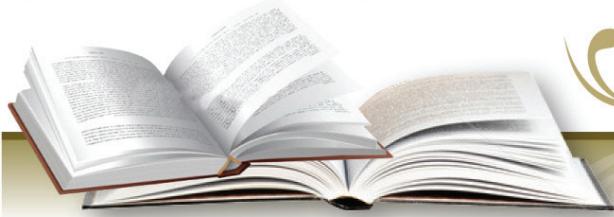




TORAH & HORAHAH



Behar 5771

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This week's article deals with the prohibition of music during the Omer period. What is the source of the prohibition? Does it apply to all forms of music (even on the radio), and all circumstances? When may one be lenient in hearing music during the Omer period? These questions, and more, are addressed in this week's article. This week's Q & A addresses the question of which berachah should be recited over orange juice.

Listening to Music: During the Year and During the Sefirah (Part 2)

Originally, the period of the *sefirah* was far from being a time of mourning. As the build up to Shavuot, it is considered by the Ramban an extended *Chol Hamo'ed* (joining the festivals of Pesach and Shavuot)—a time of joy rather than of sadness.

Yet, because the death of Rabbi Akiva's disciples occurred between Pesach and Atzeret, the joy of the period is marred, and the *Shulchan Aruch* (*Orach Chaim* 493) rules that a number of activities are customarily prohibited during this period. Two specific prohibitions are mentioned: weddings are not made during the *sefirah*, and haircuts are not taken.

Is there also a prohibition on listening to music?

Dancing and Music

The *Magen Avraham* (551:10) rules that one may not engage in dancing during the *sefirah*, without mentioning music or singing.

Yet, many authorities extend the prohibition to listening to music, and the *Aruch Hashulchan* (*Orach Chaim* 493:2) writes that if dancing is prohibited, music is certainly forbidden. This position is upheld by Rav Yitzchak Yaakov Weiss (*Minchas Yitzchak* 1:111), who mentions a number of proofs that music involves greater joy and a more intense celebration than dancing.

The Force of the Custom

The main source for this prohibition is custom. As Rav Shmuel Wozner writes (*teshuvah* published in *Eleh Hem Moadai*, Vol. 4, no. 96), the widespread custom is to avoid all music in the ➤➤

Dear Readers,

In this week's parashah we learn of the prohibition of *ona'ah*—fraud, or price gauging. The verse first instructs us concerning *ona'ah* in commerce: "When you sell a sale to your fellow, or buy a purchase from your fellow, do not fraud each man his brother" (*Vayikra* 25:14). Following this, the verse adds another instruction: "Do not fraud each man his fellow, and you shall fear your G-d, for I am Hashem, your G-d" (*Ibid.* 17). Is this addition not superfluous?

The Gemara (*Bava Metzia* 58b) addresses the question, and explains that whereas the first verse refers to commercial fraud, the second refers to an altogether different type of forbidden behavior: *ona'as devarim*. The Torah prohibits us not only from hurting our fellow's pockets, but even from hurting his inner feelings.

The Gemara offers a number of examples of this prohibition. If a person is a *baal teshuvah*, one may not remind him of his previous sins. If a person is a descendent of converts, one may not recall the evil deeds of his ancestors. If a person experiences hardships,

one should not tell him that they have come on account of his misdeeds. The common denominator is that one must be sensitive to another's feelings, and avoid hurting them in any way.

Which of the two *ona'ah* prohibitions is more stringent—the monetary prohibition, or the prohibition on hurting feelings? The Gemara states that the latter is the more stringent, proving the case from the verse's addition: "and you shall fear your G-d." Whereas the commercial injunction protects a person's wealth, *ona'as devarim* protects his inner person; whereas money can be returned, hurt feelings cannot be mended.

In this week's article we discuss one of the prohibitions that are observed during the Omer period: listening to music. As we deal with the laws of the Omer, it is incumbent upon us to recall the event over which we mourn, and its underlying cause: The death of Rabbi Akiva's disciples, who were struck down because they did not pay due respect to one another. All are particular with regard to monetary fraud—who would think of deceiving another in commerce? But what of *ona'as devarim*, which is even more stringent than its monetary counterpart?

Let us accept upon ourselves, as one community and one nation, to be vigilant in what we say and how we say it—to ensure that we do not cause hurt and harm to one another, and to augment love and affection, friendship and care.

sefirah time, adding in no uncertain terms that one may not be lenient in this matter.

