" (see גמרא שבת סט:). Today, the term is used to refer to those who have not received a Jewish education.

The 10) (שפה-סק״ד) **משנה ברורה**) *passkins* that to receive the status of one who "publicly transgresses Shabbos," Shabbos must either be violated in front of ten Jews or become publicized among ten Jews. In סק״ו, the משנ״ב adds that if the Jew would be embarrassed to transgress Shabbos in front of a Rav, then even if he publicly transgresses Shabbos, he is not considered to have desecrated Shabbos "publicly." Based on this, many "off the *derech"* Jews who used to be religious, as well as many secular Jews who still respect religious Jews and would not transgress Shabbos in front of religious Jews and certainly not in front of a prominent Rav, would not be considered public transgressors of Shabbos and their wine would be permitted.

3) <u>Totally unaffiliated Jews – a תינוק שנשבה</u>

What is the *halacha* regarding Jews who are completely unaffiliated and would even transgress Shabbos in front of a Rav? As mentioned, many of these Jews never had any Jewish education and are genuine תינוקות שנשבו, while some are anti-religious.

Rav Sternbuch, in 11) (ח״ב-ת) **תשובות והנהגות**), suggests that the permissibility of wine touched by a completely unaffiliated Jew today depends on why Chazal gave a מחלל שבת בפרהסיא the status of an idol worshiper. If it was imposed as a קנס (fine) to impress upon people the severity of transgressing Shabbos, then today, when the majority of irreligious Jews did not receive a Jewish education, there is no reason to penalize them because they do not fully understand the significance of their actions and do not even realize they are being penalized. However, if the reason Chazal gave them the status of idol worshipers was to prevent religious Jews from learning from their actions, then even if they are not to blame for their upbringing, their wine should still be forbidden lest we learn from their behavior. Moreover, there is even greater reason to forbid their wine than that of a non-Jew, because we naturally identify more with them. Rav Sternbuch therefore *passkins* that one should be very careful not to drink wine touched by an irreligious Jew today.

Based on this understanding, that a מחלל שבת was given the status of a non-Jew to prevent us from learning from their negative behavior, then even wine touched by a traditional Jew or by an irreligious Jew who would not transgress Shabbos in front of a Rav would be forbidden because we do not want people to learn from their negative behavior. Rav Sternbuch explains that when the משנ״ב writes that one who does not transgress Shabbos in front of a Rav is considered a Jew in all respects, that applies only to עירוב חצירות (allowing carrying between yards of next-door neighbors), which is not valid if one of the neighbors is a non-Jew or irreligious. This decree was enacted to discourage Jews from living in

close proximity to non-Jews and those who are completely irreligious, as we might learn from their behavior. However, if the irreligious Jew would not transgress Shabbos in front of a Rav, Chazal allowed making an *eiruv* with him because neighbors do not necessarily mingle, and you may not come to learn from his bad behavior. However, drinking with such an individual, which is inherently an act of coming together, is forbidden because you might learn from his negative behavior. This is also the opinion of the (ח״ג-כד **מנחת אלעזר**), who writes that even one who would not transgress Shabbos in front of a Rav is still considered a מחלל שבת בפרהסיא with regard to wine.

However, the (פי״ט-סג **ספר הכשרות**) *passkins* that wine touched by a genuine תינוק שנשבה who received no Jewish education whatsoever, or by a Jew who falls into either of the first two categories described above, does not become forbidden. In a footnote, however, he writes that, today, when many irreligious Jews are exposed at least somewhat to religious Jews, it is hard to determine who truly qualifies as a תינוק שנשבה. The ספר הכשרות adds that one who would not transgress Shabbos in front of a Rav is not considered a מחלל שבת בפרהסיא. This is also the *pssak* of **RSZA** in (ערב הע׳ ח שלחן שלמה). However, all agree that wine touched by an anti-religious Jew or an irreligious Jew who would transgress Shabbos in front of a Rav and was raised with knowledge of Judaism is forbidden.

To summarize the previous two sections:

- Wine touched by a non-Jewish baby/child or a Muslim adult – forbidden to drink, but permitted for benefit.
- Wine touched by traditional Jews – **Rav Ovadya** allows, and the **בנין ציון** writes that there is a basis upon which to rely. **Rav Sternbuch** prohibits.
- Wine touched by a respectful Jew who would not transgress Shabbos in front of a Rav – **ספר הכשרות** and **RSZA** allow, while **Rav Sternbuch** prohibits.
- Wine touched by a **ספר הכשרות** – תינוק שנשבה allows (although it is difficult to determine who is given this status today), while **Rav Sternbuch** prohibits.
- Wine touched by an antireligious Jew or by a Jew who would transgress Shabbos in front of a Rav – forbidden to drink, but permissible in benefit.

