



# Alcohol addiction - Kashrus of alcoholic beverages

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**Dovid Lichtenstein: Change- Look through a different prism**

**טור אורח חיים הלכות ראש השנה סימן תקפב**

ובכן תן פחדך יש בו מ"ד תיבות וכן יש במלוך עד בכל משלה כנגד מ"ד תיבות שיש מן (זכריה ח) כה אמר ה' צבאות עד אשר יבא עמי לחלות פני ותקנו לומר ובכן לשון המקרא ובכן אבא אל המלך וגו' לפי שהוא עתה יום הדין ואנו באין לפני ממ"ה הקדוש ברוך הוא

## **Alcohol addiction**

**שפת אמת ליקוטים פרשת נח**

**וישת** מן היין כו' (בראשית ט, כא). לפי הפשוט יש לומר שנשתנו הדורות והטבע, והמעט שהיה רגיל לשתות מקודם, היה מזיקו אחר המבול. וגם לפי פירוש הזהר<sup>50</sup> יש לומר כן, כענין שנאמר (משלי כה, טז) דבש מצאת אכול דרך, לפי עמידת הנפש כך יכולין לחפש בגניזין דמלכא, ועכשיו נשתנה מדריגתו, ומה שמקודם היה מותר לו, הזיק לו אחר המבול:

## ילקוט שמעוני תורה פרשת נח רמז סא

ויטע כרם [ט, כ] בא לקראתו השטן א"ל רצונך שנטענה יחדו אני ואתה א"ל הן מיד הביא תחלה רחלה אחת ושחטה על הגפן ואח"כ הביא אריה אחד ושחטו על אותו הגפן ואח"כ חזיר אחד ושחטו על אותו הגפן, מפני מה עשה כן השטן כשאדם שותה כוס אחד הוא כרחלה עניו ושפל רוח וכשהוא שותה שתי כוסות מיד נעשה גבור כארי ומתחיל לדבר גדולות ואומר מי כמוני וכשהוא שותה ג' או ד' מיד הוא נעשה כחזיר שמתלכלך בטיט ורפש אף הוא מתלכלך ואף במי רגלים:

### **Kashrus of wine etc.**

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### **Dovid Lichtenstein: Davening to hashem with the unique power of Purim**

#### פחד יצחק פורים ענין כז עמוד עז

שלהם סגולת ההבדלה. אלא שכל זה הוא בשאר ימות השנה, אבל בשעת שמחת פורים, שמהלך הנס היה על ידי ה"לא נקראתי לבוא אל המלך", וכל מקום שנאמר המלך סתם במלך מלכי המלכים הכתוב מדבר, — הרי סדר ההנהגה של שמחת פורים מחייב, כי מי שהשתוקקות הקדושה דוחפת אותו פנימה, זוכה למציאות חן, ואדרבה מושיטים לו את שרביט הזהב. ואם תאמר, הלא על הנכנס בלי קריאה נאמר עליו שאין בו דעת; ויש לומר, אדרבה הלא בשמחת פורים אין העדר הדעת חסרון כלל. עד דלא ידע.

#### שולחן ערוך אורח חיים הלכות מגילה ופורים סימן תרפו סעיף ג

יש מתענים ג' ימים זכר לתענית אסתר. ובמגן אברהם שם ס"ק ה' ג' ימים. פירוש בה"ב אחר פורים (ב"י סי' תכ"ט ע"ש).

# The New York Times

## Whiskey Makers Court Jewish Market

June 4, 2013

Robert Simonson

For avid whiskey lovers, few events are more eagerly anticipated than WhiskyFest, an enormous tasting that touches down in several American cities throughout the year. But when sponsors of the New York festival suddenly moved it last year from Tuesday to Friday and Saturday, many regulars were unable to attend.

An alternative arrived suddenly in the form of a new one-night event, held on the eve of WhiskyFest. Despite little time to advertise, it drew a crowd of 250 to its unlikely Manhattan location: the West Side Institutional Synagogue.

These whiskey devotees, it turned out, were Jews shut out of the big event because they observe the Sabbath. And to drive home the point of the tasting, its founder, the fledgling Jewish Whisky Company, called it Whisky Jewbilee.

Whiskey has numerous fan bases, but few are more devoted — and arguably less noticed by the press and public — than Jews, particularly observant Jews. Synagogues are increasingly organizing events around whiskey, and whiskey makers are reaching out to the Jewish market.

Retailers have long recognized Jews as valuable customers. “Jewish men are very interested in the selection of whiskey available at a wedding or bar/bat mitzvah,” said Jonathan Goldstein, vice president of Park Avenue Liquor Shop, a Manhattan

KASHRUT



Some of the growing number of kosher whiskeys on the market, for sale at Park Avenue Liquor Shop in Manhattan. Credit: Ruth Fremson/The New York Times

store known for its whiskey selection. “They very often will pick up a special bottle to offer close friends or relatives.” Of the Friday before the Jewish holiday of Purim, last February, he said, “It was like Christmas in here.”

Part of the spirit’s appeal to many Orthodox Jews is that most whiskey is naturally kosher. In contrast, wine, owing to its long connection to Jewish tradition, must satisfy many regulations to earn a hechsher, the symbol of kosher certification.

But that hasn’t stopped prominent Scotch producers like Glenrothes, Glenmorangie, Ardbeg, Bowmore and Auchentoshan from courting the Jewish consumer by obtaining official kosher certification for certain bottlings.

Bourbon producers have even less to worry about, because by federal law their spirits must be aged in new casks, rather than in the sherry, port or wine barrels that some whiskey distillers use, and that give some kosher drinkers pause because of their exposure to wine. Yet the Buffalo Trace Distillery in Kentucky recently enlisted the help of the Chicago Rabbinical Council in laying down more than 1,000 barrels of three styles of whiskey, all certified kosher and set for release in five or six months.

In a smaller-scale but similar enterprise, the Royal Wine Corporation, a New York producer of kosher wine and grape juice, asked Wesley Henderson two years ago if he would be interested in making a kosher-certified version of his boutique bourbon, Angel’s Envy. “We were looking for a bourbon line in general,” said Shlomo S. Blashka, a wine and spirits educator at Royal, also the New York-area distributor of Angel’s Envy. “The Jewish community is a very big bourbon community.”

Mr. Henderson did not have to be told. “You’d have to be blind not to notice it,” he said. “I thought, if you had a kosher bourbon, that would be a great thing. It seemed a no-brainer.”

For the new whiskey, Angel’s Envy was aged for six months in barrels that had held Kedem kosher port for 20 years. The run sold quickly, Mr. Henderson said, and may become a permanent addition to the bourbon maker’s line.

In 2011, Jason Johnstone-Yellin and two partners founded the Jewish Whisky Company, which has bottled barrels from six Scotch distillers. “We had the opportunity to purchase casks, where not everybody would have that opportunity,” said Mr. Johnstone-Yellin, who was born in Scotland and whose American wife is Jewish.

During a recent trip to the Victoria Whisky Festival in British Columbia, he said, he buttonholed a representative of a well-known international whiskey distillery and asked if it would let the Jewish Whisky Company bottle one of its casks. “The response was: ‘We’re very protective of our brand. We don’t do that,’” said Joshua



Single Cask Nation is produced by the Jewish Whisky Company. Credit: Jason Johnstone-Yellin

Hatton, another partner in the business, who also founded a popular blog, Jewish Single Malt Whisky Society — now renamed Jewmalt.

Mr. Johnstone-Yellin, not giving up, gave the man his card and pointed to the word “Jewish.” “This is our market,” he said. “These are our customers and members.”

The man paused, he said, then agreed to talk to them.

The bond with whiskey goes way back. Mr. Blashka said early Jewish immigrants to America, unable to trust the provenance of local wines, turned to certain distilled liquors, including whiskey. “Because the wine was an issue, typically spirits was their avenue for drinking,” he said.

As recent decades have ushered in a revival in Scotch, bourbon and other whiskeys, Jews, like many other groups, have moved beyond the usual blends and have developed more sophisticated tastes. “Now we have many whiskeys that we know are kosher,” said Rabbi Aaron Raskin of Congregation B’nai Avraham in Brooklyn Heights, whose preferred whiskey is the smoky Laphroaig, a single malt from Islay. “It is used to add to our joy.”

“And it helps attendance at synagogues,” he added.

Whiskey-centered events at temples are a lot more common than they used to be, said Joshua London, a lobbyist for the Zionist Organization of America who regularly writes about whiskey for Jewish publications.

...The extent of a congregation’s, or congregant’s, embrace of whiskey can vary. “It all depends on what rabbi you hold by,” Rabbi Arian said. Some are content with whiskeys that are kosher by nature; others like the extra insurance of a hechsher. Aging or finishing in wine barrels will disqualify a bottle for one drinker, while another isn’t troubled by the distinction.

For years, there was no greater yardstick of Jewish interest in whiskey than New York’s WhiskyFest, sponsored by Whisky Advocate magazine.

“If you went years ago, you’d see that close to 50 percent of the people attending were wearing kippot,” Mr. Blashka said, referring to skullcaps. When WhiskyFest became a two-day event in 2012, held during the Sabbath, many Jews who wanted to attend were not pleased. “I wish I could tell you the sheer number of e-mails I received from my readers, distributors, importers, distillers,” Mr. Hatton said.

He said an importer and a distributor entreated him to assemble a pop-up festival for the disenfranchised customers and many producers in town for WhiskyFest.

Whisky Jewbilee will return this fall, at a larger site, and a second date in Westchester County will be added. “There were a couple distillers that we didn’t reach out to” last fall, Mr. Johnstone-Yellin said. “They said, ‘You will have us be part, won’t you?’ They’re smart people. They know who’s not going to be standing at their table on Friday and Saturday night.”

## Is Sherry Cask Whiskey Kosher?

Made from just barley, water, and yeast (and sometimes caramel coloring), whiskey<sup>1</sup> has generally been presumed free of *kashrus* concerns. In fact, it is claimed that the Jews' well-known affinity for whiskey originates with the early Jewish immigrants to America, who turned to whiskey for alcoholic drinking due to the unavailability of kosher wine.<sup>2</sup>

However, already in 1949, Rabbi Pinchas Teitz of Elizabeth observed that some blended whiskeys contained a small percentage of wine, which is forbidden due to the law of *ינתם יינם*, which prohibits drinking the wine of non-Jews. Rabbi Teitz's inquiries determined that the maximum percentage of wine found in blended whiskeys was 2.5%. This meant that in some brands, the wine content comprised more than 1/60<sup>th</sup> (1.67%) of the product. Since *ביטול* — halachic “nullification” of a minority portion of a mixture — generally requires a proportion of 60:1 against the minority portion, it would seem that these brands were forbidden due to the wine content. Rabbi Teitz posed this question to Rav Moshe Feinstein, who devoted three responsa to the subject, which were published in his *Iggeros Moshe* (Y.D. 1:62–64).

For reasons that will be discussed below, Rav Moshe concluded that *ביטול* for non-kosher wine requires only a proportion of 6:1, not 60:1. As such, he ruled that blended whiskeys were permissible despite the 2.5% wine content. Rav Moshe did, however, qualify his ruling by stating that a *בעל נפש* — one who wishes to be especially scrupulous to satisfy all halachic opinions — should avoid blended whiskeys, as their permissibility hinges on a number of halachic debates.

Notwithstanding this significant qualification, many Jews have generally assumed that whiskey is permissible and may be consumed without any concern, in light of Rav Moshe's lenient ruling.

More recently, however, some *kashrus* professionals have questioned the

1. Formally, whiskey produced in Scotland is spelled “whisky,” without an e, whereas the spelling “whiskey” is used in reference to other whiskeys. For the sake of simplicity, we will use the spelling “whiskey” generically, to refer to all brands.
2. See media article above.

status of sherry cask scotch, a type of whiskey that is aged<sup>3</sup> or finished<sup>4</sup> in oak casks that had previously stored sherry wine.<sup>5</sup>

The practice of aging whiskey in sherry casks actually began by accident. Spanish wine exporters would deliver barrels of sherry wine to England, and after the wine was bottled, Scottish whiskey companies would purchase the empty casks at a discounted price to use for aging their beverages. It was later discovered that the sherry flavor in the barrels enhanced the flavor of the whiskey, so the use of sherry casks for whiskey continued even after Spanish wine-makers started bottling their wine before exporting it.

From a halachic standpoint, storing an otherwise kosher beverage in a utensil that had previously contained non-kosher wine generally renders the beverage forbidden for consumption, due to the non-kosher wine absorbed in the walls of the utensil, which is then absorbed by the beverage. The *Shulchan Aruch* (Y.D. 135) discusses at length the procedures required to permit the use of a utensil that had contained non-kosher wine, and quite obviously, these procedures are not followed by whiskey distilleries.<sup>6</sup> Hence, the use of sherry casks for aging whiskey would seem to make the whiskey forbidden due to the flavor of forbidden wine that it absorbs.

This issue was the subject of an impressive, thorough treatise prepared by Rabbi Akiva Niehaus of the Chicago Community Kollel, which published the monograph in 2012.<sup>7</sup> Based on extensive research into the process of producing scotch whiskey and of the relevant halachic sources, Rabbi Niehaus concluded that 100% sherry cask scotch — meaning, a bottle whose entire content had been aged in sherry casks — should be avoided, whereas whiskeys that contain only a portion of sherry cask scotch — such as most blended whiskeys — are permissible. He added that in light of the aforementioned ruling of Rav Moshe Feinstein regarding blended whiskeys, it would be appropriate for a בעל נפש to avoid most types of sherry cask scotch.

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3. Whiskey undergoes aging, or “maturation,” after distillation for at least three years, and usually for eight years or more.
  4. “Sherry finish” whiskey is whiskey that was transferred to sherry casks for the final period — usually six months to two years — of the maturation process.
  5. “Sherry wine” refers to wine produced from white grapes grown in the area of Jerez de la Frontera in Spain’s Andalusia region.
  6. It should be noted that according to the *Shach* (Y.D. 135:33), if non-kosher wine had been contained for twenty-four hours or more, then the utensil requires *hagala* (immersion in boiling hot water), which distilleries certainly do not do to their casks.
  7. “Sherry Casks: A Halachic Perspective,” available online at <http://www.rccvaad.org/documents/SherryCasks.pdf>.

In the pages that follow, we will briefly review Rabbi Niehaus' analysis and suggest that a different conclusion may be reached.

## I. The Halachic Effects of a Sherry Cask

### נותן טעם לפגם

The *Shulchan Aruch* (Y.D. 137:4) rules that wine placed in utensils that had previously contained non-kosher wine is forbidden for consumption; but other beverages stored in such utensils are permissible. As long as the barrel had been completely emptied and dried, it may be used for beverages such as water and beer. The *Tur* (cited by the *Taz*, 7) explains that the wine absorbed in the container has an adverse effect upon the beverage, and as such, its taste is not considered forbidden. The law of טעם כעיקר, which forbids consuming foodstuff that contains the flavor of non-kosher food, does not apply to a taste that negatively affects the mixture, a rule known as נותן טעם לפגם. Hence, since the wine absorbed in a utensil negatively affects the taste of the water or beer now stored in it, the taste of the wine is of no halachic consequence, and the beverage is permissible for consumption. This is in contrast to wine stored in such containers, whose taste is enhanced by the flavor of the wine absorbed in the walls of the container, and thus is forbidden.

Rabbi Niehaus cites several halachic authorities who rule that whiskey is an exception to this rule.<sup>8</sup> Absorbed wine enhances the flavor of whiskey, and thus cannot be disregarded on the grounds of נותן טעם לפגם. Rabbi Niehaus also notes seemingly contradictory statements of the *Noda Be-Yehuda* (*Mahadura Tinyana*, Y.D. 58, 67) in this regard. In any event, as Rabbi Niehaus concludes, it seems clear that if the manufacturer specifically stores the product in sherry casks in order to incorporate the taste of sherry in the beverage, this taste cannot possibly fall under the category of נותן טעם לפגם. Therefore, at least in principle, this taste can render the whiskey forbidden.

Additionally, while taste that is absorbed in walls of a utensil is generally considered stale (פגום) and thus negligible after twenty-four hours, the Rama (Y.D. 137:1) writes explicitly that this rule does not apply to wine, which improves with time.<sup>9</sup> Therefore, the wine absorbed by the cask should seemingly render the whiskey forbidden for consumption.

Rabbi Niehaus notes in this context the argument advanced by Rav Shlomo Miller suggesting that sherry may actually ruin the taste of the whiskey, but the

8. *Magen Avraham*, O.C. 451:40; *Chayei Adam* 125:15; *Maharsham* 3:150.

9. After twelve months, however, the absorbed wine may be disregarded, as we will discuss below.



distillers nevertheless use sherry casks for the benefit of the fragrance provided by the absorbed sherry:

In a conversation with Harav Shlomo Miller *shlita*, he suggested that it is quite possible that the flavor contributed by the wine does indeed ruin (*pogem*) Scotch (just like wine ruins beer, as indicated by the Gemara's allowance to store beer in a non-kosher wine barrel). Nevertheless, it is possible that Scotch distillers specifically use wine barrels to allow the Scotch to absorb the wine's *fragrance*, and according to *halacha*, fragrance added by a non-kosher ingredient is insignificant (*reicha lav milsa* — *Shach* 108:14). Accordingly, the non-kosher wine *blios* [absorption] would not require nullification.<sup>10</sup>

Rabbi Niehaus rightly questions this contention, proceeding to extensively document experts who have written about the sherry's enhancement of the taste of whiskey.<sup>11</sup> He then adds that Rav Miller refuted the significance of the experts' claims with an astonishing assertion:

Rav Miller countered in a follow-up letter that even taste stems from fragrance; this is proved by the fact that someone with a cold and is unable to smell has difficulty tasting food. Accordingly, the experts are merely experiencing the fragrance, which is negligible in *halacha*.

This attempt to distinguish between “real” taste and taste that is in truth a function of fragrance is nothing short of bizarre. If experts in the field determine empirically that the sherry impacts the taste of the whiskey, we cannot possibly ignore their claims based on a far-fetched, unsubstantiated theory.

### ביטול

The question then becomes whether we may apply to sherry cask scotch the rule of *ביטול*, which allows us to disregard a small amount of forbidden substance mixed with a much larger quantity of permissible foodstuff. If the forbidden portion constitutes a small enough percentage of the mixture, then we view it as “negated” by the majority, and hence halachically irrelevant. In the case of sherry cask whiskey, we need to ask what percentage is needed for a small portion of sherry wine to be negated by the whiskey, and whether we may presume that this ratio is indeed present in contemporary whiskeys.

10. “Sherry Casks,” n. 19.

11. *Ibid.*, n. 20.

Generally speaking, the taste of a forbidden food is considered “negated” if it comprises one-sixtieth or less of the mixture. The *Rishonim* debate the question of whether this applies to forbidden wine as well. The Ramban and Ritva, in their respective commentaries to *Maseches Avoda Zara* (73b), maintain that *halacha* draws no difference in this regard between forbidden wine and other prohibited foods. Thus, forbidden wine must comprise one-sixtieth or less of a mixture in order for the mixture to be permissible. However, the Ra’avad and the Ri (cited by the *Tur*, Y.D. 134) claim that the rules of ביטול apply more leniently in the context of forbidden wine, and the wine is considered negated as long as it comprises no more than one-sixth of the mixture. The *Shulchan Aruch* (Y.D. 134:5) follows the lenient position, and this is indeed the accepted *halacha* (as noted by the *Shach*, 123:16).