Before we move on to possible leniencies concerning music in the Omer period, it is important to note that the halachic force of a custom should be taken seriously. Indeed, all *poskim*, spanning the entire spectrum of halachic Judaism, concur that one may not listen to music during the Omer period (for instance, see: *Yechaveh Daas* Vol. 3, no. 30, Vol. 6, no. 34; *Mishnah Halachos* Vol. 8, no. 188; *Hilchos Chagim* of Rav Mordechai Eliyahu, Chap. 20, no. 47).

Rav Yitzchak Yaakov Weiss suggests that on account of the custom, it is possible that listening to music would even be a Torah prohibition. This is because the force of custom might form a *neder*, a binding vow. He proves further that this type of prohibition can even be passed on from one generation to the next, deriving his contention by citing a responsum of the *Chasam Sofer* (*Yoreh De'ah* 107) concerning *chalav akum*.

Furthermore, although following Lag Ba'Omer (according to the common custom) it is permitted to take haircuts, the *Eliyah Rabba* (493:1) expresses a *safek* over whether dancing—and by the same token, music—is permitted during this time.

Indeed, Rav Shlomo Zalman Auerbach stated that the custom is to be strict (quoted in *Bein Pesach Le-Shavuot*, Chap. 15), and it is therefore forbidden to listen to music throughout the Omer period (with the exception of Lag Ba'Omer), even on days when haircuts may be taken. A number of calamities that befell the Jewish people during this time are also quoted as being further sources for the customary mourning practices.

It is thus clear that the lack of ancient sources that discuss the matter did not prevent modern authorities from issuing a forceful prohibition on music in the Omer. Having said this, there are a number of leniencies that could be taken into account.

Possible Leniencies: Vocals and Classical Music

The approach taken by Rav Moshe Feinstein (Vol. 1, no. 166) is particularly interesting. After discussing the general prohibition on music, he writes that there is little ground for permitting instrumental music throughout the year. He continues that even if one is lenient during the year, he should at least observe the *halachah* properly during the *sefirah* period.

Based on this approach, there is room to suggest leniency concerning listening to vocal singing, without musical accompaniment, during the Omer period.

As discussed, even the stringent opinion of the *Rambam* and the *Shulchan Aruch* concedes that during the year one may listen to vocal singing, if unaccompanied by music. It stands to reason that one may also hear and sing this type of music during the *sefirah* period. Indeed, this argument is reflected in the ➤➤

words of Rav Feinstein, who concludes: "In days of the sefirah it is prohibited, even according to lenient opinions, to listen to instrumental music."

Along similar lines, further leniencies are mentioned by Rav Eliyahu Schlesinger, in his *Shoalin Vedorshin* (Vol. 4, Chapter 37). Based on the assumption that music in the Omer period is no more stringent than the year-long prohibition of music, he explains that the prohibition does not apply to recordings of soothing or emotional music.

As mentioned, *poskim* derive the prohibition on music from the *Magen Avraham's* ruling concerning dancing. It stands to reason that this derivation applies specifically to joy- or dance-inducing music, and not to classical/slow music. Furthermore, the Maharam Schick (*Yoreh De'ah* 368) ruled that in principle it would be permitted to listen to sad music during a personal *aveilus* period. It is reasonable to apply this distinction to the Omer period, and thereby permit sad/slow music.

For these reasons, and also based on a verbal ruling of Rav Moshe Feinstein, Rav Schlesinger ruled that a religious radio station may play such music during the Omer period.

Additional Leniencies for Music

Poskim mention a number of additional leniencies with regard to playing and listening to music:

It is permitted for somebody whose livelihood depends on playing musical instruments to play music (to practice or for goyim) during the Omer period. As Rav Moshe Feinstein writes (*Iggros Moshe, Orach Chaim* Vol. 3, no. 87), it is permitted to study music, or to teach music, when one does so for reasons related to one's livelihood, and not for pleasure (see also *Seder Pesach Kehilchaso*, Chap. 12, no. 16; *Tzitz Eliezer* Vol. 16, no. 19).

Many *poskim* write that it is permitted to play music at the celebratory feast of a *mitzvah*, such as the occasion of a *bris*, the inauguration of a *Sefer Torah*, a *pidyon ha-ben*, a *siyum maseches*, and so on (*Sheyarei Kenesses Hagedolah, Orach Chaim* 551, Glosses to *Beis Yosef* no. 33; *Shut Chaim Shaal* Vol. 1, no. 21; *Iggros Moshe, Orach Chaim* vol. 2, no. 95 and *Even Ha-Ezer* 1:97; *Yecheveh Daas* Vol. 6, no. 34). See also

Teshuvos Vehanhagos (Vol. 5, no. 338), who makes a distinction in this regard (concerning music at a *sheva berachos*) between the Omer period and the mourning period of the Three Weeks.

