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Listening to Music

Rosh Kollel Harav Shachne Sommers

When is it forbidden to listen to music?

What types of music are included in the prohibition?

We are now in middle of the three-week period that begins with Shiva Asar BiTammuz (the Fast of the 17th of Tammuz) and ends with Tisha B'Av (the Fast of the 9th of Av), known in halacha as *Bain Hametzarim* (lit., between the straits) and colloquially referred to as "the Three Weeks." *Bain Hametzarim* is a period of mourning over the destruction of the *Bais Hamikdash* which occurred on Tisha B'Av, and Chazal instituted a number of restrictions to help create the proper atmosphere of mourning. One of the most well-known restrictions of this period is the restriction on listening to music.

Upon researching this halacha, one discovers something surprising. When looking in the sources for the prohibitions of *Bain Hametzarim* (including the period known as the Nine Days that begins with Rosh Chodesh Av and concludes with Tisha B'Av) in the Gemara and the early *poskim*, including the Shulchan Aruch and its primary commentaries, there is no mention of such a restriction! Nevertheless, it seems to be universally accepted that such a restriction exists¹.

Where did this prohibition come from?

The source: Upon further exploration, one discovers that there is a clear source in the Gemara and Shulchan Aruch for restrictions on music. However, this restriction is not limited to three weeks a year²; it is year-round. Let us explore this little-known halacha and its bearing on the Three Weeks.

There are 2 sources in the Gemara that discuss a Rabbinic prohibition of music:

The Mishna in Sotah (48a) tells us *mishebatla Sanhedrin batla shir bivais hamishtha'os*, from the time the Sanhedrin ceased to exist, there was no more song in the places of parties. The Mishna cites a verse in Yeshaya (24:9) as a source for this idea, "*Bishir lo yishtu yayin*," "With song they shall not drink wine."

The second source is a Gemara in Gittin (7a). The Gemara asks, "*Zimra minalan d'assur*," from where do we know that music is prohibited? The Gemara responds with a verse from Hoshea (9:1), "*Al tismach Yisrael el gil ka'amim*," "Do not rejoice, o Israel, to be happy like the nations." The Gemara wonders why the verse of "*Bishir lo yishtu yayin*" is not cited, and explains that just that verse would only prohibit musical instruments, but this second verse serves to prohibit vocal music, as well.

It thus emerges from the Mishna and Gemara that there is a Rabbinic decree stemming from the loss of the Sanhedrin prohibiting music, both instrumental and vocal.

Different opinions regarding the scope of the prohibition: There are 3 opinions in the Rishonim as to the extent of this prohibition:

1) Rashi and Tosafos: The above-quoted Mishna in Sotah says that the prohibition is *bivais hamishthaos*, in places of drinking. The verse cited, "*Bishir lo yishtu yayin*," "With song they shall not drink wine," seems to indicate that music is only prohibited when one is drinking wine.

Rashi in Gittin (s.v. *zimra*) states that the Gemara's question (in Gittin) regarding the source of the prohibition against music is referring to music in places of drinking.

Tosafos (ibid. s.v. *zimra*) find support for Rashi's approach from the Gemara, which wonders why the source for the prohibition isn't from the verse of "*Bishir lo yishtu yayin*," which indicates that the restriction is limited to a wine-drinking

¹ See Sh'ut Minchas Yitzchak 1:111:4 who quotes many earlier Acharonim who assume that there is such a prohibition.

² The mourning period of Sefiras Ha'omer also features a restriction on listening to music whose mention is also conspicuously absent from the early *poskim*; the ideas discussed in this article for the Three Weeks apply to that mourning period, as well.

session.

However, Tosafos quote the Talmud Yerushalmi that extends the restriction a bit further. The Yerushalmi discusses someone whose daily practice was to wake up in the morning and go to sleep at night with music, implying that this practice is prohibited. Based on this, Tosafos say that one who is accustomed to constantly listening to music on a regular basis may be violating the restriction even if not drinking wine.

Thus, the opinion of Rashi and Tosafos is that both instrumental and vocal music are only prohibited under one of two conditions, either when drinking wine or when one is accustomed to constantly doing so.

2) Rambam in Yad Hachazaka: The Rambam (Yad Hachazaka Hilchos Ta'anis 5:14) seems to make a distinction between instrumental and vocal music. He first writes that instrumental music is prohibited. He continues that even vocal music is not allowed when drinking wine. The implication is that instrumental music is prohibited even without wine, whereas vocal music is only restricted with wine.

This is puzzling, as the Gemara quoted above only mentions a distinction between instrumental and vocal music as a theoretical possibility, if not for the second verse of "*Al tismach Yisrael el gil ka'amim*." On a practical level, the Gemara does not seem to distinguish between them.