The conventional explanation of this distinction is that wine cannot be formally considered “wine” when it is diluted to such an extent.<sup>12</sup> Whereas other forbidden foods may not be consumed as long as their taste can be discerned, forbidden wine becomes permissible once it loses the formal halachic status of “wine.” When wine mixes with a quantity of water six or more times the wine’s quantity, we do not view the mixture as water with a taste of wine. Rather, the wine loses its identity altogether, and thus the mixture is entirely permissible. Hence, even though one can taste the wine when he drinks the water, the water is nevertheless permissible for consumption.<sup>13</sup>

However, the applicability of this principle to whiskey hinges on a debate among the *Rishonim* concerning its scope. The Rama (Y.D. 114:4) writes that one may not buy a beverage that normally has wine added from gentiles, unless he can ascertain that the wine comprises one-sixtieth or less of the beverage. Curiously, the Rama here requires a ratio of 60:1 to overwhelm the non-kosher wine, and not 6:1. The *Shach* (in *Nekudos Ha-Kesef*, commenting on the *Taz* 114:4) explains that the Rama distinguishes in this regard between water and other beverages. It is only when wine mixes with water that a 6:1 ratio suffices to “negate” the wine. If, however, wine mixes with other beverages, then a proportion of 60:1 is needed for ביטול to apply. This is indeed the position of the *Issur Ve-Heter*, cited by the *Shach* elsewhere (134:21).

The *Taz* (114:4) rejects this distinction and rules that even when non-kosher wine mixes with beverages other than water, the mixture is permissible if the

12. See Rashba to *Avoda Zara* 73b and in *Toras Ha-Bayis* 5:6. Rav Moshe Feinstein elaborates on this point in *Iggeros Moshe*, Y.D. 1:62, ד"ה והנה.

13. Rav Moshe Feinstein (Y.D. 1:63) writes that for this reason, ביטול would apply even if the producers of the beverage introduce the small amount of wine specifically to contribute its flavor to the beverage, as is the case with sherry cask scotch.

wine comprises a portion of one-sixth or less. This is the view accepted by several *poskim* as well, including the *Peri Chadash* (114:10), *Chochmas Adam* (66:15), and *Magen Avraham* (204:16). More recently, Rav Yitzchak Weiss follows this view in *Minchas Yitzchak* (2:28:4), as does Rav Moshe Feinstein in *Iggeros Moshe* (Y.D. 1:62). Both Rav Weiss and Rav Feinstein propose that the *Shach* might concede that in the case of strong alcoholic beverages, wine is considered “negated” in a proportion of 6:1.

The consensus among the *poskim*, then, permits drinking a beverage with a small portion of non-kosher wine added, even if the wine’s taste can be discerned, provided that the wine comprises no more than one-sixth of the beverage.

There is, however, a separate controversy that affects the manner in which the proportion is determined in the case of a barrel that had previously contained non-kosher wine. The *Shulchan Aruch* (Y.D. 135:13) rules that when a utensil stores non-kosher wine, wine is absorbed only in the surface layer of the utensil’s wall (כדי קליפה); it does not extend throughout the entire thickness of the wall. As such, the *Shulchan Aruch* writes, if one chisels the wall to remove its surface layer, the container may then immediately be used for kosher wine. Since the wall does not absorb wine beyond the first layer, the container can be “*kashered*” through the removal of that first layer.

This ruling bears vital importance for the question surrounding sherry cask scotch, as it drastically increases the likelihood that the non-kosher wine absorbed in the barrel is “negated” by the whiskey. If wine is absorbed only in the surface of the barrel’s interior, and not throughout the entire thickness of the wall, then this wine constitutes a minuscule quantity, which can be presumed to amount to less than one-sixth of the volume of whiskey in the barrel.

This conclusion, however, is subject to debate. The *Shach* (135:33) asserts that the *Shulchan Aruch* refers here only to situations of uncertainty, when it has not been verified that the utensil had stored wine for a period of twenty-four hours. In such a case, the *Shulchan Aruch* allows removing the surface layer as a means of “*kashering*” the utensil. If, however, the utensil had definitely contained non-kosher wine for a period of twenty-four hours, then the wine is absorbed throughout the entire thickness of the wall, and removing the surface layer would not suffice. Many halachic authorities, including the *Chochmas Adam* (81:11), *Kitzur Shulchan Aruch* (48:17), and *Imrei Eish* (Y.D. 44), concur with this stringent ruling of the *Shach*.

According to this view, the whiskey in the sherry cask must constitute six times the volume of the entire width of the wood of the barrel, and not merely six times the area of the surface layer.

Others dispute the *Shach*’s ruling and maintain that non-kosher wine stored in a barrel is absorbed only in the surface layer. These include the *Chacham Tzvi*

(75), *Machaneh Efrayim* (*Hilchos Ma'achalos Asuros* 11:15), *Chazon Ish* (55:6), *Chikrei Lev* (77), and *Yad Yehuda* (*Hilchos Melicha* 69:64). This lenient ruling would make it all but certain that sherry casks do not contain enough absorbed non-kosher wine to have a halachic effect on the whiskey. As Rabbi Niehaus observes (p. 43, note 59), several *poskim* establish that the volume of liquid in a container even constitutes more than sixty times the amount contained in the surface layer.<sup>14</sup>

However, Rabbi Niehaus cites the view of two contemporary *poskim* — Rav Moshe Heinemann and Rav Shlomo Miller — that it is proper to follow the stringent ruling of the *Shach*. Rav Heinemann asserts that conventional practice follows the *Shach's* position, and Rav Miller posits that although, strictly speaking, the *halacha* follows the lenient view, it is preferable to assume that the wine is absorbed throughout the thickness of the wall.<sup>15</sup>

Rabbi Niehaus proceeds to present the results of measurements conducted with a barrel calculator of a barrel that had stored sherry wine, which was obtained from a Spanish barrel supplier. The calculator measured the barrel's internal dimensions (511.5 liters) and external dimensions (647.4 liters); the difference between them, 135.9 liters, amounts to 26.6% of the interior volume. This means that the volume of the walls of the barrel constitutes over one-quarter of the volume of the whiskey stored in the barrel, significantly exceeding the 1:6 proportion needed for ביטול.

Accordingly, Rabbi Niehaus concludes that 100% sherry whiskey, which has been stored entirely in sherry casks, should be avoided, as the small amount of wine in the beverage renders the product forbidden. Whiskeys that contain only a portion of sherry cask scotch — such as combinations of sherry cask and bourbon cask whiskey — may be drunk, as the wine absorbed from the sherry cask may be presumed to be “negated” by the rest of the beverage.

Rabbi Niehaus then notes Rav Moshe Feinstein's ruling that a בעל נפש should follow the stringent ruling of the *Shach* that ביטול for forbidden wine requires a proportion of 60:1 against the forbidden wine. Rav Moshe also maintained that a בעל נפש should avoid beverages containing even a slight proportion of non-kosher wine due to the ruling of the Rashba, in one of his responsa (3:214), that if wine is normally added to a beverage, it is not subject to ביטול in that beverage, regardless of its minuscule proportion. As such, according to Rav Moshe, those who seek to be especially scrupulous should avoid all sherry scotch.

14. *Shach* 69:65; *Binas Adam*, *Sha'ar Issur Ve-Heter* 43.

15. However, in footnote 61, Rabbi Niehaus cites these two *poskim* as permitting sherry scotch for other reasons, and he disputes their arguments.

## II. Grounds for Leniency

It would seem, however, that a more lenient position can be formulated in light of the fact that the prohibition of **סתם יינם** — wine produced or owned by non-Jews — was enacted by the Sages, and does not constitute a Torah prohibition. When dealing with **איסורים דרבנן** — prohibitions enacted by *Chazal* — there is far greater room for leniency when halachic uncertainties arise. The famous rule of **ספק דרבנן לקולא** allows assuming the lenient possibility in situations of halachic doubt, and in the case of sherry whiskey, as we will now proceed to demonstrate, several such doubts arise, which, in the view of this author, suffice to permit its consumption.

### 1. כדי קליפה

One uncertainty has already been mentioned — namely, the question regarding the amount of non-kosher wine that can be assumed to have been absorbed by the cask. As we saw, several leading *poskim*, including the *Chacham Tzvi* and the *Chazon Ish*, rule against the *Shach's* position that non-kosher wine is absorbed throughout the entire thickness of the container's walls. According to these authorities, the sherry absorbed by the whiskey is certainly “negated” by the whiskey, and thus has no halachic effect. While it may be true that the *Shach's* stringency is generally accepted as the *halacha*, the opposing view can certainly be taken into account and combined with other uncertainties to establish grounds for leniency.

### 2. Subsequent Fills

The *Shulchan Aruch* (Y.D. 135:16) rules that once twelve months have passed from the time a container was emptied of its non-kosher wine, the barrel may then be used for kosher wine. After twelve months, any absorbed taste of the wine is presumed stale, and hence halachically negligible. The *Shulchan Aruch* adds that this applies even if the barrel was filled with water in the interim. In other words, the barrel does not have to remain unused for twelve months for it to become suitable for use with wine; as long as twelve months have passed since the non-kosher wine was removed, it may now be used, even if it had contained water in the interim.

Applying this *halacha* to sherry cask whiskey, we may arrive at yet another basis for leniency. Even if the “first fill” — the first whiskey stored in a barrel after the sherry wine had been removed — is forbidden for consumption, subsequent fills are seemingly permissible. Since whiskey is aged for several years, the sherry cask is permissible after the first fill, as more than twelve months have passed

since the wine was removed. As noted, the presence of a different beverage in the utensil does not interfere with this twelve-month “kashering” process, and thus although the cask contains whiskey within twelve months of the wine’s removal, the absorbed taste of the wine nevertheless becomes insignificant after twelve months.

The potential flaw in this argument relates to the fact that since the first fill becomes forbidden by the wine it absorbs from the walls of the barrel, it should then render the barrel forbidden anew. Since the entire vat of whiskey is forbidden for consumption and the walls of the barrel absorb this whiskey, the clock is restarted, so-to-speak, and we view the barrel as freshly absorbing forbidden wine throughout the period in which it contains the whiskey.

The basis for this claim is the halachic concept of *חתיכה נעשית גבילה*, often referred to by the acronym *חנ”ג*, which establishes that a piece of permissible food that absorbs the taste of forbidden food must be treated as entirely forbidden. If the proportion of permissible food to forbidden food is not large enough for *ביטול* to occur, then we must treat the entire piece of food as a *גבילה* — a piece of forbidden meat. As such, if that newly forbidden piece of meat mixes with permissible food, the mixture is forbidden unless the permissible food constitutes sixty times the volume of the entire forbidden piece that had mixed in. Even though that piece is forbidden only by virtue of a small portion of forbidden food that it contains, nevertheless, we must treat the piece as entirely forbidden, such that it forbids permissible food with which it mixes.

Applying this principle to whiskey in sherry casks, if we assume that the whiskey absorbs an amount of wine exceeding one-sixth of the total volume of the beverage, then all the whiskey in the cask must be treated as forbidden wine. As such, the cask absorbs forbidden wine anew over the course of the aging process, and thus even subsequent fills should be forbidden.

This conclusion, however, hinges on a number of debates among the *poskim*. First, the *Shulchan Aruch* (Y.D. 92:4) rules explicitly that the principle of *חתיכה נעשית גבילה* applies only in the very specific context of *בשר בחלב* — when meat mixes with milk. When it comes to all other areas of *halacha*, we do not treat the mixture as comprised entirely of forbidden foodstuff. According to this view, the first fill of whiskey, even if it is forbidden for consumption, does not have to be treated as forbidden wine that would then render the cask forbidden anew. Although the Rama disputes this ruling and maintains that *חתיכה נעשית גבילה* applies to all forbidden foods, the *Shach* (92:12) cites earlier *poskim* who assert that this applies only on the level of *מדרבנן*. As such, and particularly in light of the fact that the prohibition against drinking non-Jewish wine to begin with applies only *מדרבנן*, we certainly have room for leniency given the other uncertainties entailed.

Moreover, the Rama also cites an opinion that חתיכה נעשית נבילה applies only to a solid piece of food that absorbs a forbidden substance, but not when a permissible liquid is mixed with a forbidden liquid — such as in the case of whiskey and sherry wine. The Rama concludes that one may rely on this view (with respect to prohibitions other than בשר בחלב) when this is necessary to avoid a substantial financial loss (לצורך הפסד גדול), but not in other situations. The *Taz* (92:15), however, infers from the comments of the Maharshal (*Yam Shel Shlomo, Chullin*, 60) that one may rely on this opinion even when no financial loss is at stake.<sup>16</sup>

Another consideration is the ruling of the *Peri Chadash* (Y.D. 92:17), which he infers from the Rambam (*Hilchos Ma'achalos Asuros* 15:26–27), that the rule of חתיכה נעשית נבילה does not apply to any Rabbinic prohibitions. Since the prohibition of סתם יינם applies only on the level of Rabbinic enactment, the *Peri Chadash* would undoubtedly permit subsequent fills of sherry whiskey, as even if the first fill is forbidden for consumption, it does not then render the cask forbidden anew. The *Aruch Ha-Shulchan* (Y.D. 92:25) rules in accordance with this position of the *Peri Chadash*. Although others, including the *Peri Megadim* (*Mishbetzos Zahav*, Y.D. 92:11), reject this opinion, we may certainly take this view into account as yet another factor to consider.

This is true as well of a different ruling of the *Peri Chadash* (ibid.) limiting the rule of חתיכה נעשית נבילה to items that absorbed forbidden foodstuff specifically through the process of cooking. If a forbidden food was absorbed through the process of כבוש — soaking for a period of twenty-four hours or longer — then although it may not be eaten, it is not, according to the *Peri Chadash*, subject to the provision of חתיכה נעשית נבילה. The entire concern of sherry whiskey arises due to the concept of כבוש, and thus for this reason, too, the *Peri Chadash* would not apply the rule of חתיכה נעשית נבילה in the context of whiskey aged in sherry casks. As in regard to the earlier debate, many *poskim* disagree with the *Peri Chadash*.<sup>17</sup> Nevertheless, in light of all we have seen, there is clearly room to permit the consumption of sherry whiskey beyond the first fill, even if we concede that the first fill is forbidden. Hence, since any given bottle of whiskey may have been produced from a second or later fill, we may permit the bottle on the grounds of ספק דרבנן להקל.<sup>18</sup>

16. The exception, as the *Taz* notes, is when the two liquids were mixed דרך ביטול — meaning, they were cooked together from the outset — which is clearly not relevant to our discussion.

17. See *Darchei Teshuva*, Y.D. 105:17.

18. The *Sedei Chemed* (vol. 7, *Ma'areches Chametz U-Matza*, 8:15) writes that according to the opinion that gentile wine is not subject to ביטול, a container that had been used for gentile wine does not become “kashered” after twelve months if it contained another

### 3. The Duration of the Shipping Process

We can also add to the equation the real possibility that any given barrel was filled with whiskey only twelve months or longer after the wine was removed. These barrels are shipped to Scotland from Spain after the sherry wine is removed from them, and we have no way of determining how much time passes from the moment they are emptied of wine until the Scotch distillers fill them with whiskey. It is certainly well within the realm of possibility that the process, at least in many cases, extends for over a year, in which case the wine absorbed in the barrels will have no halachic effect on the whiskey, even in the first fill.

### 4. Empirical Evidence

Rather than engage in speculation about the amount of sherry wine contained in sherry whiskey, I sent five bottles of different brands of whiskey — four of which were aged in sherry casks — to a laboratory for analysis. As I expected, the amount of wine contained in the whiskey constituted a minuscule proportion:

- Glenmorangie 12 (Sherry): 0.06%
- The Balvenie 17 (Sherry): Less than 0.01%
- Auchentoshan (Sherry): 0.13%
- Macallan 18 (Sherry): 0.05%
- Glenfiddich 14 (No Sherry): Less than 0.01%

The brand with the highest sherry content, Auchentoshan, contained sherry in a

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liquid in the interim. The reason, he explains, is that the liquid becomes forbidden by absorbing the non-kosher wine from the walls of the barrel, and then the walls absorb anew this forbidden liquid. Seemingly, this ruling applies practically even though we accept the view that recognizes the possibility of ביטול for gentile wine. In a case in which the volume of liquid in the container does not suffice for ביטול, according to the *Sedei Chemed*, the liquid must be treated as entirely forbidden, and thus the container absorbs a forbidden beverage anew. If so, then in the case of sherry whiskey, the *Sedei Chemed* would forbid subsequent fills, since the first fill becomes entirely forbidden and is then absorbed into the cask.

In truth, however, a clear distinction can be drawn between our discussion and that of the *Sedei Chemed*. According to the view that gentile wine is not subject to ביטול, even the slightest quantity of gentile wine suffices to forbid an entire vat. Since ביטול does not occur, there will always remain a tiny element of prohibited wine that cannot be disregarded, and it will continue to be absorbed into the wall of the container, extracted into the new liquid, and then reabsorbed in the wall, *ad infinitum*. We, however, accept the view that ביטול occurs, and thus the question of whether the wall reabsorbs forbidden beverage hinges on the applicability of חתיכה נעשית נבילה, as discussed.



proportion of 1:769. The other brands contained a significantly lower proportion of sherry.

In light of these results, the question becomes whether we may rely on laboratory findings for the purpose of determining *ביטול*. The *Shulchan Aruch* (Y.D. 98:1) rules that when a small amount of forbidden food mixes with a different kind of permissible food, a gentile should be asked to taste the mixture and determine whether the forbidden food can be discerned. If the gentile says that no taste of the forbidden food can be discerned in the mixture, then the mixture is permissible. The only condition imposed by the *Shulchan Aruch* is that the gentile is unaware that he is being relied upon for matters of religious law, as if he is, then he might knowingly lie.

The Rama, however, citing the *Agur*, writes that the custom is not to rely on this method of determining the presence or absence of the taste of forbidden food. Instead, we make this determination solely on the basis of proportion. If the forbidden food constitutes one-sixtieth or less of the mixture, then we presume it imparts no taste into the mixture, but otherwise, we must assume that it does, and the mixture is forbidden.

In light of this custom, it would appear, at first glance, that in the case of sherry whiskey, the results of laboratory results are irrelevant, and the status of the whiskey is determined solely on the basis of the proportion of the volume of the cask's walls with respect to its content.

Upon further reflection, however, there is ample reason to accept the laboratory's findings as halachically authoritative.

Two reasons are given for the custom documented by the Rama. The first is that a gentile tasting the mixture cannot be trusted, given the hostility that some gentiles of that time showed to Jews. The *Shach* (98:5) infers this approach from the fact that the Rama ruled against relying on gentiles (*אין נוהגין עכשיו לסמוך*), and not against relying on tasting in general. As such, the *Shach* rules that in situations in which it is possible for a Jew to taste the mixture and determine the presence or absence of forbidden taste, this solution may be used. One example noted by the *Shach* is a situation in which a Jew vowed to abstain from a certain food, and a small amount of that food fell into some other food. According to the *Shach*, another Jew may be invited to taste the mixture and determine whether he can discern the taste of the food from which the other fellow had vowed to abstain.