Note that the leniency only applies to a true *seudas mitzvah*, and music may not be played at an engagement party, even though there is something of a *mitzvah* involved in bringing the parties together (based on *Magen Avraham* 493:2 and *Mishnah Berurah* 493:3 concerning dancing).

However, some *poskim* are stringent concerning this matter (see *Minchas Yitzchak* Vol. 1, no. 111, quoting from *Daas Kedoshim*).

It is likewise permitted to play music for the purpose of calming a young child (who has not reached the age of *chinuch*), or for calming and soothing the sick (*Shut Devar Shalom*, Vol. 4, no. 80; *Nitei Gavriel, Pesach* Vol. 3, Chap. 53, no. 5, 7). It is likewise permitted to listen to music while driving, if the purpose of the music is to keep the driver alert. One should preferably play slow (classical or other) music, and not dance music.

Listening to Recorded Music

According to many authorities, there is no distinction between recorded and live music. Rav Moshe Feinstein (*Iggros Moshe, ibid*) thus writes (concerning the issue of music for the year round) that a recording has the same status as the original: Recorded voice has the status as vocals, whereas recorded music has the status of music. This is also the ruling of Rav Shmuel Wozner (*Shevet Halevi* 2:57; 6:69).

Some, however, treat recordings with greater stringency than live singing, and write that an electronic device is also considered an instrument. Based on this, even recorded vocals are considered listening to instrumental music, and are prohibited (see *Tzitz Eliezer* 15:33; *Shevet Halevi* 8:127).

A more lenient possibility is suggested by Rav Yaakov Breisch (*Chelkas Yaakov* 1:62), who makes an interesting distinction between recorded music and music on the radio. He suggests that while recorded music may be prohibited on the grounds that the music player is considered >> an instrument, a radio cannot be called an

instrument, and is therefore not included in the general (year round) prohibition on music. The general custom does not follow this leniency.

Conclusion

In last week's article, we saw a number of opinions concerning whether one may listen to instrumental music *at any time throughout the entire year*. The *Shulchan Aruch* follows the opinion of the Rambam, and prohibits listening to instrumental music. The *Rema* adopts a more lenient approach, and permits listening to music on an occasional basis, with the exception of a party where wine

is offered. In practice, many have adopted the *Rema's* lenient approach.

Even as the general custom 'permits' music during the year, it nonetheless prohibits music during the Omer period. As *Iggros Moshe* writes, for several weeks a year we return to the original prohibition on music. The prohibition of listening to music in the Omer period is mentioned by virtually all modern-day *poskim*.

Exceptions for soothing and calming music, for purposes of a *mitzvah*, and for earning a living, can be made.

Halachic Responsa

to Questions that have been asked on our website [dinonline.org.il](http://www.dinonline.org.il)



Question:

Going over siman 202 in *Shulchan Aruch* the *poskim* discuss that a bracha for a fruit or vegetable may depend sometimes on the intention of the one planting the fruit. Today, there are species of oranges that are specifically grown for their juice and not to eat. Does this impact the bracha?



Answer:

Shehakol should be made on all forms of orange juice.



Sources:

Or Le'Zion (14:6) discusses the basic berachah on orange juice, and concludes, after quoting a discussion of the Chazon Ish (33:5; the Chazon Ish compares squeezing an orange to pressing a plum), that the correct berachah is shehakol.

This is confirmed by Rav Shmuel Wosner (*Shevet Halevi* 4:19), who discusses the dispute between the Rashba and the Rosh (mentioned in *Shulchan Aruch* 202:10), and writes that the principle halachah follows the opinion of the Rashba, according to whom even if an entire fruit is pressed into juice, the berachah would be shehakol (see also *Taz* 205:8 concerning the Rosh's opinion, and *Chemed Moshe*; see also *Ginas Veradim* 1:26). The same conclusion is reached by *Yalkut Yosef* (Vol. 3, p. 402) concerning orange and carrot juice.

The question of oranges grown for the purpose of juice is raised by Rav Moshe Sternbuch (*Teshuvos Vehanhagos* 2:150), who writes that the berachah would depend on whether we follow the purpose of the planting (most oranges are planted for juice) or the majority's use (most people use oranges for eating), which is a dispute in *Orach Chaim* 202 (see *Magen Avraham* 12).

Rav Binyamin Silver (*Az Nidberu* Vol. 7, no. 57) write that the principle halachah is that the majority of planting determines the blessing, and because most oranges are planted for export, which is mainly for eating (and not for juice), it follows that the blessing would be shehakol. Even if the Rosh would disagree (based on *Taz*, as mentioned), out of doubt the correct berachah is shehakol.

Therefore, the correct berachah is shehakol, even if small pieces of orange are present in the juice.