Rabbi Moshe Feinstein (Igros Moshe Orach Chaim 1:166) suggests that the Rambam's source for this distinction is based upon the following analysis of the *shakla vetarya* (give and take) of the Gemara:

The Gemara quotes two verses as sources for the prohibition. One verse, "*Bishir...*" mentions wine but the other, "*Al tismach...*," does not. This creates some ambiguity as to the limitation of the prohibition to wine-drinking sessions.

The Gemara then explains that just one of those sources would have sufficed to prohibit instrumental music; the second source is necessary to prohibit vocal music.

It emerges from this that there is only one verse that prohibits vocals - the second verse - but there are two verses that prohibit instrumental music - the first one that applies exclusively to instrumental and the second verse that prohibits even vocal music, and thus which surely restricts instrumental music, as well.

The Rambam derived from this that the prohibition against instrumental music, because it's repeated twice, is more stringent. Therefore, the ambiguity as to the limitation to wine-drinking is resolved by applying it only to the more lenient prohibition of vocal music but not to the stringent prohibition of instrumental music.

Be that as it may, the Rambam's opinion, according to the implication in Yad Hachazaka, is that instrumental music is prohibited across the board and vocal music is prohibited only while drinking wine.

3) Teshuvos HaRambam: The Tur (Orach Chaim 560) quotes a responsum of the Rambam in which he writes that all music is always prohibited, even vocal music without wine.

Besides the apparent contradiction between this responsum and the Rambam's own words in Yad Hachazaka, this opinion is difficult to understand. The Mishna mentions that song is not allowed in places of drinking, quoting a verse regarding song in houses of drinking. How can the Rambam say that drinking is not a factor in this prohibition?

The Bach (ad. loc.) explains that the Rambam (in this responsum) understood that the mention of drinking is not meant to be taken as a limitation of this restriction but is merely an example of a common scenario where there would be music. This understanding is supported by the fact that the Gemara in Gittin bases the prohibition on the verse “*Al tismach...*” which does not mention wine.

The Bach brings a proof to this approach from the aforementioned Gemara in Sotah. The Gemara there says that workers may sing to energize themselves for their work. The workers presumably were not drinking wine as they worked. Nevertheless, a special allowance is necessary to permit singing to energize themselves. This clearly indicates that even vocal music is generally forbidden, even without wine, in accordance with the view of the Rambam’s responsum.

However, Rabbi Moshe Feinstein (Igros Moshe *ibid.*) refutes this proof. He points out that these workers were very possibly accustomed to singing on a consistent daily basis. If that was the case, it would be similar to the case of the Talmud Yerushalmi of arising and going to sleep with music, which even the more lenient view of Tosafos understands as forbidding constant music³.

Perhaps a different approach can be offered to refute the Bach’s proof. The Gemara, immediately following the one quoted by the Bach, states that Rav Huna instituted a prohibition against music. Rashi (s.v. *batel zimra*) explains that Rav Huna’s prohibition was particular to his generation and it included music both in places of drinking and at home. This implies that although according to Rashi the original decree mentioned in the Mishna only applies *bivais hamishta’os*, while drinking wine, Rav Huna extended the decree temporarily, for his generation, to include music at home, even without wine. It can be suggested that Rav Huna’s discussion regarding the workers is to be understood in the context of Rav Huna’s own temporary decree. That decree prohibited vocal music even at home without wine, and so a special allowance was needed for workers. However, the decree mentioned in the Mishna and Gemara could still be understood in accordance with the other Rishonim, that it would not apply to vocals without wine and, indeed, no exception would be necessary for the workers.

This interpretation of Rav Huna’s words would resolve a perplexing issue. The early *poskim* - the Rif, Rambam, Rosh, Tur and Shulchan Aruch - all inexplicably omit Rav Huna’s allowance for workers to sing in their discussion of this halacha. If we understand this allowance for workers to sing as being tied to Rav Huna’s temporary decree, as opposed to the permanent decree mentioned in the Mishna, then it would make sense that it is not mentioned by the *poskim*, as Rav Huna’s temporary decree no longer applies⁴.

The practical halacha: Which of the aforementioned opinions is to be followed practically is also a subject of dispute.

The Shulchan Aruch (Orach Chaim 560:3) rules in accordance with the Rambam in Yad Hachazaka, prohibiting instrumental music across the board and vocals with wine. The Rema (*ibid.*) rules like Rashi and Tosafos that both vocals and instrumentals are only prohibited with wine or if one is accustomed on a consistent regular basis. The Bach (quoted in Mishna Berura 560:13) rules like the most stringent opinion of the Rambam’s responsum that even vocals are always prohibited.

Although Rabbi Moshe Feinstein (Igros Moshe *ibid.*) rules in accordance with the Shulchan Aruch and prohibits instrumental music, the general practice follows the Rema to permit even instrumental music unless it’s with wine or very consistent and regular.

Leniencies: We have learned that music or singing where wine is served is generally prohibited according to all authorities. However, the *poskim* discuss a number of *heterim* (leniencies) where this prohibition would not apply.