Rabbi Akiva Eiger (*chiddushim* to *Shulchan Aruch*) explained the custom differently, claiming that it evolved due to the concern that people might not detect a taste that is, in truth, present in the mixture. It is the concern for mistakes, not dishonesty, that gave rise to the practice not to rely on tasting. According to this

explanation, this method should not be relied upon even if a Jew of presumed integrity does the tasting.<sup>19</sup>

According to both reasons, it would seem, conclusive results of laboratory tests should suffice to establish the proportion of a forbidden component of a mixture. When dealing with a professional laboratory that is paid for its services and, like any business, must remain competitive and maintain a reputation for accuracy and integrity, we may apply the well-known halachic principle, חזקה חזקה לאומנותיה — a professional can be assumed not to risk his reputation by providing incorrect information. There is certainly no reason to suspect that a professional research laboratory would knowingly distort the results of a test commissioned by a customer. As for the possibility of error, it is difficult to imagine that a contemporary lab conducting a simple test identifying the respective proportions of a beverage's components would mistake a proportion of 1/6<sup>th</sup> (or 1/60<sup>th</sup>) for 1/769<sup>th</sup>.

Indeed, Rav Shlomo Zalman Braun (*She'arim Ha-Metzuyanim Be-Halacha*, vol. 1, p. 260) cites several halachic authorities, including Rav Yosef Shaul Nathanson (*Shoel U-Meishiv* 3:1:317) and Rav Yitzchak Schmelkes (*Beis Yitzchak*, vol. 1, Y.D. 141), who allowed relying on laboratory tests — in conjunction with other considerations — to allay fears of the presence of pig fat in oil. More recently, Rav Moshe Sternbuch (*Teshuvos Ve-Hanhagos*, vol. 1, Y.D. 423) ruled that a laboratory test may be trusted, although he adds that the technician must be told that the sample is also being given to two other experts for testing, so that he realizes his reputation is on the line. Rav Sternbuch proceeds to note the practical problems on relying on lab tests for the purposes of formally certifying a certain product as kosher, given the possibility that the ingredients might change, as well as other pragmatic concerns.<sup>20</sup> In our case, however, we need only to ascertain that whiskey aged in sherry casks does not contain anywhere

19. Both these explanations have support from the Rama's own comments elsewhere in his writings. In one of his published responsa (54), the Rama addresses the case of wine barrels that were lined with oil, which some feared may have contained pig fat, and he rules that the wine is permitted for several reasons, including the fact that no one had ever detected the taste of pig fat in wine. This would suggest that a Jew's tasting may be relied upon to discount the presence of forbidden taste. In his *Toras Chatas* (61:1), however, the Rama writes explicitly that we do not rely on tasting דאין אנו בקיאים — because we lack the necessary skill to determine the presence or absence of a forbidden taste. For a resolution of these two sources, see *Yad Yehuda* (*Aruch*, 98:5).

20. For example, in situations of a forbidden food that is prohibited במשור — meaning, in even the slightest quantity — a laboratory test may be insufficient to establish the absence of even a slight trace of the forbidden food.

near a significant quantity of wine. There is little reason to discount these laboratory findings, and thus sherry whiskey should be permitted.

We should also note that Rabbi Akiva Eiger, in his notes to the *Shulchan Aruch* (Y.D. 98:1), proposes that one may rely on a gentile's tasting a mixture in situations involving an איסור דרבנן. He writes that since the custom noted by the Rama evolved as a matter of stringency, in order to satisfy all opinions, it stands to reason that it should not apply if the prohibition at stake is Rabbinic in origin, as opposed to a Biblical command.

In light of these considerations, it seems clear that there is room to allow sherry cask scotch without any concern.<sup>21</sup> However, it must be emphasized that, as noted earlier, Rav Moshe Feinstein ruled that a בעל נפש should avoid blended whiskeys in light of the Rashba's ruling forbidding beverages to which any amount of gentile wine is added to enhance its taste. This ruling would seemingly apply to sherry whiskey as well, and thus those who wish to be stringent and satisfy the Rashba's view should avoid such whiskey.<sup>22</sup>

However, Rabbi Niehaus raised the possibility of distinguishing in this regard between blended whiskeys, into which wine was actually added, and sherry whiskey, which was aged in sherry-flavored casks.<sup>23</sup> One could argue, Rabbi Niehaus writes, that the Rashba's ruling applies only when wine was poured directly into a beverage, but not when a beverage was stored in a barrel to absorb the taste of the wine that previously occupied the barrel. Additionally, we might add, the Rashba might concede that even wine added for the purpose of enhancing taste can be ignored if it constitutes less than one-thousandth of the beverage (בטל באלף). As this is the case in the majority of brands of sherry whiskey, the slight amount of wine in the whiskey would not pose a problem even according to the Rashba. Hence, it is possible that even a בעל נפש would be allowed to consume sherry whiskey without any concern.

21. To this we might add that although Rabbi Niehaus refers to measurements done on a standard whiskey barrel, it is far from certain that every sherry cask used for whiskey is constructed in such a way that the volume of its wood exceeds one-sixth the volume of its content.

22. In light of what we have seen, Rav Moshe's other reason for why a בעל נפש should avoid blended whiskeys — to satisfy the *Shach's* view, requiring a proportion of 60:1 against forbidden wine — does not apply to sherry scotch, as the proportion of wine is far below even one-sixtieth. Rav Moshe also noted the view of the *Mateh Yehonasan* that if wine enhances the beverage with which it is mixed, then a proportion of one-sixtieth is needed for ביטול to occur. Of course, this consideration also does not apply to sherry whiskey.

23. "Sherry Whiskey," note 50.

INTERVIEWS

**Rav Ezra Schwartz**  
**on Headlines with Dovid Lichtenstein\***

There certainly is *על מי לסמוך* to allow the majority of scotches. However, for those scotches that are aged exclusively in sherry casks, the *kula* is much more difficult. The sherry casks contribute flavor, and anything that contributes flavor is not going to be *בטל*, even were there to be a 6:1 ratio. There is a discussion in *Yoreh Dei'a* whether *סתם יינם* is *בטל בשש* or *בטל בששים*, but even if we accept the leniency that it is *בטל בשש*, when something is *עבידא לטעמא* — it contributes flavor — it is very difficult to be lenient. Rav Moshe does rule leniently, but he acknowledges that a *בעל נפש* should be stringent.

The reality is that it is not *בטל בששים*, and according to the Chicago kollel's book, it might not even be *בטל בשש*... In all likelihood, it is not *בטל בשש* unless it is blended, meaning, different types of scotch were mixed together. But if it's exclusively from sherry casks, we have the impression that this is not a legitimate *ספק*.

As to whether a year passes [between the time the barrel is emptied of its wine and it is filled with whiskey], the reality is that the transportation [process] does not work that way... The likelihood is that the trip from Spain takes maximum 6–8 months. The manufacturers want to do things as quickly as possible...

[Rabbi Niehaus'] calculation [of the proportion of wine in the whiskey] resonates with me; this barrel calculator seems accurate...

The more legitimate *ספק* is that maybe [the barrel absorbs] only *כדי קליפה*...

Some argue that the color of scotch aged in a sherry cask differs from that of scotch aged in a bourbon cask; it tends to be darker and more of an amber-like color. The *Shach* (102:5) paskens that something which is *עבידא לחזותא* (added for the sake of coloring) is not *בטל*. The *Taz* disagrees, as does the *Peri Megadim*, but the *Minchas Yaakov* says that if something is *אסור בהנאה* (forbidden for any kind of benefit, and not just for consumption), then it will not be *בטל*. And we are *machmir* that *סתם יינם* is *אסור בהנאה*. (Granted, the *Peri Chadash* says that when dealing with an *איסור דרבנן*, we are not concerned with *חזותא*.)

There are many types of scotch available that do not have this problem. The problem is only with the pure sherry, those matured exclusively in sherry casks. Regarding the others there is no concern. Even Rav Moshe said that a *בעל נפש* should try to avoid [blended whiskeys which contain a small amount of wine], and he praised Rav Teitz for putting on the market a type of whiskey which did not contain any wine.

*[In response to the laboratory results, which found that pure sherry whiskey contains an infinitesimally small percentage of sherry:]*

One of the more difficult questions that come up is that בליעת כלים — the notion that a utensil absorbs *treif* food and then imparts that taste [into the food cooked in it subsequently] — does not seem to exist in the real world. Many people who work with metal contend that there's no such thing. So what do we do about all of *Yoreh Dei'a*, if the realities of בליעת כלים do not seem to meet the halachic definitions? There are some nice articles in *Techumin*, vol. 35, in which the authors go back and forth and debate the issue. One Rosh Yeshiva in *Eretz Yisrael* takes this question into consideration as a factor in difficult cases involving *Yoreh Dei'a*. But most *poskim* with whom I have spoken feel that we need to deal with בליעת כלים based on what it says in the *Shulchan Aruch*. The entire volume of the walls of the utensil are absorbed with *issur* [forbidden foodstuff], and consequently, that full amount will come out in the next food [cooked in the utensil]. Most *poskim* say we cannot overturn all the laws in *Yoreh Dei'a*... בליעת כלים is less about *metzius* [actual reality] than it is a halachic construct...

There are many *poskim* who take different approaches to the Rama's ruling that nowadays we do not rely on a gentile tasting a mixture [and concluding that no forbidden taste is discernible]. The *Levush* assumes that כח הטעימה [the skill to discern taste] does not exist at all...

I acknowledge that certainly, according to standard approaches to *halacha*, we have many ספיקות. Nonetheless, the question is whether there is enough of a need to be lenient. So מעיקר הדין, there is certainly what to rely on [to permit sherry whiskey], but once we're coming from the perspective of a בעל נפש, I don't think it's an unreasonable stringency.

\* Broadcast 10 Adar II, 5776 (March 19, 2016).

### **Rabbi Eli Gersten** **on Headlines with Dovid Lichtenstein\***

The opinion of the *poskim* for the OU — Rav Yisrael Belsky *zt"l* and *ybl"ch* Rav Herschel Schachter — is that the OU should not certify scotches made in sherry casks, and that they should not be sold in restaurants or served by caterers certified by the OU. This is a matter of policy, the public position of the OU. As far as individuals are concerned, each person should ask his מורה הוראה חסו what to do.

There are blended whiskeys that have many whiskeys together. As long as it does not say “sherry cask,” the OU would allow it to be sold and served. Blended whiskeys can have as many as 50 whiskeys mixed together, so only a minimal

amount was aged in sherry casks. As long as it is not known how much was aged in sherry casks, it's permissible.

The wine casks [used for sherry whiskey] contained non-kosher wine for many years. To use them for kosher wine gives rise to the question of אין מבטלין (the prohibition against knowingly mixing a small amount of forbidden foodstuff into kosher food, even if the proportion is small enough for ביטול to occur). When it comes to giving a *hechsher*, certifying a bottle of scotch that is known to have been made with wine barrels is not permitted. The OU does not certify products made through ביטול. The factory has to be kashered first, and all the ingredients must be kosher. This is not the case with these wine barrels. Giving it a *hechsher* would be an issue of אין מבטלין איסור לכתחילה (something inappropriate); a *hashgacha* should not allow this. Even though strictly speaking, this is not ביטול איסור לכתחילה [since the ביטול is being done by a non-Jew, who is not doing it at a Jew's behest], it nevertheless falls under the category of מכוער; it's not in the spirit of the law. We should not certify and give our stamp of approval to a product that would be forbidden for a Jew to make. All *hashgachos* accept this. People expect more when they buy a certified product. Therefore, we kasher every factory we go to.

Additionally, in his *teshuva* about whiskey, Rav Moshe was not referring to בליעת כלים. He was referring to בעין (actual wine added to the whiskey), which is much easier to calculate; you just look at the recipe. When it comes to בליעת כלים, we have to calculate based on the thickness or the קליפה of the barrel... *Chazal* required us to evaluate this in its entirety.

Moreover, sherry is not regular wine; it's fortified wine, meaning that alcohol is added. Sherry is 20–22 percent alcohol, which means they could be adding 10 percent wine alcohol to the wine. When dealing with a regular wine barrel, there are certain familiar *halachos* that apply; it becomes permitted even without kashering after twelve months [have passed since the wine was removed]. This is not necessarily true if you were to put alcohol into a barrel. The *Darkei Teshuva* (end of 135) brings from the *Yad Yehuda* that [a period of] twelve months does not help if the barrel held wine alcohol. Sherry is somewhere on the spectrum between wine and alcohol, somewhere between schnapps and wine. If you define it as schnapps, then you get into trouble, and twelve months does not help. And, you have to be concerned with not just כדי קליפה, but with the whole thickness of the barrel, all of which becomes non-kosher. Also, the issue of 6:1 or 60:1 could change if it's alcohol. Rav Moshe has a *teshuva* about wine alcohol which was turned into vinegar, and he writes that you need a proportion of 60:1 for it to be בטל.

The laboratory won't be able to tell you about the alcohol. If the barrel is saturated with wine alcohol, no lab will be able to tell you where the alcohol is coming from... A laboratory can provide information from an allergen standpoint, and say there is no grape [in the whiskey], but it cannot tell you which part of the product is made from grape. And my guess is that when a barrel is saturated with alcohol, much of it will come out into the whiskey. We cannot make any assumptions when it comes to ביטול.

[Also,] when *Chazal* said that we have to be concerned with the entire בליעה of utensils, and we could perhaps rely on a קפילא for this — [in the case of a laboratory] they're not tasting, which is what *Chazal* required.

\* Broadcast 10 Adar II, 5776 (March 19, 2016).



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בס"ד, כ"ה חשוון תשע"ב

לכבוד ידידי הרב הגאון והנעלה מוה"ר עקיבא ניהויז שליט"א מחשובי כולל זכרון שניאור פה עיר שיקאגו.

ראיתי את הקונטרס שחיבר מעכ"ת בענין כשרות של מיני יין שרף שונים העשויון בחביות שיש בהם חשש בליעות של סתם יין. והנה קראתי בו והוא חיבור חשוב מאד שנכתב בעיון רב, וניכר שהרבה עמל ויגיעה השקיע המחבר שליט"א לברר וללבן כל ההלכות והמציאות הנוגעות לברר שאילה הג"ל. הנה המחבר כבר למד אצלינו בכולל זכרון שניאור הרבה שנים ועמל בתורה ביגיעה רבה, והצליח מאד במעלות התורה, ובפרט לאסוקי שמעתתא אליבא דהלכתא, ויורד לעומקא דדינא. וחזקה על חבר שאינו מוציא מתח"י דבר שאינו מתוקן.

ואסיים בברכה שיזכה המחבר שליט"א שיפוצו מעיינותי החוצה ויהי ממנוכי הרבים בזה ובבא וה' יהי

בעזרו.

הכר"ח לכבוד התורה ולומדי

2/3 3/1 קאר



**Rabbi Akiva Padwa**  
Kashrus Consultant & Coordinator  
London UK

**הרב עקיבא אשר פדווא**  
מומחה לענייני כשרות  
פק"ק לונדון יצ"ו

ר"ח כסליו תשע"ב לפ"ק, פה לונדון יצ"ו

בס"ד

I consider it indeed an honor and a privilege to have been asked to give a *Haskoma* to this *Kuntrus* "Sherry Casks: A Halachic Perspective". Having read the *Kuntrus* I found it to be *Me'at Kamus* but *Rav Aichus*. Much has been written over the last few decades about whisky, however many of the articles written were based on incorrect technical details that do not reflect the realities at the distilleries. Many others may be factually and technically correct, but do not relate in depth to *Divrei HaPoskim Z"TL*. It is therefore refreshing to find this *Kuntrus* comprehensive and well balanced, addressing in great detail both the technical and Halachic aspects of this intriguing subject.

In the course of my activities on behalf of the London Beis Din Kashrus Division I have had the opportunities to visit numerous Scotch and other whisky distilleries. I have also visited several cooperages that service the whisky industry and have had the privilege to meet with distillery managers and 'master blenders' and to discuss these issues in depth and at length with some of the world's leading experts in this field. For whatever my *Haskoma* is worth, I will state that the description of the Scotch whisky production portrayed by Rabbi Akiva Niehaus, *Shlita* is factually correct. As one who has spent many years researching and who has written several articles on this subject I will also state that I concur entirely with his conclusions too.

עקיבא אשר פדווא  
באאמ"ר פדאן פלסי"א

PS: While I agree with Rabbi Akiva's conclusions that there are varieties of whisky that can safely be considered kosher, there is no doubt that the ideal situation would be that only kosher certified beverages should be consumed. Up until recently this has not been considered a very viable option for those of us who prefer to consume quality whisky. I consider it to be my privilege that I have in recent times been instrumental in the introduction of quite a number of premium quality Single Malt Kosher Whiskies certified by the LBD. As much the kosher community will demonstrate that there is a demand for such certified products, so the availability will increase.

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## AUTHOR'S PREFACE

As the second, expanded edition of *Sherry Casks: A Halachic Perspective* goes to print, I would like to take this opportunity to thank the people who have had a tremendous impact on my life.

My first acknowledgement goes to my parents, Rabbi and Mrs. Ephraim Niehaus, who have encouraged me to reach for my goals and continue to support me in my endeavors. My in-laws, Rabbi and Mrs. Avrohom Union, for encouraging me like a son and for their constant support and advice.

The Mesivta of Long Beach, the *Rosh HaYeshiva* and *Rabbeim* helped mold me into what I am today. The Chicago Community Kollel, led by the *Roshei Kollel*, Harav Dovid Zucker and Harav Moshe Francis, has been my second home for the past six years. They have given me the opportunity to *shteig* in all areas. The *Rosh Chaburah*, Rav Yehoshua Goldstein, has always been there to help out.

Many people helped in the production of this publication. A special thank you goes to Rabbi Yaakov Galster, Rabbi Yeruchom Levovitz, Rabbi Dovid Rokach and Rabbi Aaron Rokach for their invaluable assistance. A very warm thank you goes to R' Eliyohu Weinstein who has been a tremendous help. His mathematical prowess and knowledgeable sources were a huge asset. Thank you to Rabbi Eli Gersten, OU Rabbinic Coordinator, for looking through the manuscript and writing numerous comments. I have great appreciation to Harav Shlomo Miller, *Rosh Kollel*, Kollel Toronto, for granting me precious time to deal with various points in this publication. Thank you to Rabbi Akiva Osher Padwa, Senior Rabbinical Coordinator & Director of Certification, Kashrus Division – London Beis Din, for taking the time to read the manuscript and make valuable comments. Thank you also to Rabbi Moshe Armel, ACCU-TRANS Quality Translations, for his editing and comments. Thank you to Harav Moshe Heinemann and Rabbi Yossi Berger for their assistance. Gratitude is due, as well, to Dr. Shlomo Adler for his editing critique on the first edition. Thank you also to Rabbi Simcha Smolenski for sharing information and pictures.

I have received a large amount of feedback from the first edition with many comments and questions. It has been a tremendous source of *chizuk* to hear from people all over the world. I have incorporated many comments into the new edition and I hope to continue to hear more.

Special Note: All sources quoted in this publication refer to *chelek Yoreh Deah* unless otherwise noted. Foreign and other uncommon terms can be found in an alphabetical glossary at the end of this publication. Also, please note that the information in this booklet was correct at the time of publication to the best of my ability. Due to the constant changes in the Scotch industry, some information may change over time.

I conclude with tremendous *hakaras hatov* to my wife for being a constant source of *chizuk*; May *Hakadosh Baruch Hu* continue to grant us *nachas* from our children.

Akiva Niehaus  
Chicago, IL



## **SHERRY CASKS: A HALACHIC PERSPECTIVE**

### *A Comprehensive Overview of Scotch Production and its Implications in Halacha*

Among the many types of alcoholic beverages that one may encounter at a *simcha*, one will inevitably find a bottle of Scotch whisky.<sup>1</sup> Scotch has been produced in Scotland for hundreds of years and there are currently many brands and varieties available. The connoisseur may have his preferred Single Malt Scotch, but the average person will sample whatever varieties he may see. As most Scotch manufacturers do not have Kashrus supervision for their products, much attention has recently been directed to the halachic status of Scotch. Let us review the process of Scotch production to discover if any halachic issues arise.