Although Rav Sternbuch and many other *posskim* forbid wine touched by irreligious Jews, we will learn in the next section that even they agree that, in the majority of situations, wine poured by such Jews remains permitted.

C. Forms of Touching That Forbid

After learning which individuals forbid wine through their contact, in this section we will learn whether all forms of touching forbid the wine. For example, does wine become forbidden if a non-Jew moves a closed bottle, moves an open bottle, lifts a glass of wine, pours wine from a bottle, or performs one of many other actions?

There are numerous *Gemaras* that discuss various situations in which wine touched by a non-Jew is forbidden, and the 13) (קכד) **טור**) teaches that not all forms of touching are equal. Some forms of touching prohibit both drinking and benefiting from the wine, some forbid only drinking while allowing benefit, and some forms of touching do not forbid at all.

For example, if a non-Jew touches wine in a manner that was commonly used for libation (e.g., shaking the bottle), the wine is forbidden for both drinking (because touching it creates concern for intermarriage) and for benefit (because of the concern for libation). However, if the non-Jew touches the wine in a manner that would not be used for libation, the wine may not be drunk because the concern for intermarriage still exists, but benefiting from it is permitted because there is no concern for libation. If the non-Jew does not directly touch the wine (e.g., he uses a stick), and it is done in a manner not normally associated with libation, the wine remains permitted for drinking and for benefit, since there is no concern for either intermarriage or libation.

We will begin by learning several גמרות that discuss the above scenarios, followed by the *pssak* of the S"A/*Rama,* and finally we will apply what we have learned to modern-day cases.

I. The *sugya*

In this subsection, we will learn 4 גמרות that teach the source for the four requirements needed to prohibit wine touched by a non-Jew for both drinking and for benefit.

1) **Intent to touch**: We learned above from the נז) **גמרא עבודה זרה**.) that if a non-Jewish baby touches wine, one may not drink from the wine, but one may

benefit from it. Rashi explains that since the baby does not have *kavanah* (intent) to touch the wine, the wine is permitted to benefit from. Similarly, any time a non-Jew touches wine without *kavanah,* the wine is permitted.

2) **Knowledge that the liquid is wine**: The 14) (נח.) **גמרא עבודה זרה**) teaches that if a non-Jew places his hand into a barrel of wine thinking that it contains oil, the wine may not be drunk, but one may benefit from it. In both Gemara #1 and Gemara #2, there is clearly no concern for libation since the wine was touched unintentionally, though there might be concern for intermarriage because the wine was ultimately touched by a non-Jew.

3) **Non-Jew's mind is not preoccupied:** If a non-Jew intentionally touches wine, but his mind was focused on something else, one may benefit from the wine. The 15) (:ס) **משנה עבודה זרה**) relates that if a non-Jew unintentionally touches wine while measuring the amount of wine in a barrel, trying to swat a hornet with a stick, or touching the foam on top of the wine to make it dissolve, the wine may not be drunk, but you may benefit from it. Some *Rishonim*[6] explain that even if the non-Jew intentionally touched the wine directly while measuring it, knowing that it was wine, one may still benefit from it because he was clearly not touching it for the purpose of libation; his mind was focused on measuring it.

4) **Shaking the wine**: If a non-Jew touches wine without shaking it, the wine may not be drunk because of the concern for intermarriage, but benefit is permitted because there is no concern for libation. The 16) (:נט) **גמרא עבודה זרה**) teaches that wine becomes forbidden to benefit from only if it was touched in a manner commonly associated with libation. The Gemara relates a story of an *esrog* that was dropped into a barrel of wine and a non-Jew grabbed it before it sank to the bottom. Rav Ashi, who was standing nearby, told his students to quickly grab the non-Jew's hand to prevent him from shaking the wine and to empty the barrel. Rashi explains that non-Jews only libate by shaking the wine, and grabbing the non-Jew's hand prevented the wine from being prohibited in benefit, but it still rendered the wine forbidden to drink due to the contact, and the concern for intermarriage is still relevant.

Tosfos in נז) עבודה זרה) ד״ה הכי גרסינן., writes that in certain cases the wine remains completely permitted – when there is no direct contact or intent to touch. For example, if a non-Jew is climbing down a tree and unintentionally touches wine with a *lulav* branch in his hand, one may even drink the wine (and certainly

[6] נפל ד״ה (נה. ראב״ד (פ״ד-יח), ראי״ש), and Tosfos נז ד״ה דאי) עבודה זרה). There are other opinions as to how to learn this Gemara, and the S"A indeed *passkins* like those opinions (see מד) גר״א)); nevertheless, we are presenting the *sugya* in accordance with the *Rishonim* mentioned to bring out the various scenarios.

benefit from it) because the contact was both indirect and unintentional; thus, there is no concern for either intermarriage or libation.

