

## Drink Responsibly

Outline of Audio Shiur by Rabbi Chaim Naftali, Kollel Dayanut Zichron Gershon [1]

### Is a person liable for damages he caused while he was drunk?

#### **1. Bava Kama (26a), Rambam (*Hovel U'Mazik* 1:11):**

A person is always liable, whether he damaged intentionally or unintentionally, awake or sleeping.

#### **2. Bet HaBehira (the Me'iri, *Bava Kama* ibid.):**

This is the case with a drunkard as well.

#### **3. Yam Shel Shlomo (Maharshal, *Bava Kama* 3:3):**

A drunkard, even if he is as drunk as *Lot*, must pay for any damage he causes... If not, we will create an unsustainable society, as anyone who has animosity towards his friend will get drunk and inflict damage in that state.

#### **4. Shulhan Aruch (H.M. 421:3):**

Some say that [for damages caused unintentionally] one does not have to pay for pain, medical expenses, and loss of income... but for damages, one is liable even if he damaged without fault...

#### **5. Shu"t Havot Ya'ir (169):**

Regarding the drunk man who came back to your house and left the candle burning, and caused you great damage... He will most definitely be liable...

### Is there a difference if you are drunk on Purim?

#### **1. Sukkah (45a):**

[On the last day of *Sukkot*] the adults would grab the *Lulavim* of the children and eat their *Etrogim*.

#### **2. Rashi (ibid.):**

There was no problem of theft (*Gezel*) or theft from a minor (*Darke Shalom*) as this was the practice, out of joy.

#### **3. Tosafot (ibid.):**

One can derive from here (the eating of the children's *Etrogim*), that youngsters who ride horses before a bridegroom and fight with each other, and inflict damage, are exempt from paying as this is the common practice out of joy before a bridegroom... Unless we explain that the children themselves would give up their *Lulavim* and eat their own *Etrogim* (then we would not have support for the idea that a common practice to damage would exempt from liability).

#### **4. Rashi (ibid. 46b):**

Some understand that the children would immediately let go of their *Etrogim* and the adults would pick them up (as opposed to grabbing from the children)... This cannot be the correct understanding...

5. The *Rishonim* argue which approach to take. According to the *Mordechi* (*Sukkah* 743), they are exempt, as is the opinion of *Rashi* and the first approach in *Tosafot*, whereas according to the *Rosh* (*Sukkah* 4:4), it was only permissible because the children consented to give the *Etrogim* to the adults.

6. ***Darke Moshe* (the *Rama*, H.M. 378):**

The *Mordechi* exempts the youngsters who ride horses before a bridegroom... so is the opinion of the *Aguda* (41) as well. However, *Mahara'i* (*the Terumat HaDeshen*, *Pesakim* 210) rules that although one is exempt, in order that the matter shouldn't get out of hand, the community should institute fines according to what seems appropriate.

7. ***Rama* (H.M. 378:9) follows what he writes in *Darke Moshe* (cf. *Be'ur HaGra*, and the *Teshuvot HaRosh* that he cites)**

8. ***Darke Moshe* (O.H. 691):**

*Mahar'i Mintz* in his responsa (15)... quotes the *Riv'a* regarding youngsters who grab other's objects on *Purim* from the time of the reading of the *Megilla* until after *Purim*, that it is not considered *Gezel* and that they do not need to be summoned before a *Bet Din*, as long as they are doing so within the parameters that the community establishes, as it is done out of *Simhat Purim*...

9. ***Rama* (O.H. 695:2 and 696:8) follows what he writes in *Darke Moshe*.**

10. ***Mishna Berura* (695:13-14) cites the *Ba'h* that the custom is only to exempt from small damages but not from large ones. He also adds that only if it is done out of *Simhat Purim* is there an exemption, but not if it is done to inflict damage.**

11. ***Yam Shel Shlomo* (ibid.):**

The liability of a drunkard is even on *Purim*, that there is a *Mitzva* to get drunk, nevertheless there is no *Mitzva* to get wild as the *Rambam* writes... and if one degrades his friend while he is drunk and the next day says he does not remember, must proclaim publicly that there was no truth to what he said while he was drunk, and ask for his friend's forgiveness... And if this is his common practice, we must be strict with him... all according to what the *Dayan* deems fit...

12. ***Bet Yosef* (O.H. 695) writes that the exemption for confiscating items out of joy on *Purim* does not apply in our day in which people do not subscribe to such a practice.**

13. See *Ba'er Hetev* (O.H. 696 and H.M. 378). It seems that according to *Maran* that in our day one would be liable for damage inflicted on *Purim* out of joy, whereas according to the *Rama* one would be exempt. However, see *Aruch HaShulhan* (O.H. 695:10), and the *Sheil'a* (cited in *Ba'er Hetev ibid.*), which seem to imply that in our days all would agree that one is liable on *Purim* as he is during the rest of the year.

Notes:

[1] This is a basic outline, the audio file contains more elaboration, and independent study is recommended.