### **I. THE PROCESS OF SCOTCH PRODUCTION**

According to the Scotch Whisky Regulations 2009 (United Kingdom, Ministry of Agriculture, Fisheries and Food, 23<sup>rd</sup> November 2009), in order to be called Scotch Whisky, the spirit: (a) must be distilled at a Scottish distillery from water and **malted barley**, to which only other whole grains may be added, have been processed at that distillery into a **mash**, converted into a fermentable substrate only by endogenous enzyme systems, and **fermented** only by the addition of yeast; (b) must be **distilled** to an alcoholic strength of less than 94.8% by volume so that it retains the aroma and taste of the raw materials used in its production; (c) must be **matured** only in oak casks of a capacity not exceeding 700 liters; (d) must be matured only in Scotland; (e) must be matured for no less than three years; (f) must be matured only in an excise warehouse or a permitted place; (g) must retain the colour, aroma and taste derived from the raw materials used in its production and maturation; (h) must not contain any added substance other than water and plain caramel **coloring**; and (i) may

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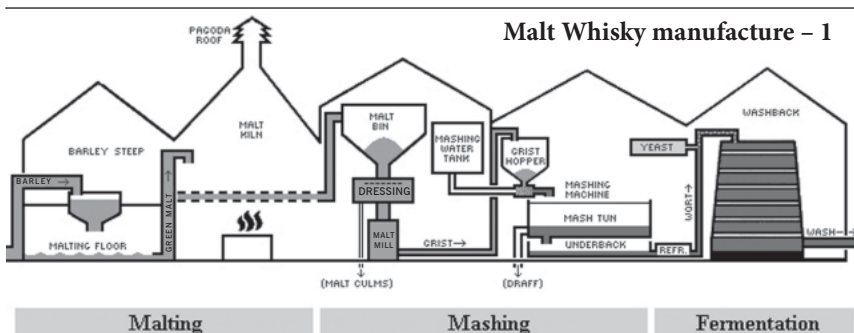
1. Whisky (without an e) generally refers to spirit produced in Scotland and Canada; spirit produced elsewhere is generally spelled whiskey (with an e) (based on *Michael Jackson's Complete Guide to Single Malt Scotch*, 6<sup>th</sup> Edition, DK Publishing, 2010, pg. 22).

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not be **bottled** at less than 40% alcohol by volume. Let us explain these terms. (See also Section X: A Pictorial Guide to Scotch Production.)

**Malted Barley:** Malted Barley refers to barley which has been allowed to reach the point of germination. The starch content of barley is initially locked within the center of the grain by cell walls lined with protein. Malting breaks down these cell walls during three stages: steeping, germination, and kilning. First, the barley is alternately soaked and dried in “steeps” for about three days; once the grain has absorbed enough water and oxygen, it is dumped on the malting floor and spread out to a depth of 4-6 inches. On the malting floor, the barley starts to warm up and germinate. Over the course of a week or so, the barley is turned about twice a day, with windows being used to adjust the temperature. The turning serves to both moderate the temperature and disentangle the rootlets as the barley germinates. During this process, important enzymes within the seed are activated, begin to reproduce, and turn the more complex starches into simpler starches and sugars.

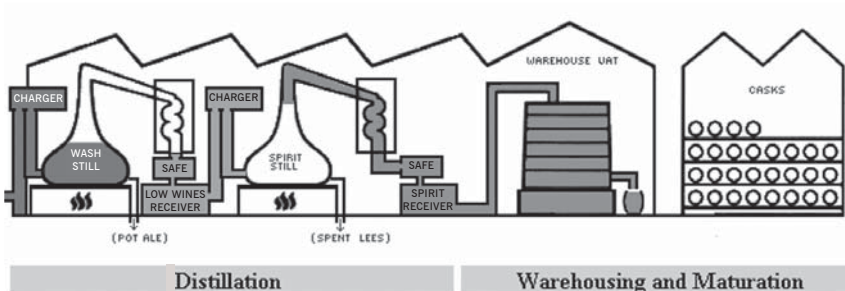
Once the barley root is about as long as the barley seed, the process is halted. The barley is loaded into a kiln where it is dried. In years past, peat fires were used to dry the barley; now, oil or coal is often used instead, with some peat thrown on the fire to provide the “traditional” peat (phenol) character to the malted barley when desired. Drying time depends on which heating method is used; with peat fire only, it might take 2-3 days, and with oil heat only, it can be done in less than half the time. Today, there are very few traditional floor maltings; most distilleries use



large communal drum or box maltings.

**Mashing and fermentation:** The dried malt is ground into coarse flour called “grist.” This is mixed with hot water in a large vessel called a mash tun where the grist is allowed to steep. Mashing is the process that extracts soluble sugars from the malted grain. The mash tun (the “coffee filter”) is generally a large stainless steel or cast iron vessel which can hold from 4-12 tons of grain and upwards of 40,000 liters of water. Tuns generally have moving arms that swirl through the mixture to speed the process along. This process is referred to as “mashing” and the mixture is the “mash.” In the course of mashing, enzymes that developed during the malting process are allowed to convert the barley starch into sugar, producing a sugary liquid known as “wort.” The grain is added first and then water is added in 3 or 4 batches (known as washes). The first wash is usually at 147-158°F and extracts the important enzymes and some sugars from the grain as it soaks through the barley. After about 30 minutes, the wash flows out of fine holes in the bottom of the tun where it emerges as a liquid called wort. The second wash is generally hotter, in the range of 158-167°F, and extracts more of the remaining sugars. The second water is then drained, combined with the first water, and collected in a worts receiver. The grains left in the mash tun still contain a small amount of sugar residue. This is too valuable to waste, and a third water – almost at boiling point – is added. The sugar content of this wash is much lower than the first two, so it is generally allowed to cool in order to be reused as the first wash of the following cycle.

## Malt Whisky manufacture – 2



The wort is then transferred to another large vessel called a “washback” where it is cooled (washbacks vary widely in size, some as large as 60,000 liters). Washbacks (fermenting vessels) are where the process gets more exciting; yeast is added to the wash and fermentation begins – sometimes violently. The resulting liquid, now at about 5-9% alcohol by volume, is called “wash” and is very similar to a rudimentary beer.

**Distillation:** Distillation is used to increase the alcohol content of the wash and to remove undesired impurities such as methanol. The liquid is heated to the boiling point of alcohol, which is lower than that of water (173.2°F). The most traditional method used for distillation is the pot still. A pot still consists of three distinct parts: the pot (where the fermented wort is heated – generally by steam); the “lyne arm” or swan neck (along which the evaporated alcohol travels); and the condenser (where the alcohol vapor cools and condenses back into a liquid). The traditional method of condensing is in a worm tub: the vapors pass through a worm-like coil of copper piping immersed in a tub of cold water. Many modern-day condensers consist of the shell-and-tube type: water flows through a bundle of tubes arranged in a vertical casing, and cools the vapors in the surrounding area of the shell.

All Scotch malt whisky distilleries distill their product at least twice, for which two stills are required. The first distillation is carried out in the wash still and the second in the spirit (or “low wines”) still; the first still will almost always be bigger than the second. Variations in the sizes and shapes of the component parts of a still affect the final flavor of the spirit in different ways. When a still needs to be replaced, every effort is made to replicate the construction of the old one. After the first distillation, the alcohol content of the liquid has risen to around 20-28% and is called “low wine.” The low wines are collected in a receiver and then passed through the spirit safe; the spirit safe is the control point for the distilling operation. Here, samples of the running distillate can be drawn off remotely and tested for strength by means of a hydrometer located in the safe. The low wine is distilled a second time, in the low wines still, and the distillate

is divided into three “cuts” which are directed through the spirit safe. The first cut contains about 74-75% alcohol and is called “foreshots.” This cut is generally quite toxic due to the presence of the low boiling point alcohol methanol and is generally saved for further distillation. It is the “middle cut” that the stillman is looking for, which will be placed in casks for maturation. At this stage, the substance produced is called “new make.” Its alcohol content can be anywhere from 63-72%. The third cut, with a 60-62% alcohol content, is called the “feints” and is generally quite weak. This is also saved for further distillation. The three cuts cannot be accessed directly by the stillman as they pass through the spirit safe, so he must judge the right moment to separate them, based largely on his knowledge and experience.

**Maturation:** Once distilled, the “new make spirit” is diluted with local water to an alcoholic content of about 63-65% and is placed into used oak casks for the maturation process.<sup>2</sup> The aging process results in evaporation, resulting in a yearly loss of 0.5–2.0% loss of volume and a reduction in alcohol. The distillate must age for at least three years in Scotland to be called Scotch whisky, although most single malts are aged for a minimum of eight years.

**Color:** The color of Scotch whisky is determined by the type of cask used to age the whisky. All whisky is matured in oak casks and whisky manufacturers generally re-use barrels previously used to store other alcoholic beverages such as Sherry, cognac, bourbon, rum, or beer. Whisky stored in ex-Sherry casks is

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2. Because used casks are usually the barrel of choice, the barrels are “dumped” – emptied of their contents – or rinsed before use (based on an email conversation with Kevin Erskine, from *TheScotchBlog.com*). It’s quite possible, however, that a few liters of liquid (perhaps wine from previous use) may remain inside the cask when being filled with Scotch (based on emails from Rabbi Simcha Smolenski and Rabbi Akiva Padwa). See, however, *Mixing the grain with the grape*, by Ian Wisniewski (*Whisky Magazine*, Issue 51, 07/10/2005): “As the ‘finishing influence’ must stem from the cask rather than the contents, it’s thoroughly drained of any remaining liquid. Residual liquid absorbed by the cask staves is of course exempt, though it plays a significant role.”

usually darker or more amber in color, while whisky aged in ex-bourbon casks is usually a golden-yellow/honey color.<sup>3</sup> The addition of legal “spirit caramel” is sometimes used to darken an otherwise lightly colored whisky.

**Bottling:** Single malts may be “vatted,” or “married,” (mixed) with other single malts (sometimes of different ages) from the same distillery. The purpose of this is to assure a uniform taste under a specific label. Distillers will occasionally release “Single Barrel” Whisky which is not vatted before bottling. The whisky is generally diluted to a bottling strength of between 40% and 46% alcohol content. Occasionally, distillers will release a “Cask Strength” edition, which is not diluted and usually has an alcohol content of 57–60%.<sup>4</sup>

To summarize, according to Scottish law, Scotch may only contain water, barley (or other grain), yeast and caramel coloring, all of which do not pose any Kashrus issues.<sup>5</sup> The only source of concern is that the maturation may have taken place in previously used wine casks, thus presenting an issue of *stam yeinam* (as explained below). Much has been written regarding the permissibility of Scotch due to the fact that many high-quality distilleries currently mature their products in casks that previously held *stam yeinam* (Sherry or other wine). Review of the relevant sources will clarify if the prohibition of *stam yeinam* is applicable.

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3. “The natural color of a malt matured in plain wood is a very pale yellow. Darker shades, ranging from amber to ruby to deep brown, can be imparted by sherry wood. Some distilleries use casks that have been treated with concentrated sherry, and this can cause caramel-like appearance and palate. Some add caramel to balance the color.” (Excerpt from *Michael Jackson’s Complete Guide to Single Malt Scotch*, 6<sup>th</sup> Edition, pg. 73.) The concentrated sherry Mr. Jackson refers to is likely a product called Paxarete, a highly concentrated wine. See *Maltmaniacs.org*, MM Archive, Issue #105, for further details.

4. Main sources: *www.uisgebeatha.org*, and *Whiskey: the Definitive World Guide*, by Michael Jackson, DK Publishing, 2005. Since every distillery has its own formula and production style, a number of details are presented in general terms.

5. The manufacturer’s fear of Government discovery and potential fines prevent the addition of any additional ingredients; this fear (*mirsas*) carries weight in halacha as well. (See similar concept in *Igros Moshe, YD I siman 47*.)

## II. SOME BACKGROUND ON THE USE OF CASKS

In days of old, Scotch manufacturers used any type of available barrel. New barrels were generally not used; the sharp tannins found in the wood would ruin the delicate flavor of Scotch. Scotch manufacturers needed to find used casks and the vast majority of available used casks were Sherry casks.<sup>6</sup> The reason for this is that Spanish wine manufacturers used to ship their Sherry wine in the cask to England for bottling because shipping bottled wine was cumbersome and expensive. As a result, there was an overabundance of wine casks hanging around in England with no particular use for them. The Scotch producers were quite pleased to purchase these barrels at a discounted price for their Scotch maturation.

This changed in the 1970's<sup>7</sup> when the Spanish wine manufacturers decided to bottle their wine in Spain before shipping to England.<sup>8</sup> As a result, there was a shortage of wine barrels and the Scotch manufacturers needed to find a different source of barrels. The perfect suppliers turned out to be American bourbon producers. According to American law, bourbon must be produced in new barrels. The bourbon manufacturers had plenty of unneeded used barrels which they were glad to sell cheaply to Scotch producers.

In the 1990's Scotch drinkers sensed that something about their Scotch was different; it just didn't have the same flavor as it used to. At this point, Scotch producers realized that the Sherry casks might actually have been

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6. Sherry wine is produced near Jerez de la Frontera in Andalucía, deep in Southern Spain. The word "Sherry" derives from English attempts to pronounce the Spanish name Jerez. "Jerez-Xérès-Sherry" is a Protected Designation of Origin (PDO), certified by the European Union, which helps to protect their geographical appellations against imitations and usurpations. Most Sherry is made from the Palamino grape. There are several styles, the most prevalent being – Fino: dry, delicate and fresh; Oloroso: rich, creamy and fruity; Pedro Ximénez: intensely raisiny, syrupy and dark (based on *Michael Jackson's Complete Guide to Single Malt Scotch*, 6<sup>th</sup> Edition, pg. 25).

7. Due to the great secrecy prevalent in the Scotch industry, dates relating to industry events are estimated.

8. The reason for this change is unclear. See *Michael Jackson's Complete Guide to Single Malt Scotch*, 6<sup>th</sup> Edition, pg. 60, "As sherry fell out of fashion, exports to the UK diminished. Meanwhile, the dictator Franco died in 1975, Spain became a democracy, and its trade unions insisted that the bottling of wines be carried out by local labour in Spain."

contributing to the superior flavor of the original Scotch and decided to revert back to wine casks. However, Sherry casks now were very expensive (Sherry casks can cost ten times as much as bourbon casks<sup>9</sup>) and shipping them to Scotland added to the expense.

Some distillers decided that the superior taste was well worth the expense and returned to maturation in Sherry casks (passing on the added cost to the consumer, of course). Other distillers, wishing to save the expense of maturing Scotch for many years in relatively expensive Sherry casks, continued to mature their Scotch in the much-cheaper bourbon casks, then transferred the mature Scotch to Sherry casks for 6 months to 2 years in order to gain some of the benefit of those barrels. This is called “Sherry finish.” Some distillers disassemble the casks before shipping them to Scotland in order to reduce their shipping costs, but others ship them to Scotland whole (in which case, the casks may still have some wine inside). According to Oxford Wine Online, the casks are so important that some distillers (such as The Macallan) now construct their own casks and lease them to Sherry producers before reclaiming them for whisky maturation.<sup>10</sup> Some distillers treat the casks themselves: they fill fresh casks with wine (and even steam them before doing so to ensure that the casks fully absorb the wine), empty the barrels, and then put the matured Scotch inside to finish.<sup>11</sup>

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9. To quote John Grant, chairman of J&G Grant, owners of Glenfarclas, “The cost per litre (of Sherry casks) is in the region of 12 times that of Bourbon wood.” (Excerpt from *Who’s afraid of the sherried beasties*, by Gavin D. Smith, *Whisky Magazine*, Issue 88, June 2010.)

10. “When the availability of casks became a problem in 1976, the company (The Macallan) began to buy its own new wood in Spain and have it seasoned in the *bodegas* of Jerez for four years before shipping it and filling it with whisky.” And to quote the Glenfiddich blog, “We now have cooperages producing casks from new European oak, maturing a sherry for 18 to 24 months to season the cask before they are then sent to Scotland for use in the whisky industry, very costly but necessary for Glenfiddich as much of the complexity of flavour comes from the European oak.”

11. As heard from Rabbi Simcha Smolenski. The *Minchas Yitzchok* (Vol. II 28:2) mentions this procedure as well. A similar process is used to rejuvenate old casks; see Section VIII:



### III. THE HALACHIC ISSUES

The potential problem raised by the use of Sherry casks is that the Sherry absorbed in these casks is almost certain to be *stam yeinam*.<sup>12</sup> When a non-kosher liquid rests in a vessel for twenty-four hours, the walls of the vessel absorb non-kosher *blios* (absorptions) through a process known as *kavush* (soaking). A kosher liquid which subsequently rests in the vessel for 24 hours absorbs the non-kosher *blios*, potentially rendering it forbidden. Sherry casks, having stored non-kosher wine for more than 24 hours, contain *blios* of *stam yeinam*. When these casks are subsequently used to mature Scotch, *blios* of *stam yeinam* mix into the Scotch, creating a potential Kashrus problem. At first glance, this issue seems to be clearly discussed in the *Shulchan Aruch*.

The *Rama* (*Yoreh Deah* 137:1) rules that if kosher wine is stored in a barrel previously used for *yayin nesech*, the wine becomes forbidden. If the volume of wine is *shishim* (60 times) greater than the *yayin nesech*, the wine is permitted.<sup>13</sup> If water, beer, or any liquid other than wine is stored in a wine barrel, that liquid is permitted (*Shulchan Aruch* 137:4).<sup>14</sup> The source for this halacha is a *Gemara* in *Avodah Zara* (33b) where Ravina allowed Rav Chiya to store beer in a barrel which previously stored non-kosher wine. The *Poskim* explain that storage of beer is allowed because the non-kosher wine ruins and detracts the flavor of the beer.<sup>15</sup> In fact,

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12. *Yayin nesech* refers to wine used by a gentile for idolatrous purposes; *stam yeinam* refers to wine handled by a gentile even without such intentions. According to many *Poskim*, Chazal prohibited *stam yeinam* in order to discourage intermarriage (see *Tur* and *Beis Yosef* YD 123). In the context of this article, the discussion and conclusions reached by the *Poskim* regarding *yayin nesech* apply equally to *stam yeinam* (with the exception of *issur hana'ah* – indirect benefit – as mentioned at the end of Section III; see also Addendum 6).

13. Although the *Shulchan Aruch* (137:1) is of the opinion that non-kosher wine *blios* are never nullified in kosher wine (see *Shach* s.k. 3), the *Rama* (ibid. and 134:2) argues that the wine *blios* are nullified *b'shishim*.

14. These liquids may initially be stored in such a barrel provided that the barrel is clean (*Shulchan Aruch* ibid.).

15. The *Bach* (s.k. 5) and *Taz* (137:7) quote the *Tur* who explains that the wine is *pogem* (ruins) other liquids when it comes in contact with them. This is based on the concept of *nosen ta'am l'pgam*, i.e., non-kosher food will not prohibit a kosher mixture if it ruins

any liquid which is ruined when mixed with wine may be stored in a wine barrel. (This is in contrast to kosher wine which may not be stored in a non-kosher wine barrel since it is enhanced by the non-kosher wine). Thus, since Scotch is not wine, it would seem to be an open-and-shut case that Sherry casks are permitted by the *Shulchan Aruch*.<sup>16</sup> However, the story regarding Scotch is complicated by additional considerations.