II. The rules of the S"A

The S"A in **סעיפים י׳-יא** organizes all of the above *Gemaras* (and many others that we did not mention) and outlines four criteria necessary for wine touched by a non-Jew to become forbidden both for drinking and benefit:

1) The non-Jew intended to touch the wine, as opposed to a baby who does not understand what he is doing.
2) The non-Jew knew he was touching wine, as opposed to one who believes there is oil in the barrel.
3) The non-Jew was not distracted when touching the wine, such as if he was busy measuring it.
4) The non-Jew shakes the wine. The S"A in **סעיף יא** writes that if a non-Jew touches wine with his hand, foot, or even with a stick,[7] and shakes it, or even if he drinks from a cup and the wine touches his lips, one may not even benefit from the wine (and certainly not drink it). The **ש״ך** (כ) explains that merely touching wine without shaking it (e.g., a non-Jew placing a finger in your glass of wine) does not forbid benefit because libation involves some form of shaking (drinking it is still forbidden because of intermarriage).

Thus, the four criteria needed to fully forbid wine touched by a non-Jew are: Intent to touch, knowledge that it is wine, lack of distraction, and shaking of the wine.

III. The groundbreaking *chiddush* of the *Rama*

We will now learn a revolutionary *chiddush* of the *Rama* that will alter almost everything we have learned until this point. But before learning the *Rama,* we need to learn a few more *halachos* in the S"A.

The S"A in **סעיף יח** *passkins* based on the ס) זרה עבודה עבודה גמרא.) that even if a non-Jew does not touch the wine itself, but merely lifts the bottle and pours out wine without shaking, the wine still becomes forbidden because it was moved through his force (i.e., action or כוחו), which is equivalent to touching it. The **ש״ך** מב)) refers us to the S"A in **סימן קכה-א**, where this *halacha* is also taught, and there, the S"A clarifies that the wine is only forbidden to drink, but remains

[7] Although there is no direct contact with the wine, since the wine was shaken in a matter that is performed when libating, the wine may not be drunk or benefitted from.

permissible for benefit. Benefit is permitted because it was not shaken,[8] but drinking is forbidden because when the wine moved through the non-Jew's force, it is considered as if he touched it. In other words, touching/moving wine without intent to libate renders the wine forbidden from drinking, but benefit is still permitted.

The S"A in **סעיף כד** *passkins* that if wine was accidentally and indirectly touched by a non-Jew, you may even drink from it. For example, if a non-Jew is climbing down a tree holding a *lulav* branch, which touches a glass of wine, or the sleeve of a non-Jewish waiter dips into your cup of wine while serving food, the wine remains permitted (even to drink). The reason is that in both situations, there was neither direct contact with the wine nor intent to touch the wine.

The *Rama* here introduces a *chiddush* (from the **מרדכי** and other *Rishonim*) that changes many of the conclusions we have drawn so far. He writes that since today, the non-Jews (at least in his vicinity) do not worship idols, any contact they have with wine owned by Jews is automatically considered to be "without intent." Therefore, if a non-Jew indirectly touches wine, even when knowing that it is wine, the wine remains permitted for drinking because it is considered indirect touching without intent. For example, if a non-Jewish waiter removes a fly from your wine glass with a spoon, the wine is permitted to drink because he is touching your wine only indirectly, and that is considered without intent (see more examples below).

Furthermore, the *Rama* writes that even if the non-Jew directly touches the wine, if the contact was accidental (e.g., the waiter's finger accidentally went into your cup when putting food down), or if he touches it without knowing it is wine, the wine may still be consumed. The עא) **ש"ך**) explains that since non-Jews today never have intent to perform libations, whenever they come in contact with wine, the prohibition is always downgraded one level from that of a real idol worshiper, known as "נחית דרגא". Therefore, since the *halacha* is that when a non-Jewish idol worshiper accidentally touches or pours wine (without shaking the bottle), the wine is forbidden to drink but permitted in benefit, when a non-Jew today accidentally touches or pours wine, one may even drink the wine. What emerges according to the *Rama,* then, is an astonishing and remarkable *chiddush*: If a Christian pours a glass of kosher wine without directly touching the wine itself, you are allowed to drink it. The *Rama* concludes that one should not publicize this *halacha* in front of an עם הארץ.

[8] The S"A in סעיף יא completely forbids the wine if it was shaken, even if shaken with a *kli.*

We mentioned above that the S"A in קכה-א *passkins* that wine poured by a non-Jew is forbidden to drink (but it is permitted for benefit). Additionally, even the wine in the bottle becomes forbidden because it is connected (through the stream, known as *nitzok*)[9] to the wine in the glass. The *Rama* there disagrees (as he does in סעיף כד) and permits the remaining wine in the bottle and the wine that was poured into the glass (see סק"א וסק"ב סוף ש"ך), but only when there is a significant loss of money.

[9] We will discuss the *sugya* of *nitzok* below.