³ According to this approach, there would be a source in the Talmud Bavli for this concept. Tosafos, however, needs to turn to the Yerushalmi for this idea. This seems inconsistent with Rabbi Feinstein’s interpretation.

⁴ It can perhaps be suggested that the Rambam’s responsum was also meant as a temporary *chumra*, similar to Rav Huna’s, thus resolving the contradiction to his opinion in Yad Hachazaka, which is based on the original Talmudic enactment.

1) *Shiros visishbachos* (praise to Hashem): The Rif (Brachos 21b *bidapei haRif*) quotes an even earlier source saying that the *minhag* (custom) is to sing songs of praise to Hashem, and that is not included in the prohibition. This is codified in Shulchan Aruch (*ibid.*) as halacha⁵⁶.

2) Mitzvah need: Tosafos write that music is permitted for a mitzvah need, such as for a wedding. The Rema (*ibid.*) codifies this as halacha. Rabbi Moshe Feinstein (Igros Moshe *ibid.*) writes that this is not limited to a wedding but would apply to any mitzvah purpose. Thus, music at a *seudas mitzvah* (a mitzvah-based meal) such as a bar mitzvah or *siyum* would be permitted. Rabbi Feinstein suggests that this may also be grounds to allow music at a fund-raising dinner to encourage people to give *tzedakah*.

3) The Gemara in Sotah implies that music for the purpose of aiding one’s work is permitted. This would be grounds to allow playing music for the purpose of facilitating exercise.

An interesting question arose with the advent of modern audio technology. What is the status of music heard on the radio, recorded on a record or cassette tape or digitally reproduced? Some authorities suggested that since those technologies did not exist at the time of the original enactment, they are not included in the decree at all. Others took the opposite approach and said that these technologies are actually more problematic, because they have the status of musical “instruments” and thus recorded vocals would also be called instrumental music. According to this more stringent view, recorded vocals would be prohibited according to the opinion of the Shulchan Aruch, who prohibits all instrumental music.

Rabbi Moshe Feinstein (Igros Moshe *ibid.*) and others take a middle approach, saying that recorded vocals are considered vocal music and recorded instrumental music is considered instrumental.

Bain Hametzarim and Sefiras Ha’omer: As mentioned at the outset, although the *minhag ha’olam* (general custom) is to follow the Rema and allow instrumental music year-round, it is universally accepted that one may not listen to instrumental music during the Three Weeks and the mourning period during *Sefiras Ha’omer*.

The Aruch Hashulchan (493:2), when discussing the customs of the mourning during *Sefiras Ha’omer*, writes that since dancing is prohibited, music is certainly not allowed. The same reasoning would apply to *Bain Hametzarim*, as the Mishna Berura (551:16) prohibits dancing then, as well.

Rabbi Shlomo Zalman Auerbach (Halichos Shlomo 14:3) is quoted as saying that the type of music that is not allowed during the Three Weeks is only that which could bring one to dance. According to this, slower, more soulful music would be allowed⁷. It is clear that in the general prohibition of music year-round that was instituted by Chazal (which, according to the Rema, applies only with wine), there is no distinction between dance music and slower music.

Rabbi Auerbach’s view seems to be that the custom of not listening to music during *Bain Hametzarim* is not an extension of Chazal’s year-round prohibition, but rather a different concept connected to dancing.

However, Rabbi Feinstein (Igros Moshe *ibid.*) would seem to indicate otherwise. In the context of his discussion of the various opinions regarding the extent of the year-round prohibition, he concludes that during *Sefiras Ha’omer* (and presumably *Bain Hametzarim* as well), all agree that one must be stringent. This indicates that the custom prohibiting music during this time of year is an extension of Chazal’s year-round custom and, accordingly, all kinds of music would be prohibited, not just lively dance music.

In the merit of mourning the destruction of the Sanhedrin and the *Bais Hamikdash*, may we merit their speedy restoration!

⁵ The Rif writes that the *minhag* was to allow singing with one’s mouth. There does not seem to be a specific source to allow instrumental music to accompany songs of praise to Hashem.

⁶ The *poskim* also warn that using verses from Tanach for songs may sometimes be problematic. This issue is beyond the scope of this discussion.

⁷ However, see Halichos Shlomo *ibid.* that although technically permitted, it would be appropriate to refrain from all types of music.

Points to Ponder

What is the status of a cappella music?

Would listening to music as “background noise” be permitted?

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Please consult with a qualified halachic authority for all practical questions of halacha

Halachic Editor: Rabbi Shachne Sommers · General Editor: Rabbi Mordechai Fleisher

5080 W. 14th Ave, Denver, CO 80204 · 303-820-2855 · info@denverkollel.org · www.denverkollel.org

To receive Halacha Weekly by email, contact info@denverkollel.org