### A) *Bitul of Stam Yeinam in Scotch*

If a non-kosher food becomes mixed into kosher food, the mixture is forbidden unless: (a) the non-kosher ingredient ruins (*pogem*) the mixture upon contact, or (b) the kosher ingredients are of substantially greater volume than the non-kosher ingredient, causing it to be nullified (*batul*). In subsection *a* we will discuss whether Scotch is “ruined” when mixed with wine; in subsections *b* and *c* we will discuss the amount of wine absorbed in the cask walls (*blios*) that must be nullified and the volume of Scotch necessary to nullify them.

#### *a. Does stam yeinam require bitul when mixed with Scotch?*

At first glance, it would appear that since Scotch is not wine, its halachic status should be similar to the non-wine liquids described above. However, this is not so clear. As explained above, the reason that non-wine liquids remain permitted when stored in a wine barrel is that these liquids are ruined when mixed with wine. So, the question becomes this: is Scotch in fact ruined when mixed with wine?

The *Noda B’Yehuda* (*Mahadurah tinyana*, YD *siman* 58) writes that

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and detracts from the quality of the mixture upon contact. The *Shach* (*s.k.* 15) seems to understand the rationale for this halacha differently than the *Taz*; see, however, *s.k.* 17 where he apparently agrees to the *Taz*’s explanation. See Addendum 1 for further analysis.

16. The *Shach* (ad loc. *s.k.* 16) writes that the *Shulchan Aruch* allows storage of liquids (other than wine) to be stored in non-kosher wine barrels only temporarily, not on a permanent basis. However, it appears that this restriction applies only initially (*l’hatchila*); once done (*b’dieved*), however, the liquids are not prohibited [especially if the storage was done by gentiles] (see *Darkei T’shuvah* 137:11). See also *Chochmas Adam* (81:12) who disagrees with the *Shach* and permits storage of liquids (other than wine) in non-kosher wine barrels even on a permanent basis.

whiskey (*yayin saraf*), like other liquids, is ruined when mixed with wine, but elsewhere (ibid. *siman* 67) he writes that it is impossible to ascertain whether or not whiskey is ruined when mixed with wine. The *Magen Avrohom* (OC 451:40), *Chayei Adam* (125:15)<sup>17</sup> and *Maharsham* (Vol. III *siman* 150) write that whiskey is enhanced when mixed with wine. It appears that the *Poskim* are unsure of the relationship between whiskey and wine.<sup>18</sup>

Presumably, the mere fact that many distillers go out of their way to use Sherry casks as opposed to the substantially cheaper bourbon casks indicates that they specifically want the *blios* (absorption) of wine, and do not feel that it ruins Scotch.<sup>19</sup>

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17. יש שם ט"ס, תצ"ל וכן אם נתנו יין או דבש בכלי שהחזיקו בו (מים) [יין שרף], אפילו היה אינו בן יומיו, אסור הכל.

18. It's quite possible that Sherry wine, with its high alcohol content, has a more stringent status according to all opinions; see footnote 22. See also *Perach Mateh Aharon* (Vol. I *siman* 57) and *Noda B'Yehuda's* critique (*Mahadurah tinyana*, YD *siman* 58).

19. The *Maharsham* (Vol. III *siman* 150) makes a similar deduction (with regard to wine stored in a whiskey barrel): From the fact that companies put whiskey into wine, it must be that it enhances the wine. Here too, the fact that Scotch producers use wine barrels indicates that there is a positive taste contribution. If the wine *blios* ruined Scotch they would avoid using such barrels.

Even those distilleries that don't want the wine flavor *per se*, just a new type of flavor, still specifically use these casks, so it would be hard to say that the wine flavor ruins the Scotch – otherwise wine barrels would never be used.

In a conversation with Harav Shlomo Miller *shlita*, he suggested that it is quite possible that the flavor contributed by the wine does indeed ruin (*pogem*) Scotch (just like wine ruins beer – as indicated by the *Gemara's* allowance to store beer in a non-kosher wine barrel). Nevertheless, it is possible that Scotch distillers specifically use wine barrels to allow the Scotch to absorb the wine's *fragrance*, and according to halacha, fragrance added by a non-kosher ingredient is insignificant (*reicha lav milsa* – *Shach* 108:14). Accordingly, the non-kosher wine *blios* would not require nullification. (See footnote 61 for Rav Miller's final ruling.)

This theory, however, appears to be at odds with numerous experts who claim that Sherry casks impart a positive taste – not just a fragrance (see next footnote). Rav Miller countered in a follow-up letter that even taste stems from fragrance; this is proved by the fact that someone with a cold and is unable to smell has difficulty tasting food. Accordingly, the experts are merely experiencing the fragrance, which is negligible in halacha.

This is further supported by numerous whisky experts who claim that Sherry casks impart a positive taste contribution (see footnote).<sup>20</sup> This can be seen also in the tasting notes of various Sherried Scotches, where Sherry is acknowledged not only for its “nose” (fragrance) contribution, but also the “palate” (flavor), indicating that there is also a positive taste contribution (see footnote).<sup>21</sup>

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20. “Flavors are also imparted by the cask: sherry wood may add the nutty note of the wine; and bourbon barrels can impart caramel flavors, vanillins and tannins.” (Excerpt from *Michael Jackson’s Complete Guide to Single Malt Scotch*, 6<sup>th</sup> Edition, pg. 62.)

“...the link between Scotland and Jerez, between whisky and sherry, is still and always has been a close one. How close though in terms of flavor? The question, which has been nagging away in my mind for a number of years, has been what do we mean by a “sherried whisky”? It used to be so simple. You’d sit with a glass of fine dry oloroso, appreciating its intense aromas of walnut and raisin, and see within it the same smells and tastes which you found in a glass of “sherried” single malt. Sherried whisky got its flavors from the wine which had been in the cask. Simple.” (Excerpt from *It’s not the Wine, and it’s not the Wood*, by Dave Broom, *Malt Advocate magazine*, Winter 2009.)

“It has been known since medieval times that whisky, when stored in casks which had previously contained sweet wine, port or Sherry, became smoother and mellower and gained positively in flavour.” (Excerpt from *Who’s afraid of the sherried beasties*, by Gavin D. Smith, *Whisky Magazine*, Issue 88, June 2010.)

“In terms of flavour, sherry casks typically contribute rich fruit, including raisins, prunes, dates, figs and apricots; fruitcake, fortified wine, almond and walnut notes; spices such as nutmeg, ginger and cloves, not to mention Xmas pudding, creme caramel, chocolate, and a (positive) sulphurous note, all delivered within a rich, drying sweetness.” (Excerpt from *No Spain no Grain*, by Ian Wisniewski, *Whisky Magazine*, Issue 53, 12/01/2006.)

“Dalmore does well with Sherry because there is a citric, lemongrass note in the new make spirit which interacts beautifully with oloroso Sherry casks to give that lovely marmalade and Xmas pudding character. We take a few fino and amontillado casks, but the bulk is oloroso. That really gives the style we want.” (Richard Paterson, master blender for Whyte & Mackay, responsible for the Dalmore single malt, quoted in *Who’s afraid of the sherried beasties*, by Gavin D. Smith, *Whisky Magazine*, Issue 88, June 2010.)

21. Take, for example, the tasting notes of The Macallan 12 Year Old (100% Sherry Casks): Sherry oak, 12 years old. Colour: Rich Gold; Nose: Vanilla with a hint of ginger, dried fruits, sherry sweetness, and wood smoke; Palate: Deliciously smooth, rich dried fruits and sherry, balanced with wood smoke and spice; Finish: Sweet toffee and dried fruits, with wood smoke and spice (source: *themacallan.com*).

Therefore, it appears that Scotch in wine barrels is comparable to wine stored in wine barrels, thus requiring nullification in order to be permissible. This is also the opinion of Rav Yitzchok Weiss (*Minchas Yitzchok* Vol. II 28:3).<sup>22</sup>

**It is important to note** that non-kosher taste absorbed in the walls of a vessel generally becomes stale (*pagum*) after twenty-four hours elapse (*aino ben yomo*). If so, Sherry casks cannot prohibit Scotch because one

22. Additionally, Harav Yisroel Belsky, in his *sefer Shulchan Halevi* (English Ed.) pg. 120, has a brief *l'shuvah* discussing Sherry casks and mentions various opinions regarding the ratio of *bitul* required and clearly assumes that Scotch in Sherry casks is *l'shvach* and requires *bitul*.

Some suggest further that since Sherry wine can have an alcohol content of 18-20%, 50% higher than regular wine, perhaps it has the status of *yayin saraf* (brandy) – not wine. The *Noda B'Yehuda* (*Mahadurah tinyana*, *YD siman* 58) writes clearly that whiskey stored in a barrel which previously stored *yayin saraf* is enhanced by the wine *blios*. Accordingly, Scotch stored in Sherry casks is certainly considered *l'shvach*, requiring nullification.

Further, many *Poskim* write that if non-kosher food becomes mixed into kosher food and we are unsure if the mixture is *l'shvach* or *l'pgam*, we may not decide ourselves that the mixture is *l'pgam*, not requiring *bitul*. The *Beis Shlomo* (*OC siman* 96) writes that we do not have the right to assume that something is *nosen ta'am l'pgam* based on our own intellect; one may be lenient only if there is proof from the *Poskim*. ושכנגדו חלק עליו, ואמר שייש ברטב של בשר היו נותן טעם לפגם, אני אומר שטעם החולק פגום הוא, ומי הגיד לו זה, כי אין להקל בזה מצד הסברא, רק אם יש בזה סמך מש"ס וראשונים. He quotes the *T'shuvos Rama* as being of the same opinion and brings a number of examples where it seems clear that a certain mixture is *l'pgam* and the *Poskim* are unwilling to be lenient without sufficient proof. (The *Beis Shlomo* mentions specifically that although it seems clear that a barrel that previously stored whiskey ruins wine – the proof of this assumption being that such a barrel is rinsed numerous times until “the substance and smell is entirely removed” before storing wine inside – still the *Poskim* are unwilling to consider it *nosen ta'am l'pgam*.)

This is also the opinion of *Sefer Ha'Eshkol* (*Perek Gid Hana'she V'Hilchos Ta'aruvos*, end of *siman* 35) where he cites other *Poskim* who rule that we are not sufficiently proficient what is considered *l'pgam* except for what Chazal tell us, for example, *aino ben yomo*. (See *Badei Hashulchan* 103:4, *biurim d.h. v'yesh*.)

Accordingly, since the entire leniency is based on *nosen ta'am l'pgam* (as indicated in *Taz* 137:7 and *Shach s.k.* 17), and there is definitely a strong position indicating that Scotch – unlike other liquids – is enhanced by wine, therefore, we must assume that Scotch stored in wine barrels is *nosen ta'am l'shvach* – and requires *bitul* – unless we have clear proof to the contrary.

may assume that the casks sat empty for a 24 hour interim. This leniency, however, is not applicable to Sherry casks. Wine, unlike other food and drink, remains potent, and even improves, after this time period has elapsed (*Shulchan Aruch* 135:16, *Rama* 137:1, *Shach* 137:10). Accordingly, the leniency of *aino ben yomo* does not apply to Sherry casks.<sup>23</sup>

***b. Is bitul required against the klipah or the entire kli?***

In order to ascertain whether wine *blios* (absorptions) in the Sherry casks are *batul* in Scotch, it is necessary to clarify how much forbidden wine remains in the wine barrel and subsequently mixes into the Scotch. Although the wine barrels are presumably emptied before they are filled with Scotch, there is still wine absorbed in the walls of the barrel. How much wine remains in the walls? If a forbidden liquid is cooked in a kosher pot, the *blios* are assumed to fill the entire thickness of the walls of the pot, thus requiring *bitul* against the entire volume of the walls. However, in the case of *kavush* (where a forbidden liquid remains in a vessel for more than 24 hours without cooking) which generally has a halachic status similar to cooking, the halacha regarding the extent of absorptions may be different. The *Shach* (98:13), quoting the *Toras Chatos* and the *Issur V'Heter Ha'aruch*, is of the opinion that *kavush* is similar to cooking and one must reckon with absorptions of the full thickness of the wall; the *Taz* (105:1), however, argues that only a *klipah* (the “peel” – a thin layer) is affected. The *Pri Migadim* (ad loc.) and the *Chochmas Adam* (57:11) both follow the opinion of the *Shach* that the full thickness of the wall is considered to contain forbidden *blios*, and this is the accepted ruling.

Regarding *kavush* involving *yayin nesech*, the *Shulchan Aruch* (135:13) states clearly that *yayin nesech* affects only the *klipah* of a vessel, and therefore rules that removing the *klipah* of a non-kosher wine barrel is an effective method of *kashering* wine barrels.<sup>24</sup> This seems to be in

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23. After twelve months have elapsed, the wine *blios* are indeed considered stale (*Shulchan Aruch* *ibid.*). See Sections VIII:C and D for further elaboration.

24. One contemporary *Posek* has suggested that modern-day wine barrels are more porous than the times of Chazal and *blios* are therefore absorbed through the entire thickness of the walls according to all opinions. He argues that we can see this from the fact that wine stains are often visible on the exterior of wine barrels, indicating that the wine has seeped through. However, many *Poskim* strongly disagree with this notion and feel that the nature of barrels has not changed from the times of Chazal. Although the outside walls

accordance with the position of the *Taz*, that *kavush* affects only the *klipah*. How is this to be reconciled with the position of the *Shach* and other *Poskim* who are of the opinion that *kavush* generally affects the entire vessel? The *Shach* (135:33) writes that the leniency of the *Shulchan Aruch* applies only where one is uncertain if the cask ever stored non-kosher wine or if the wine was stored for a full 24 hours. If, however, non-kosher wine was definitely stored in a cask for at least 24 hours, the entire thickness of the cask is assumed to contain prohibited *blios*, conforming to the general rule of *kavush*, and removing the *klipah* is ineffective.<sup>25</sup>

Many *Poskim* follow the opinion of the *Shach*. The *Chochmas Adam* (81:11) and *Kitzur Shulchan Aruch* (48:17) rule that if *yayin nesech* was stored in a cask for 24 hours, the whole vessel is assumed to contain prohibited *blios*. They conclude that “*Itzorech gadol*” (in case of great need) one may rely on the *Poskim* who reckon the *klipah* alone. This is also the opinion of the *Imrei Aish* (*YD siman* 44). Further, the *Beis Meir* (on the *Chok Yaakov OC* 451:58) offers a proof to the *Shach*’s view from the *Mordechai* (*Pesachim siman* 567).

However, some *Poskim* argue on the *Shach*. The *Chacham Tzvi* (*siman* 75) and *Macha’ne Ephraim* (*Hilchos Ma’achalos Asuros* 11:15, quoting his son) argue with the *Shach* and maintain that even if *yayin nesech* was stored in a barrel for many days, only the *klipah* is prohibited. This is also the opinion of the *Chazon Ish* (55:6), *Yad Yehuda* (*Hilchos Melicha*, 69:64, pg. 69a, column 2) and *Chikrei Lev* (*siman* 77).<sup>26</sup>

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may be stained, the *blios* at that point are not strong enough to be considered forbidden. Therefore, only a *klipah* is affected, as stated in the *Shulchan Aruch*.

25. Although the *Shach* writes a second, seemingly related halacha and subsequently concludes that the latter halacha is *tzarich iyun* (requires further research), nevertheless, the *Shach* (137:9) repeats his position that the entire thickness of wine barrels are occasionally affected, indicating clearly that this is his position. (The *Shach* *ibid.* suggests further that perhaps all *Rishonim* agree to his position.) *Ba’er Haitaiv* (137:4) clearly understands this to be the *Shach*’s conclusion. See also *Pri Migadim* (*M”Z* 87:1 towards the end – יש שם ט”ס, וז”ל צידד שם [לאסור אף] בין נסך וז”ל צידד שם [לאסור אף] בין נסך), *Noda B’Yehuda* (*Mahadurah tinyana*, *YD siman* 67) and *Maharsham* (Vol. III *siman* 150) who quote the *Shach* as being stringent in this matter. See Addendum 2 for further analysis. (It should be noted that the *Shach* writes clearly that this halacha also applies to *stam yeinam*.)

26. It is unclear what these *Poskim* would say in cases of *kavush* other than *stam yeinam*. It is possible that they are of the opinion that *kavush* never affects more than the *klipah*; alternatively, perhaps *kavush* generally affects the entire vessel, but Chazal were lenient

Based on the above, it appears that according to the opinion of the *Shach*, nullification is necessary against the full thickness of the walls, whereas according to the *Chacham Tzvi*, *bitul* is only required against the *klipah*. In a dispute of this nature, *Poskim* generally advise one to follow the stringent opinion of the *Shach* and other *Poskim*. Indeed, many contemporary *Poskim* follow the stringent opinion, requiring nullification against the full thickness of the cask; see Section V.<sup>27</sup>

**c. Is sheish or shishim required for bitul of stam yeinam?**

It was established in the last section that, according to many *Poskim*, nullification is necessary against the volume of the entire thickness of the walls of the vessel. Now, it is necessary to determine the required ratio of *bitul*. Is the standard *bitul b'shishim* (60 times the volume of wine) required to nullify the non-kosher wine *blios* or is *bitul b'sheish* (six times) sufficient? Generally speaking, it is assumed that the flavor of non-kosher food is noticeable unless it is nullified in 60 times its volume of kosher food. Non-kosher wine, however, appears to have a different ratio of nullification. The *Shulchan Aruch* (134:5) states that *yayin nesech* mixed with water is *batul b'sheish*, a ratio of just six-to-one.<sup>28</sup> What is the source for this ruling? The *Mishnah* (*Avodah Zara* 73a) states that *yayin nesech* is nullified in water if it does not contribute flavor (*aino nosen ta'am*) to the mixture. At what point does wine not contribute flavor? This is subject to dispute, as will be explained.

The *Gemara* (*ibid.* 73b) relates that if one had two cups of wine – one permitted and one not permitted – and he diluted each of them with the proper amount of water needed to dilute their strength, and then mixed

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in the case of *stam yeinam* since its prohibition is only Rabbinical (*PM"G* *ibid.* See also *Chazon Ish* *ibid.*, *Issur V'Heter Ha'aruch* 2:8 and *Hagahos Rav Boruch Taam*, gloss to *Noda B'Yehuda*, *Mahadurah tinyana*, *YD siman* 67.).

The *K'nesses Hag'dolah* (*Hagahos Beis Yosef* 135:39) writes that the *Levush* (135:13) sides with the *Chacham Tzvi* that the wine is only absorbed *k'dei klipah*. The *Chikrei Lev* (*ibid.*) and the *G'vul Yehuda* (*OC siman* 5) both write that this is also the opinion of the *Taz* (105:1). See Addendum 3 for further analysis of the *Taz's* position. (See *Chavatzeles Hasharon*, *Tinyana*, pg. 98, for an additional ramification of this dispute.)

27. For more analysis see Addendum 4.

28. *Stam yeinam* mixed with kosher wine and no water, however, requires *bitul b'shishim* (*Rama* 134:2).



the two cups together, we view the permitted wine as if it is not there, and the water overwhelms the prohibited wine and nullifies it. The *Gemara* in *Shabbos* (77a) reveals that the standard rate of dilution in Talmudic times was one part wine and three parts water. The *Ra'avad* (*Avodah Zara* 39a *d.h. v'Rebbi Yochanon*, 73a *d.h. yayin nesech*) and *Ri Hazaken* (quoted in *Ran*, *Ritva*, and *Rashba*, *Avodah Zara* 73b) understand that the above *Gemara* in *Avodah Zara* is referring to two equal cups of wine; thus, when the diluted cups were mixed, the total mixture contained one measure of prohibited wine, one measure of permitted wine, and six measures of water. Still, the *Gemara* rules that if we view the permitted wine as if it is not there, the prohibited wine is nullified in the combined water – which is only six times greater than the prohibited wine. The *Ra'avad* and *Ri Hazaken* deduce from here that, unlike most forbidden substances which prohibit a mixture unless nullified in a ratio of sixty-to-one, non-kosher wine can only prohibit a mixture up to six times its volume. As a result, if the volume of water is six times greater than the forbidden wine, the mixture is permitted.

Some *Rishonim* argue on this conclusion. The *Ritva*, *Ramban*, and others (*Avodah Zara* ad loc.), maintain that wine is no different than other forbidden substances, and sixty measures are necessary to nullify one measure of wine. They therefore explain that the *Gemara* refers to unequal cups: The forbidden cup contains one measure of wine and three measures of water, whereas the permitted cup contains 19 measures of wine and 57 measures of water. When combined, the total mixture consists of one measure of forbidden wine, nineteen measures of permitted wine, and sixty measures of water. When we ignore the permitted wine, the sixty measures of water will nullify the one measure of forbidden wine. According to this stringent opinion, wine is only nullified in a mixture of sixty-to-one, at exactly the same ratio as any other prohibited substance.

The *Tur* (134:5) cites both opinions and the *Beis Yosef* quotes the *Rashba* as siding with the lenient opinion. The *Shulchan Aruch* (134:5) and *Rama* (123:8)<sup>29</sup> both rule in accordance with the lenient opinion that non-kosher wine is nullified in a ratio of six-to-one.

Why does wine have a different nullification ratio than other prohibited foods? The *Rishonim* offer two explanations. The *Ra'avad* (*ibid.*) explains

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29. Although the *Rama* cites two opinions in this matter, the halacha clearly follows the lenient opinion, as stated in *Shach* (123:16) (*Igros Moshe* YD I *siman* 62).

that a small amount of wine contributes a detrimental flavor when mixed in water six times its volume and is considered *nosen ta'am l'pgam* (i.e., a non-kosher food does not prohibit kosher food if the taste of the mixture is compromised).

The *Rashba* (*T'shuvos* Vol. I *siman* 633) argues that diluted wine actually enhances a mixture – not ruins it. Why, then, is wine nullified in *sheish*? The *Rashba* elsewhere (*Toras Habayis* 5:6 pg. 60b; *Chidushei HaRashba*, *Avodah Zara* 73b) explains that wine, a light, fruity beverage, loses its “wine” status when mixed with other liquids six times its volume, referred to as “*kiyuha-acid*” instead. This is also the opinion of the *Ran* (*Avodah Zara* 36b *d.h. v'garsinan*) and *Tosfos* (*Chulin* 25b *d.h. hamitamed*).<sup>30</sup> Rav Moshe Feinstein (*YD I siman* 62 *d.h. v'hinei*) explains that the fact of the matter is that wine does not ruin water even in a volume six times its size. After all, many people mix a little wine into water to give it a bit of flavor, thus proving that wine actually enhances water. Why, then, is wine nullified in water when nullified in *sheish*? The answer must be that wine loses its status when mixed with other liquids six times its volume, referred to as *kiyuha* instead.<sup>31</sup>

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30. It must be noted that both the *Rashba* and *Ran* (*Avodah Zara* *ibid.*) write initially that diluted wine is *nosen ta'am l'pgam* – wine imparts a detrimental flavor when diluted with six parts water, but both conclude that diluted wine is referred to as *kiyuha*. The *Pri Migadim* (*P'sicha L'Hilchos Ta'aruvos*, 3:4 *d.h. shuv*) understands that the conclusion is the primary reason. This fits well with the *Rashba* in *T'shuvos*, quoted above, that a small amount of wine actually enhances water. It's interesting to note that in yet a third location (*Toras Habayis Hakatzer*, 5:6 pg. 51a) the *Rashba* writes that wine diluted by six parts water contributes a detrimental flavor and is *nosen ta'am l'pgam*, seemingly contradicting the *Rashba* in *T'shuvos*. (It is possible that the *Rashba* in *Toras Habayis* is merely quoting the opinion of *Ra'avad* who permits wine when diluted in six parts because it contributes a detrimental flavor, whereas the *Rashba* himself permits such wine for a different reason, because diluted wine is referred to as *kiyuha*. See, however, *Toras Habayis*, *ibid.* pg. 66b.) Rav Moshe (*YD III siman* 19) explains that any mention by *Poskim* of *nosen ta'am l'pgam* in reference to wine diluted in six parts actually refers to the wine itself (i.e., the wine loses its flavor and character), not to the compromised flavor of the final mixture. Thus, the *Rashba* in all locations means the same point: non-kosher wine diluted in six parts has been compromised to the extent that it can no longer be called “wine.” The flavor imparted by such wine does not prohibit other foods.

31. In a later *t'shuvah* (*YD III siman* 19) Rav Moshe explains that if one wishes to drink

Thus, two explanations arise from the *Rishonim* as to why wine is nullified in a ratio of six-to-one: The *Rashba* and *Ran* are of the opinion that although diluted wine contributes a positive flavor, wine is extremely delicate and loses its identity when diluted in six parts, referred to as *kiyuha* instead. The *Ra'avad* argues that a small amount of wine contributes a detrimental flavor to a mixture when diluted in six parts and is *nosen ta'am l'pgam*.<sup>32</sup>

We must now clarify whether the 6:1 ratio applies only to wine in water (as in the case mentioned above) or even when wine is diluted in other liquids. The *Shach* (134:21, quoting *Issur V'Heter* 23:16) states that non-kosher wine is *batul b'sheish* only when mixed with water, but if the wine is mixed with kosher wine or food, *shishim* is required. The reason for this distinction is that non-kosher wine is ruined when mixed with water, granting it a status of *kiyuha*; thus, *bitul b'sheish* is sufficient. When mixed with wine or food, however, the non-kosher wine is enhanced and retains its wine status. Only when nullified in a ratio of sixty-to-one is the

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wine, he would not do so if it were diluted in six parts water. Wine diluted to such a degree can no longer be referred to as wine. Therefore, if non-kosher wine is mixed into water six times its volume, it cannot prohibit the water. Rav Moshe continues that apparently there is a printer's error in our edition of the *Ran*. Based on Rav Moshe's explanation that wine actually enhances water when mixed in, the words "ואינו משיבא המים אלא פוגמן" appear incorrect. Rav Moshe therefore suggests that these words be removed. He further edits the *Ran*'s final words to read "שאין טעמו (משביח) [מושבח] אלא (פוגם) [פגום] וקיוהא בעלמא" to correctly reflect his explanation. He notes that these edits conform with the *Rashba*'s version (ibid.).

32. The *Mateh Yehonoson* (gloss to *Rama* 114:4) apparently sides with the *Ra'avad*'s explanation; see below, footnote 35. See also *Taz* (134:5). Rav Moshe (*YD* III *siman* 19) feels that the *Ra'avad*'s explanation is so difficult to comprehend (as explained above that a little wine enhances a large quantity of water – not ruins it) that halacha simply doesn't reckon with the *Ra'avad*'s position. He suggests further that the *Ra'avad*'s commentary on 39a was added by a different author and is not authoritative. The *Ra'avad* on 73a who suggests that wine mixed in water is *nosen ta'am l'pgam* does not mean that the wine compromises the taste of the water, but rather that the wine itself becomes *pagum*, i.e., the wine loses its character when diluted, similar to the *Rashba*'s explanation. Accordingly, all *Poskim* agree that wine loses its identity when diluted in six parts, even though it still contributes a positive flavor to the mixture.

non-kosher wine considered nullified.<sup>33</sup> If so, what is the halacha when wine is mixed with Scotch; is Scotch comparable to water, or to wine and other foods?

The *Rama* (114:4) writes that one may not buy apple wine or other beverages from a gentile if the custom is to mix wine (which is cheaper than these other beverages) into the drink, unless one is certain that the wine is *batul b'shishim*. The *Taz* (s.k. 4) asks: if, indeed, the *Rama* is of the opinion that wine is *batul b'sheish* in liquids other than wine (as the *Shulchan Aruch* in 134:5 states with regard to water) why does he require *bitul b'shishim*? The *Taz*, therefore, concludes that the *Rama* is simply quoting the words of the *Mordechai* who is of the opinion that wine always requires *bitul b'shishim*. In truth, however, the halacha follows the opinion that wine is *batul b'sheish* in other liquids. Therefore, one need only ascertain that there is six parts beverage – not sixty – against the wine.<sup>34</sup>

The *Nekudos Hakesef* (gloss to *Taz* *ibid.*; authored by the *Shach*) takes the opposite approach. The *Rama* wrote *bitul b'shishim* and that is what's required. The *Rama* rules that wine is only *batul b'sheish* when mixed with water because water ruins (is *pogem*) the wine; if wine is mixed with any other liquid, *shishim* is required. The *Nekudos Hakesef* maintains that this is what the *Issur V'Heter* (quoted by the *Shach* 134:21) had in mind when writing that wine is *batul b'sheish* only when it falls into water as opposed

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33. This explanation follows the position of the *Rashba*, quoted above, that diluted wine is referred to as *kiyuha*. (This is, in fact, the position of the *Issur V'Heter* (*ibid.*) himself.) Therefore, when non-kosher wine is mixed with wine or food it is not referred to as *kiyuha* and requires *shishim* (see *Igros Moshe* YD I *siman* 62 *d.h. v'hinei* who understands this to be the distinction mentioned in *Magen Avrohom* 204:16). This halacha may also be true according to the *Ra'avad*, quoted above, who is of the opinion that wine is nullified in *sheish* because a small amount of wine contributes a detrimental flavor when diluted in six parts and is *nosen ta'am l'pgam*. This only applies when wine is mixed with water; if non-kosher wine is mixed with kosher wine or food, the mixture is actually enhanced and the standard ratio of *shishim* is required.

34. The *Rama* later (114:6) records a similar ruling, that one may purchase a beverage from a gentile even if non-kosher wine sediments may have been added, provided that the sediments are *batul b'shishim*. The *Taz* (s.k. 6) comments again that according to accepted practice, *sheish* is sufficient.

to other liquids.<sup>35</sup>

This difference in understanding the *Rama* plays itself out if *stam yeinam* is mixed with liquids (other than wine or water) that are not spoiled when mixed with wine, such as Scotch. The *Nekudos Hakesef* requires *bitul b'shishim* (a ratio of sixty-to-one) to permit the mixture, but the *Taz* requires only *bitul b'sheish* (six-to-one). Many *Poskim* side with the *Taz*, including the *Pri Chadash* (YD 114:10), *Chochmas Adam* (66:15) and *Magen Avrohom* (204:16).<sup>36</sup> This is also the opinion of the *Minchas Yitzchok* (Vol. II 28:4) and Rav Moshe (*Igros Moshe* YD I *siman* 62).<sup>37</sup>

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35. The *Mateh Yehonason* (gloss to *Rama* 114:4) offers a third approach. A distinction can be made between mixtures enhanced by wine and those ruined by wine. Those mixtures enhanced by wine require *shishim* to nullify the wine, like other prohibited foods, whereas mixtures ruined by wine suffice with *sheish* to nullify the wine. The *Mateh Yehonason* apparently sides with the *Ra'avad's* explanation (quoted above) that non-kosher wine is *batul b'sheish* because it ruins the mixture. He therefore rules that a mixture enhanced by the wine requires *shishim*. (This distinction applies to wine mixed with both water and other liquids.) Accordingly, the *Rama* who rules that *shishim* is required is referring to a beverage enhanced by wine.

Rav Moshe (YD I *siman* 62 *d.h. v'hinei*, quoted above) argues that wine never ruins the mixture and the leniency is based on the fact that diluted wine is referred to as *kiyuha*, as stated in the *Rashba* and other *Rishonim*. Rav Moshe therefore rules that according to the opinion that wine is nullified in *sheish*, this ratio is sufficient even if the mixture is enhanced. [Rav Moshe questions further that if it's true that a higher level of nullification is required when wine enhances a mixture, why is *shishim* sufficient? This should presumably be a situation of *avida l'taama* which is not nullified even when mixed into *shishim*.] However, Rav Moshe concludes that a *ba'al nefesh* should require *shishim* if the non-kosher wine enhances the mixture, to accommodate the position of *Mateh Yehonason*. This is an additional reason for a *ba'al nefesh* to be concerned with Sherry casks, because according to the *Shach* and other *Poskim* quoted above (Sec. III:A:b), Sherry casks do not contain *shishim* against the forbidden wine *blios*, as will be explained later (Sec. IV). See also Addendum 6.

36. Although the *Magen Avrohom* follows the opinion of *Nekudos Hakesef* that liquids other than water require *shishim*, he also writes that present-day wine is weak and delicate, and *bitul b'sheish* is sufficient.

37. Rav Moshe writes that it is quite possible that the *Nekudos Hakesef* requires *shishim* only when wine is mixed with non-sharp liquids, but if wine is mixed with a sharp liquid, like whisky, then perhaps only *sheish* is required. He writes this to avoid a seeming

Rav Moshe concludes, however, that a *ba'al nefesh* (a scrupulous person) should be stringent and require *bitul b'shishim* in order to accommodate the position of the *Nekudos Hakesef*.<sup>38</sup>

Based on the above, it appears that most *Poskim* rule that wine mixed with Scotch is rendered permissible through *bitul b'sheish* (but according to Rav Moshe, a *ba'al nefesh* should require *shishim*). Accordingly, Scotch matured in Sherry casks is deemed permissible only if the volume of Scotch is at least six times as much as the amount of wine absorbed in the cask walls. We will examine whether or not this ratio is generally present in Section IV.<sup>39</sup>

## B) Potential Limitations to *Bitul*

Since any forbidden wine mixed with Scotch requires nullification, as discussed above, we must determine if it is possible to nullify the *blios* of Sherry wine absorbed by the Scotch. Various considerations that prevent *bitul* from taking effect are discussed in halacha. These considerations are treated below.

### a. *Avida l'ta'ama* (added for taste purposes)

An important limitation to the rule of *bitul* is *avida l'ta'ama* (added for taste purposes). The *Rama* (98:8) writes that even a minute amount of forbidden spice prohibits kosher food into which it has become mixed. Non-kosher food is generally nullified when mixed into a kosher food

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contradiction between the above-mentioned *Shach* and a quote of the *Shach* by the *Magen Avrohom* (OC 202:3). The *Minchas Yitzchok* (ibid.) and *Mishne Halachos* (Vol. X *siman* 109) also suggest the idea that wine is nullified in sharp liquids *b'sheish*.

38. This is in addition to the position of *Mateh Yehonoson*, quoted above, footnote 35.

39. It is interesting to note that in *Hilchos B'rachos* (202:1) the *Rama* writes that if wine and beer are mixed together, the *b'racha* on this mixture follows the majority ingredient; if the majority is beer then the *b'racha* is *shehakol*. How can this halacha be reconciled with the halacha found in *Yoreh Deah* that wine is *batul* in other liquids only if there is six or 60 parts against the wine? The *Sha'ar Hatziyun* (202:14) explains that the guidelines for *b'rachos* are quite different than those of *yayin nesech*. To nullify *yayin nesech* one needs to obliterate the wine's identity – this can be accomplished when there are six or 60 parts against the wine. Regarding *hilchos b'rachos*, however, the main guideline is *ikur v'tafel* – the main ingredient decides the identity of the mixture, and this is based on the majority ingredient.

whose volume is substantially greater, but spices cannot be nullified in this way because a minute quantity imparts detectable flavor even to a large volume of food, thus retaining their non-kosher identity.<sup>40</sup> Are the wine absorptions in Scotch *avida l'ta'ama*? To answer this question it is necessary to determine why Scotch producers prefer Sherry casks.

There is no clear consensus as to the specific reason that Scotch manufacturers prefer to use wine casks for maturation. One accepted reason is to add color to the naturally light-colored Scotch.<sup>41</sup> It is also likely that the manufacturers want the wine flavor to enhance the Scotch, as explained in the background section above. This may be especially true with regards to “finishes.” As explained above, many distilleries transfer fully matured Scotch to casks previously used for wine. This is called “finishing.” Many argue that the primary purpose of finishing is to permit the Scotch to absorb the wine flavor. If this is true, then the absorbed wine is considered *avida l'ta'ama* and can never be nullified.

However, it is more likely that the distillers are not interested in the actual flavor of wine – after all, they are producing Scotch, not wine. Rather, they want the enhanced flavor created by the blend of Scotch with the wine absorptions. According to Keith Cruickshank, Master Distiller of Benromach, by using various wood-finishes for aging and finishing, one is not flavoring the whisky but achieving “a complementation of elements, a strong merge.”<sup>42</sup> Since one cannot actually taste the wine flavor, but only a new blend of flavors, the case with Scotch is not comparable to spices where one can taste the actual forbidden spice.

Additionally, some maintain that distillers are not interested in the wine flavor at all; they only want the flavor of the wood. The Glenlivet's Ian Logan says: “We're not interested in what's been in the barrel but in the wood itself.”<sup>43</sup> In this case, the wine flavor would certainly not be

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40. The *Rama* repeats this halacha in 114:6. See Addendum 5 for further analysis.

41. The Scotch Whisky Regulations 2009 allows for the addition of caramel coloring to rectify this problem.

42. Quoted in *From wine barrels, out pours Scotch*, by Charles Perry, *LA Times*, Nov. 8, 2006.

43. Quoted in *LA Times*, *ibid*. According to Narciso Fernandez Iturraspe, owner of *Tevasa Cooperage*, it isn't only the Sherry seasoning that makes the barrels ideal for aging single malts. The wood itself plays a large part in imparting special flavors to the whisky. Sherry barrels are made from *Quercus Robur*, a Spanish oak that is felled when it reaches 60 to

considered *avida l'ta'ama* because the wine flavor is both undesirable and indiscernible, unlike a forbidden spice whose taste is desirable and discernable.

On the other hand, even if the distillers were specifically interested in the wine flavor (as, for example, the makers of Glenmorangie claim<sup>44</sup>)

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70 years of age and contains approximately 10 times more tannin than does the 30 to 40-year-old *Quercus Alba*, or American White Oak, which is used to make bourbon barrels. Research has shown the tannins in the wood act as a catalyst that aids oxidization during the maturation period and hence is highly desirable to malt producers. (Source: *Barrels of fun? Using sherry casks to age Scotch is a complicated process*, by Gary Regan, June 18, 2001. [findarticles.com](http://findarticles.com))

Some suggest that the wine does not contribute any flavor and wine barrels are used simply because the wine neutralizes the bitter wood flavor (see *Minchas Yitzchok* Vol. II 28:21, *Mishne Halachos*, Vol. X *siman* 109). However, the *Minchas Yitzchok* (*ibid.*) points out that this seems to be sharply disputed by many experts who claim that the wine does contribute to the overall flavor of the drink. An additional difficulty is that the *Mishne Halachos* favors this theory that the Scotch makers aren't interested in the wine flavor based on the premise that if distillers truly wanted the wine flavor, it would be simpler to add wine directly to the Scotch. However, this premise is based on a false assumption. As stated clearly in the Scotch Whisky Regulations 2009, Scotch must not contain any added substance other than barley (or other grain), yeast, water and plain caramel coloring. Accordingly, even if Scotch distillers wanted wine flavor, they may not add wine directly to the whisky without risking fines and ruining their reputation. Indeed, the only way to add wine flavor would be through aging the whisky in wine casks.

44. "I believe the flavour coming into the finishing cask from the wine has a more significant impact than the wood extractives. I'd say two-thirds is a direct result of the wine itself, and one-third is down to further wood-derived chemistry." (Glenmorangie's Dr. Bill Lumsden, quoted in *Mixing the grain with the grape*, by Ian Wisniewski, *Whisky Magazine*, Issue 51, 07/10/2005.) This is indicated as well by the fact that Glenmorangie produces the "Extra Matured Range" with Single Malts finished in four different wine casks (Sherry, Sauternes, Port, and Pedro Ximénez). This indicates that there is indeed a significant contribution from the wine – not merely from the wood. To quote Anthony Burnet, Ambassador Emeritus, Glenmorangie (quoted in *Sherry; "Sherry Oak" – which is it?*, by Kevin Erskine, *TheScotchBlog.com*): "[Regarding] Glenmorangie Wood Finishes [currently called "Extra Matured Range"]... it is indeed the traces of the different fortified wines which have previously been aged in the casks that add so much to the final products...not just the characteristics that the oak itself also brings to the party. One has only to nose/taste those



there are grounds to argue that *avida l'ta'ama* does not apply to the wine absorbed in Scotch. As discussed above (Sec. III:A:c) once wine is *batul b'sheish* it loses its status as wine and is treated as *kiyuha* ("acid") instead. This idea is also brought in *Igros Moshe* (YD I *siman* 63). There, Rav Pinchos Teitz is quoted as arguing that wine added to whiskey should not be nullified because it was *avida l'ta'ama*, added for flavor. Rav Moshe countered that even if wine was added for flavor the whiskey would not be prohibited because wine which is *batul b'sheish* is referred to as *kiyuha* and treated as "acid."<sup>45</sup> Rav Moshe supports this position (in the previous *siman*) from various sources, including *Tosfos* (*Chulin* 25b *d.h. hamitamed*) who write that diluted wine is called *kiyuha* and is not considered "*ta'am gamur* – authentic flavor." This indicates that even though the flavor of the wine can be tasted, it loses its status as "wine," even if the intention was to add wine flavor. Based on this concept, it would certainly seem that any wine flavor absorbed by the Scotch can be nullified according to the rules of *bitul*, even in the case of distilleries that are truly interested in the wine flavor.

The issue of *avida l'ta'ama* is also addressed by Rav Weiss. In *Minchas Yitzchok* Vol. II (28:5-7, written in 5716) he argues that if the actual wine flavor can be detected then it can never be nullified. If, however, the taste cannot be detected and there is only some change in the flavor due to the presence of wine, then it may be permitted based on the principle *zeh v'zeh gorem* (*ibid. s.k.* 16-18). The rationale for this is that many factors in the production of Scotch affect the final flavor of the drink, including malted barley, water, wood flavor, peat and Sherry flavoring. Since the overall flavor is affected by many factors, the wine's particular contribution cannot be considered *avida l'ta'ama*. This is also the opinion of *Mishne Halachos* (Vol. X *siman* 109).

It appears that most Scotch experts agree that, although the wine affects the overall flavor, the actual taste of wine cannot be detected. The *Minchas Yitzchok* himself (*s.k.* 21) acknowledges that this seems to be the accepted opinion. Therefore, even though *bluos* of wine in Scotch is *avida l'ta'ama*, the forbidden wine *bluos* can be nullified.

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four different products in order to find out what very different character is brought to the spirit by each wine."

45. "וא"כ מה לנו אם בכוונה ניתן מצד טעם הקיורא – הא עכ"פ לא ניתן לטעם יין שזה ליכא במציאות, וטעם הקיורא לא נחשב להאסר."

However, it is hard to accept the application of *zeh v'zeh gorem* in the case of Scotch. The concept of *zeh v'zeh gorem* is applicable only in cases where the resulting flavor could have been achieved with the other kosher ingredients had they been present in larger quantities, and the non-kosher ingredient is not absolutely required to achieve the desired outcome. In contrast, the distinctive flavor of Scotch matured in Sherry casks cannot be achieved without the addition of forbidden Sherry flavor. Rav Weiss himself grapples with this issue in a later volume (Vol. VII 27:4, written in Iyar 5738) and writes that *zeh v'zeh gorem* is not applicable to Sherry casks, since the distinctive Scotch flavor could not have been attained solely with the other kosher ingredients. Rav Weiss notes that this differs with the earlier *t'shuvah* and concludes that this issue is *tzarich iyun* (requires further elucidation).

An additional reason to disregard the concern of *avida l'ta'ama* is that some *Poskim* are of the opinion that *avida l'ta'ama* prevents *bitul* only of actual forbidden items (*bi'en*); imparted flavors (*blios*), however, are not subject to the limitations of *avida l'ta'ama* (*Beis Shlomo OC siman 87*; *S'dei Chemed, Ma'areches chometz u'matzah 4:6:10 and 4:12, Volume 7, pages 103 and 108*). Other *Poskim*, however, argue that the concern of *avida l'ta'ama* applies to *bi'en* and *blios* alike (*Pri Migadim M"Z OC 451:27*).

To summarize: It is unclear if Scotch makers are interested in the Sherry casks for the flavor of their wine *blios* (presenting a concern of *avida l'ta'ama*), or for the overall effect of the wine or wood on the Scotch. Most experts agree that the original wine flavor is not preserved and cannot be identified in the Scotch, and therefore it is subject to *bitul*. One may not invoke the principle of *zeh v'zeh gorem*; nevertheless, according to Rav Moshe once the wine is diluted at a ratio of 6:1 it is "acid" and not "wine," and there is no longer any concern of *avida l'ta'ama*. Additionally, according to some *Poskim* *avida l'ta'ama* does not apply to *blios*. Thus it appears that there are sufficient grounds to consider wine *blios* not subject to the limitation of *avida l'ta'ama*.

### **b. Darkon b'kach (an integral ingredient)**

The *Shulchan Aruch* (134:13), quoting the *T'shuvos HaRashba* (Vol. III *siman 214*), rules that one may not drink any beverage of a gentile if it is customary (*darkon b'kach*) to add (non-kosher) wine to it. The *Rashba* clarifies that the drink is forbidden even if there is enough kosher liquid to nullify the wine. The reason for this is that any food or liquid

routinely added to a mixture is considered an integral ingredient of the mixture. This fundamental part of the mixture defines the final product, similar to the concept of *davar ha'ma'amid* (i.e., a forbidden food that acts as a “support” for the final product), and cannot be nullified (*Minchas Yitzchok* Vol. II 28:12, based on the *Machatzis Hashekel* 447:45 towards the end).<sup>46</sup> Accordingly, it would seem that Scotch containing absorptions of Sherry wine should be forbidden.

However, the *Noda B'Yehuda* (*Mahadurah tinyana*, *YD siman* 56) notes that since many *Poskim* (*Rambam* and *Ri Migash*, quoted by *Ran*, *Avodah Zara* 13b) argue with the *Rashba*, one may be lenient and permit these beverages as long as the wine is *batul*. This is also the position of *Gilyon Maharsha* (gloss to *Shulchan Aruch* 134:13).<sup>47</sup>

Furthermore, Rav Weiss (*ibid.* 28:18), based on the *Machatzis Hashekel* mentioned above, maintains that this prohibition does not apply when *zeh v'zeh gorem* is applicable (just like it doesn't apply to *davar ha'ma'amid*). Since the desired taste of the beverage cannot be achieved without the other permissible ingredients, the forbidden substance cannot be said to define the entire mixture. Hence, since the unique taste of Scotch is only achieved with a combination of various ingredients, the presence of non-kosher wine cannot be reason to forbid the Scotch.<sup>48</sup>

Rav Moshe Feinstein (*YD I siman* 63) seems to have a different view on this halacha. After quoting the *Shulchan Aruch* (*ibid.*) that one may not drink the beverage of a gentile if it is customary to add wine to it, he notes that the *Rama* (114:4 and 6) disagrees and rules that the beverage

46. See *Minchas Yitzchok* (*ibid.*) who explains the difference between this prohibition and *avida l'ta'ama*. It should be noted that the *Ra'avad* (quoted by *Ran*, *Avodah Zara* 13b) explains this prohibition differently. The *Ra'avad* explains that Chazal prohibited products to which forbidden food is routinely added out of concern that the volume of forbidden food may be too large to be nullified. The *Rashba* himself equates his position with that of the *Ra'avad*, as does the *Noda B'Yehuda* (*Mahadurah tinyana*, *YD siman* 56). Thus, the *Machatzis Hashekel's* interpretation of the *Rashba* is debatable.

47. See also *Magen Avrohom* (*OC* 442:1) who understands that the *Rashba's* stringency is only Rabbinical in nature. The *Noda B'Yehuda* (*ibid.*) points out that this is actually explicit in the *Ran* and *Rashba*.

48. According to the *Ra'avad's* explanation of this halacha, quoted above (footnote 46), the leniency of *zeh v'zeh gorem* does not apply to situations of *darkon b'kach* because Chazal forbade all such mixtures, regardless of where the particular forbidden flavor originated.

may be consumed as long as the wine is nullified.<sup>49</sup> Rav Moshe maintains that although the halacha follows the *Rama*, it is advisable that a *ba'al nefesh* abstain from drinking such a beverage in order to accommodate the position of the *Rashba*.<sup>50</sup>

### c. Chazusa (coloring)

The *Rama* (102:1) rules that if a forbidden ingredient adds color to a mixture, the ingredient cannot be nullified. Accordingly, since one of the primary functions of Sherry casks is to add color to the light-colored Scotch, the wine should not be *batul*.

However, the *Minchas Yitzchok* (Vol. II 28:19) cites the *Pri Chadash* (102:5) who rules that Chazal were not concerned about coloring when dealing with an item which is only Rabbinically forbidden, which includes the prohibition of *stam yeinam*.<sup>51</sup> Furthermore, since the color is affected by many other factors, including the barrel and caramel color, this is certainly a case of *zeh v'zeh gorem* and the non-kosher ingredient can be nullified.

### d. Bitul Issur L'chatchila (intentional nullification)

Another potential issue of concern is *bitul issur l'chatchila*. It is forbidden to add even a minute amount of non-kosher food (even if only

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49. However, Rav Weiss (ibid. s.k. 12-13) maintains, based on an apparent contradiction in the *Shulchan Aruch*, that the lenient position of the *Rama* applies only when the non-kosher ingredient does not enhance the mixture, but if it was added to improve the mixture then the mixture is forbidden (unless it is a scenario of *zeh v'zeh gorem*).

50. It is important to realize that Rav Moshe was referring to a scenario where wine was poured *into* whiskey, as opposed to Scotch which is simply matured *in* wine casks. One may argue that Rav Moshe's stringency applies only to the scenario he specifically discussed, where wine was actually poured into whiskey, and in that case alone a *ba'al nefesh* should adhere to the *Rashba's* opinion that an integral non-kosher ingredient causes the entire beverage to be forbidden. With regard to Scotch, however, wine is *never* poured into the barrel; rather, the Scotch absorbs the *blios* of wine through *kavush*. Since wine is not an *added* ingredient to Scotch, perhaps even the *Rashba* would agree that the standard rules of *bitul* apply; thus even a *ba'al nefesh* need not be concerned with the restriction of *darkon b'kach*.

51. This is also the opinion of *Yad Avrohom* (gloss to *Rama* ibid.) and *Chasam Sofer* (gloss to *Shach* 102:5). See also *Gr"a* (102:6) who has a different explanation of the *Rama*.

Rabbinically forbidden) to a kosher mixture, even though the amount will certainly be nullified (*Shulchan Aruch YD 99:6*). If the non-kosher ingredient was intentionally added, Chazal imposed a penalty and prohibited the food to the one who mixed it in and to the person for whom it was added (*ibid.* 99:5). This prohibition is referred to as *bitul issur l'chatchila*. What is the halacha if a forbidden ingredient was added intentionally by a commercial manufacturer – is the product forbidden to the consumer? Rabbi Akiva Eiger (gloss to *Shulchan Aruch* *ibid.*) quotes the *Rivash* that it is forbidden to the customers because it is considered as if the manufacturer mixed in the forbidden item specifically for the customer. He notes, however, that the *Taz* (*s.k.* 10) permits the item to the purchasers because it was not mixed with any particular individual in mind. Accordingly, it would appear that the absorption of Sherry wine in Scotch is considered *bitul issur l'chatchila* according to the *Rivash*, but not according to the *Taz*.

However, Rav Moshe Feinstein (*Igros Moshe YD I siman 62*) writes that since Scotch is mainly marketed to gentiles, it is considered as if the addition of wine was done for them. As such, there is no problem for Jewish consumers even according to the *Rivash*.

Rav Moshe reasons further (*ibid. siman 63*) that even though the manufacturer created additional Scotch to accommodate the Jewish market, no penalty can be imposed upon the Scotch because the (non-Jewish) Scotch manufacturer did not violate any prohibition by adding the wine. Furthermore, many *Poskim* side with the *Taz* that the penalty of *bitul issur l'chatchila* was not imposed on consumers of commercially produced food and beverage. Additionally, gentile wine in contemporary times has the status of *stam yeinam* and not *yayin nesech*. The distinction here is crucial. In the days of old when gentile wine had the status of *yayin nesech*, it was forbidden to have any benefit, directly or indirectly, from the wine. *Stam yeinam* is less problematic, for though one may not drink it, one may benefit from it indirectly, for instance, by selling it. This indicates that the injunction against *stam yeinam* is not due to any real concern that the wine was used for idolatrous purposes, but rather that it is a Rabbinical ordinance meant to prevent intermarriage and has no direct Torah source (*ain lo shoresh min haTorah*). Accordingly, some *Poskim* permit intentionally nullifying this wine (*Tosfos, Pesachim 30a*). In addition, the *Rambam* (*Hilchos Ma'achalos Asuros 15:26*) rules that one may intentionally nullify any food that is only Rabbinically prohibited.

In light of all these considerations, Rav Moshe concludes that whiskey containing wine cannot be prohibited because of *bitul issur l'chatchila*.

Rav Yitzchok Weiss (*Minchas Yitzchok* Vol. II 28:20) cites an additional reason that *bitul issur l'chatchila* does not apply to Scotch. The *Maharsham* (Vol. III *siman* 234) explains that Chazal's motivation behind imposing a penalty for intentionally nullifying a prohibited item was their concern that one may come to add such a large amount of the forbidden food that nullification won't occur. Rav Weiss therefore argues that the penalty of *bitul issur l'chatchila* cannot possibly apply to Scotch because one would carefully avoid adding a large volume of wine, lest one ruin the Scotch.<sup>52</sup>

**Summary of Section III:** Scotch matured in non-kosher wine barrels can be permitted only if the wine *blios* are nullified. Most *Poskim* are of the opinion that a six-to-one ratio is sufficient to nullify non-kosher wine (although a *ba'al nefesh* should require *shishim*). Many *Poskim* require the volume of whisky to be six times the volume of the entire thickness of the cask walls. According to Rav Moshe, there is no problem of *avida l'ta'ama*. There is also no concern (*mei'ikur hadin*) of *darkon b'kach*, *chazusa*, or *bitul issur l'chatchila*.

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52. One can also argue that the penalty against *bitul issur l'chatchila* applies only to one who mixes a forbidden item *into* kosher food. In our scenario, however, wine is not being added into the Scotch; our issue is only the absorption of wine *blios*. Accordingly, this may not be considered an act of *mevatel issur l'chatchila*.

It is also questionable if an act of nullification done by a gentile is subject to the penalty of *bitul issur l'chatchila*. The *T'shuvos Radvaz* (Vol. III *siman* 547) rules that one may not purchase a food product from a gentile in which a forbidden ingredient was intentionally nullified. He reasons that the act of purchasing such a product is considered nullification. Many *Poskim*, however, argue that the product may be purchased; see *T'shuvos Ein Yitzchok* (Vol. I, *OC siman* 19) who proves this point from the *Rama*. The *Rama* (YD 114:6) permits the purchase of a beverage from a gentile in which a non-kosher ingredient was added, provided that the non-kosher ingredient was nullified. The *Minchas Yitzchok* (Vol. II 28:20) notes that this is also the opinion of *Maharam Lublin* (Vol. I *siman* 104). See *Darkei T'shuvah* (108:20) and *Yabea Omer* (Vol. VII, YD *siman* 7) for additional sources.

## IV. ESTABLISHING THE FACTS: DO SHERRY CASKS CONTAIN THE RATIO NECESSARY FOR NULLIFICATION?

Now that we have determined that according to many *Poskim*, in order to nullify the wine *blios* in Sherry casks, the volume of Scotch must be at least six times greater than the amount of wine absorbed in the casks (see above, Section III:A:b), it is crucial to determine if that volume is generally present. This requires an evaluation of the volume of the contents of the barrel vs. the volume of liquid absorbed in the walls of a Scotch barrel.<sup>53</sup> The wine barrels commonly used nowadays to mature Scotch are Sherry casks, or “butts,” which generally contain 500 liters. In order to conclude that the wine *blios* are *batul b’sheish* one must ascertain that the liquid-to-wood ratio is more than 6:1. Studying the dimensions of a standard 500 liter Sherry butt, one discovers that the liquid-to-wood ratio is substantially less than 6:1, which means that there would not be enough Scotch to nullify the *blios* of the entire thickness of the walls *b’sheish*. (Although one would intuitively take the wood mass into consideration when calculating how much wine is absorbed, for purposes of halacha we measure the *blios* contained in the walls as if the walls were hollow and full of *blios*. The *Shulchan Aruch* 98:4 explains that since it is impossible to ascertain the precise volume of non-kosher taste absorbed in the walls, we must consider the walls to be completely imbued with non-kosher taste.<sup>54</sup>)

How does one calculate the volume of absorbed wine in a Sherry cask? The *Beis Yosef* (98:4) cites the *Mordechai* that the simplest method to calculate the volume of the walls of a vessel is to use the displacement method: One fills a large vessel with water, dunks the vessel in question inside, and measures the displaced water. However, this is quite difficult to do with a large 500L barrel. Accordingly, we must use a different method.

The calculation of the volume of the walls of a standard barrel was

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53. If there is actual wine inside the cask, e.g., if the cask was shipped to Scotland with wine actually sloshing around inside and the cask was not emptied prior to filling with Scotch, the volume required for *bitul* must be measured relative to this wine as well.

54. See Sections VIII:G and H for further analysis.

made using a barrel calculator (<http://www.cleavebooks.co.uk/scol/calbarr.htm>) to figure the volume of a barrel using dimensions of a 500L Sherry butt offered by *Antex Rioja*, a used-barrel supplier in Spain. The internal and external dimensions are presented in the accompanying chart.<sup>55</sup> The barrel calculator indicates that the internal volume of liquid contained inside this barrel is 511.5L (fairly close to the stated volume), while the external volume of the barrel is 647.4L.<sup>56</sup> Accordingly, it appears that the walls have a volume of 135.9L, which gives a liquid-to-wood ratio of 3.76:1, and would not be *batul b'sheish*.<sup>57</sup>

[It should be noted that these calculations were done with the dimensions of a standard 500L Sherry butt which actually stored Jerez Oloroso Sherry; if maturation is done with different size barrels, the calculations may differ, possibly changing the halacha.]

500 L Sherry Cask	Internal Dimensions (derived)	External Dimensions (actual)
Height	110.38 cm	117.38 cm (excluding chimes)
Head Diameter	68 cm	75 cm
Center Diameter	83 cm	90 cm
Volume	511.5 L	647.4 L
Stave/Head Thickness	3.5 cm	
Volume of Walls	135.9 L, a ratio of 3.76 : 1	

55. The chimes (3.81 cm on a standard wine barrel x 2= 7.62 cm) have been excluded from this calculation; see *Chochmas Adam* (57:11).

56. The calculator uses the dimensions of a barrel and considers the stave thickness to be paper-thin. By subtracting the volume of a slightly smaller barrel (using the internal dimensions) from the volume of the larger barrel (using the external dimensions), one can ascertain the volume of the walls.

It should be noted that the standard formula to calculate the volume of a cylinder ( $V = \pi r^2 h$ ) cannot be used to calculate the volume of a barrel due to the fact that the side walls bulge outward. The barrel calculator takes this into consideration by using the standard shape of barrels.

57. According to a *Posek* familiar with Sherry casks, the liquid-to-wood ratio of Scotch barrels is 4.25:1, not *batul b'sheish*.



## V. CONCLUSION

In conclusion, the permissibility of Scotch matured in Sherry casks seems to be questionable. It appears from the *Poskim* that the *blios* of wine located in the walls of Sherry casks require nullification and it is sufficient to nullify the *blios* with a liquid-to-wood ratio of at least 6:1. Although there are numerous concerns regarding the susceptibility of the wine *blios* to nullification (namely, *avida l'ta'ama*, *darkon b'kach*, *chazusa*, and *bitul issur l'chatchila*) it appears from the *Poskim* that there is sufficient room (*mei'ikur hadin*) to be lenient in this regard.<sup>58</sup>

The main concern, however, regarding Sherry casks, is due to the opinion of the *Shach*, *Chochmas Adam* and *Kitzur Shulchan Aruch* that the *blios* of *stam yeinam* are located in the entire thickness of the barrel walls. Although many *Poskim* are of the opinion that only a *klipah* of the wine barrel is affected and, as such, the *blios* of *stam yeinam* are nullified in the Scotch,<sup>59</sup> the halacha generally follows the stringent opinion of the *Shach* and other *Poskim*. Indeed, many contemporary *Poskim*<sup>60</sup> advise that one be stringent like the *Shach* and other *Poskim* that the entire thickness of the barrel is saturated with non-kosher wine *blios*. In a standard cask, it appears that there is not sufficient volume of Scotch to nullify the *blios b'sheish*. Accordingly, Scotch matured in Sherry casks appears to be problematic (see footnote).<sup>61</sup> In the next section (Section VI) we will

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58. A *ba'al nefesh*, though, must be concerned that the addition of wine is considered *darkon b'kach*, not susceptible to nullification (Rav Moshe Feinstein, quoted above, Sec. III:B:b. However, see above, footnote 50).

59. According to the lenient opinion that only a *klipah* is affected, it can be assumed that the *blios* are nullified even *b'shishim* (see *Shach* 69:65, 137:9 and *Binas Adam*, *Shaar Issur V'Heter siman* 43, that a standard vessel contains *shishim* against the *klipah*).

60. To quote Harav Moshe Heinemann *shlita*, “The *minhag* of *Klal Yisroel* is to be *machmir* like the *Shach*.” According to Harav Shlomo Miller *shlita*, “*l'chatchila* one should be *machmir* like the *Shach*.” **See next footnote.** It must be noted that Rav Moshe Feinstein's *heter* of “blended whiskey” (*Igros Moshe*, *YD I simanim* 62-64) does not apply to Scotch, as will be explained in Section VIII:A.

61. Indeed, Rabbi Akiva Padwa strongly recommends against drinking Scotch matured in Sherry casks (if Sherry is mentioned on the label) due to the numerous Kashrus concerns.

Some *Poskim* suggest various considerations to permit Scotch matured in Sherry casks.

In a conversation with the author, Rav Heinemann maintained that if a wine barrel is sawed open, it is clear that the wine stains do not penetrate the entire thickness of the walls. Accordingly, there is no need to assume that the walls are completely saturated with *blios*. One may therefore assume that the minimal absorption of wine *blios* are indeed *batul b'sheish*. (However, this point appears to be disputed by others (see above, footnote 24) who maintain that the exterior of the barrel is occasionally discolored from wine, indicating that wine *blios* are absorbed in the entire thickness of the walls. Furthermore, the *Shach* (135:33, 137:9) rules that wine *blios* are absorbed in the entire thickness of the barrel, seemingly unimpressed with the lack of wine stains.)

In a conversation with the author, Rav Miller ruled that Sherry-matured Scotch is permitted. His main leniency was based on the *Gemara's* ruling that liquids (other than wine) are permitted when stored in non-kosher wine barrels. Rav Miller ruled that this leniency also applies to Scotch. (This point, however, is questionable. The *Gemara's* lenient ruling is based on *nosen ta'am l'pgam*; as explained above (see footnotes 19 and 22), Scotch is likely considered *lshvach* and therefore requires nullification.) Rav Miller added a number of *snifim* (supporting theories): 1) *Mei'ikur hadin*, *blios* are only absorbed *k'dei klipah*. He proved this from the *Chochmas Adam* (81:11) who rules that "*Itzorech gadol*" (in case of great need) one may rely on the *Poskim* who reckon the *klipah* alone. Further, the *Noda B'Yehuda* (cited in *Pischei T'shuvah* 135:2) rules that *miluy v'iruy* is effective even in a situation where wine was definitely stored in the barrel 24 hours. This indicates that wine was only absorbed *k'dei klipah*. (See, however, Addendum 2 if this is conclusive proof.) 2) The addition of water prior to bottling allows the wine *blios* to be nullified *b'sheish* (see Section VIII:B). Although it was clarified that due to the relatively thick walls of European Sherry casks, the addition of water is not sufficient to nullify the wine *blios*, it is still possible that *sheish* does indeed exist. Accordingly, one may be lenient based on the concept of *safek d'rabbanan l'hakkel*. This is strengthened by the possibility that any particular bottle of Scotch may be from a second (or later) fill which perhaps does not contain any forbidden wine *blios* (see Sec. VIII:E and Addendum 8 for further analysis of this suggestion). 3) We find that Chazal prohibited the wine of a Jew which came into contact with a gentile because he may have had intent for idolatrous purposes. Additionally, Chazal prohibited wine produced by a gentile even if it was not touched by a gentile so as to discourage intermarriage (see *Har Tzvi*, *YD siman* 111). Wine produced nowadays in a commercial setting can be assumed to have avoided direct contact with a gentile because the entire process is mechanical. (According to the *Chazon Ish*, touching the exterior of a vessel containing wine is not considered direct contact.) Since such wine is only forbidden by the latter prohibition, it's possible that it is *batul b'rov* (nullified in a mixture which contains a majority of kosher food). The *Shach* (112:23) and many

clarify which Single Malts are generally problematic.

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other *Poskim* are of the opinion that *bishul akum* (food cooked by a gentile) is *batul b'rov* when mixed into kosher food. Although non-kosher food generally requires nullification *b'shishim*, food which Chazal prohibited solely to discourage intermarriage (such as *bishul akum*) is nullified *b'rov*. One can argue that since commercially-produced Sherry wine is prohibited nowadays solely to discourage intermarriage, it is also *batul b'rov*, similar to *bishul akum*, and *sheish* is not required. (According to halacha, *stam yeinam* is nullified only with *sheish* or *shishim*, but perhaps one may be lenient when combined with the factors mentioned above.) Based on the above factors, Harav Miller is of the opinion that Scotch matured in Sherry casks is permitted.

## VI. VARIOUS VARIETIES

As discussed above, Scotch matured in Sherry casks is problematic due to the absence of the ratio necessary for nullification. Some varieties are more problematic than others, as will be explained.

### A) Sherry Casks Mentioned on Label

Many bottles of Scotch list on the label the type of cask used for maturation. If Sherry casks are mentioned on the label, this generally indicates that there is a high percentage of Sherry casks present. This will generally disallow nullification, as will be explained.

#### *a) 100% Sherry Casks*

It is important to note that the problem of Sherry casks generally applies only to Scotch that is labeled as 100% Sherry casks. This can be expressed in a number of ways:

- 1) The label states that it was matured in Sherry casks (such as The Macallan 12 Year Old which is “exclusively matured in selected Sherry oak casks from Jerez, Spain”);
- 2) The Scotch was “finished” in Sherry (or other wine) casks (such as Glenmorangie Lasanta which is “initially matured in bourbon casks, then extra matured or ‘finished’ in Oloroso Sherry casks”<sup>62</sup>);
- 3) It was “double-matured” (such as The Balvenie DoubleWood 12 Year Old which is matured in traditional whisky oak casks and a “further few months’ maturation in European oak Sherry casks”).

Such Scotch, which is 100% Sherry cask matured or finished, is problematic because it does not have a liquid-to-wood ratio of at least 6:1.

#### *b) Mixture of Sherry and Bourbon Casks*

Even if the label mentions Sherry casks, some Single Malts may still be acceptable. Several varieties of Single Malt Scotch found on the market

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62. This is one of the four Glenmorangie “Extra Matured Range.” The other three are: Nectar d’or – finished in Sauternes ‘barriques’; Quinta Ruban – finished in Port; Sonnalta – finished in Pedro Ximénez (super-sweet Sherry).

consist of a mixture of bourbon casks and Sherry casks (e.g., Glenfiddich 12 Year Old). (This should not be confused with “double-matured” Scotch mentioned above which refers to Scotch that is matured first in bourbon casks and then in Sherry casks.) This Scotch is more lenient because only the portion of Scotch that originated in Sherry casks requires nullification. The portion that originated in bourbon casks does not require nullification.<sup>63</sup> Generally, the volume of Scotch which originated in non-wine barrels, in addition to the Scotch itself, is enough to nullify the wine *blios b’sheish*. Based on various calculations, it appears that any Scotch containing a mixture of Sherry and bourbon casks may be assumed to have at least *sheish* against the non-kosher wine *blios*, provided that the percentage of Sherry casks is less than 66.5% (see footnote).<sup>64</sup> Listed below are a number of examples that fit this criterion.

In the example above (Glenfiddich 12 Year Old), the label (newly designed) states that it is “matured in the finest Oloroso sherry & bourbon casks.” Although the distiller does not disclose the cask breakdown, other

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63. Assuming that there is no concern of *chanan*, as explained below, Section VIII:B.

64. Assuming that the standard Sherry cask has a liquid-to-wood ratio of 3.76:1, the maximum allowable Sherry cask percentage to attain 6:1 is 53.71%. (The original ratio  $(1/3.76) \times (1/y) = 1/(6+1)$ ,  $y = 7/3.76$ ,  $y = 1.8617$ , and  $1/1.8617 = .5371$  or 53.71%.) When taking into consideration the water added for dilution after removal from the casks (see below, Section VIII:B), the maximum allowable Sherry cask percentage to attain 6:1 (assuming dilution from 58% ABV to 40% ABV) is 77.9%. [To calculate a dilution from 58 to 40, one multiplies the original ratio by  $1/1.45$  ( $.58/z = .40$ , so  $z = .58/.40 = 1.45$ ). So  $(1/3.76) \times (1/1.45) \times (1/w) = 1/(6+1)$ , so  $w = 1.2839$ ,  $1/1.2839 = .779$  or 77.9%.] It is important to note that according to Rav Moshe Feinstein (quoted above, Sec. III:A:c and footnotes 35 and 38) a *ba’al nefesh* must be concerned that the wine *blios* are still not *batul b’shishim*. This is true even when considering the addition of water after removal from the casks. The maximum allowable Sherry cask percentage to attain 60:1 (assuming dilution from 58% ABV to 40% ABV) is 8.9%. [To calculate a dilution from 58 to 40, one multiplies the original ratio by  $1/1.45$ . So  $(1/3.76) \times (1/1.45) \times (1/y) = 1/(60+1)$ , so  $y = 11.189$ ,  $1/11.189 = .089$  or 8.9%.] See Addendum 6 for more analysis on Rav Moshe’s stringency regarding a *ba’al nefesh*.

In a worst-case scenario of dilution from 57% to 46%, the maximum allowable Sherry cask percentage including dilution to attain *bitul b’sheish* is **66.5%**. If one were to follow the stringent opinion cited in Section VIII:B with regard to *chanan*, the maximum allowable Sherry cask percentage to attain *bitul b’sheish* is 14.3%. [ $1/7$  of the total mixture = 14.3%.]

sources reveal that it is 85% ex-bourbon cask, 15% ex-Sherry cask.<sup>65</sup> Since only 15% of the Scotch originated in Sherry casks, the wine *blios* are *batul b'sheish*.<sup>66</sup>

Another example, the label of the Glenfiddich 18 Year Old states that it is “matured in the finest Oloroso Sherry and bourbon casks, [and] is then married for at least three months in oak tuns.” According to the official Glenfiddich blog (run by Glenfiddich ambassadors and linked from the main site): “The 18 year old is a vatting of 80% American oak matured whiskies and 20% European (wine barrels), a very classy whisky that ensures we remain the most awarded single malt whisky in the world.” Since only 20% of the Scotch originated in Sherry casks, the wine *blios* are surely nullified.<sup>67</sup>

With regard to Glenfiddich 15 Year Old, the label states, “The richly layered Glenfiddich 15 Year Old is matured in three types of oak cask: sherry, bourbon and new oak before being married in our unique, handcrafted Solera vat.” According to acclaimed whisky writer Dave Broom (*The World Atlas of Whisky*, Octopus Publishing, 2010, pg. 69), the split is 70% bourbon, 20% Sherry, 10% new oak casks. Because only 20% of this Scotch was Sherry-cask matured, the wine *blios* are *batul b'sheish*.

An additional example of this is The Macallan Fine Oak 10 Year Old (not to be confused with The Macallan Sherry Oak). The label states that it is “triple cask matured in a unique complex combination of exceptional oak casks; European Oak casks seasoned with Sherry, American Oak casks seasoned with Sherry, American Oak casks seasoned with bourbon.” Although the company does not disclose the cask breakdown, at least one source reveals that 50% of the whisky originated in bourbon casks.<sup>68</sup>

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65. See, for example, <http://www.tasteto.com/2010/10/28/glenfiddich-not-just-for-newbies/>.

66. If 15% of the vatting is from Sherry casks, then the liquid-to-wood ratio is 25.08:1 ( $1/3.76 \times 1/6.67 = 1/25.08$ ), certainly *batul b'sheish*. As noted above, according to Rav Moshe Feinstein (quoted above, Sec. III:A:c) a *ba'al nefesh* must be concerned that the wine *blios* are still not *batul b'shishim*.

67. If 20% of the vatting is from Sherry casks, then the liquid-to-wood ratio is 18.8:1 ( $1/3.76 \times 1/5 = 1/18.8$ ). See footnote 64 with regard to a *ba'al nefesh*.

68. *On the rocks / Single-malt scotch shortage is double trouble for distillers, consumers*, by Richard Carleton Hacker, Special to The Chronicle (Page 3 of 4), June 23, 2005. Mr. Hacker confirmed by email that the recipe has not changed to date (11/13/2011). See also <http://www.bbr.com/producer-259-macallan-distillery-speyside>.

Accordingly, the non-kosher wine *blios* may be assumed to be nullified *b'sheish*.

Many expressions of The Dalmore are a mixture of Sherry and bourbon casks and the breakdown is listed on the carton (but not the bottle). The Dalmore 12 Years Old states on the carton that it is "50% bourbon American White Oak and 50% Oloroso Sherry wood." The Dalmore Gran Reserva is "matured and married in 60% Sherry wood and 40% American White Oak." These percentages of Sherry casks, all under 66.5%, may be assumed to be *batul b'sheish*. However, The Dalmore Cigar Malt Reserve is "70% Oloroso Sherry wood; 30% bourbon American White Oak." The wine *blios* in this expression may not be *batul b'sheish*.

Most Sherry-cask single malts currently on the market are a mixture of Sherry casks and bourbon casks; based on the above, these products are likely permissible.

## B) No Mention of Sherry Casks on the Label

In the previous section we discussed Scotch which mentioned Sherry casks on the label. Such Scotch, if 100% Sherry-cask matured or finished, is problematic due to the absence of a six-to-one ratio against the non-kosher wine *blios*. If, however, the label makes no mention of wine casks, a doubt exists as to whether such casks were used, and therefore, the dictum *safek d'rabbanan l'hakkel* (one may be lenient when in doubt regarding a Rabbinical prohibition) applies (*Igros Moshe* YD I *siman* 62, based on *Rama* 114:10 and *Shach* 114:21). Furthermore, if there is no mention of Sherry on the label one can assume that it was *not* matured in Sherry casks. Since Sherry cask maturation is a great marketing gimmick, distillers are likely to advertise the use of Sherry casks (and charge more accordingly).

It should be noted that Single Malt Scotch generally comes from many casks which are vatted (mixed) with other Single malts (sometimes of different ages) from the same distillery, as noted in Sec. I (a notable exception is the occasional "Single Barrel" Whisky which is not vatted before bottling). Accordingly, it is quite possible that a Single Malt may contain some Scotch that originated in Sherry casks, even though there is no mention of Sherry casks on the label. (According to a source familiar with the subject, a typical expression has 10-20% Sherry casks in the vating even with no mention of Sherry on the label.) However,

the minimal volume of wine *blios* from such barrels is generally nullified in the Scotch originating in non-wine barrels.<sup>69</sup> This is especially true if the label makes no mention of Sherry casks, thus indicating that even if some Sherry casks were indeed used, it is likely only a small amount. The higher the Sherry influence, the more likely distillers are to mention it on the label.

An example of this is The Balvenie 10 Year Old Founder's Reserve; the label makes no mention of wine casks, but the accompanying brochure states that some Sherry casks were used: "[The Balvenie Founder's Reserve] results from a marriage of The Balvenie Single Malt matured in bourbon casks with that matured in sherry casks, or butts." Although the brochure does not disclose the cask breakdown, other sources reveal that this Scotch was matured in 90% American oak and 10% Sherry.<sup>70</sup> Since the volume of Scotch originating in Sherry casks is only 10%, the wine *blios* are *batul b'sheish*.<sup>71</sup> The distiller did not mention Sherry casks on the label apparently because of its low presence. Accordingly, if the label makes no mention of wine casks or finishes, one can assume that wine casks were not used, or the percentage of wine casks were minimal, small enough to be *batul b'sheish*.

### C) Label Mentions Bourbon (or American) Casks

On occasion, a Single Malt may state on the label "matured in Bourbon casks" or "matured in American Oak casks." In such an instance there is no case to be stringent at all. As explained above, if Sherry casks are not mentioned on the label there is strong argument to be lenient and assume that Sherry casks were not used (or only minimally used). This is surely true if the distillery actually claims that bourbon casks were used. In this scenario the company can certainly be believed because Sherry casks are

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69. See footnote 64 that the maximum allowable Sherry cask percentage to attain 6:1 is 53.71%, and 66.5% when taking dilution into consideration (assuming a worst-case scenario of dilution from 57% ABV to 46% ABV).

70. *Michael Jackson's Complete Guide to Single Malt Scotch*, 6<sup>th</sup> Edition, pg. 109.

71. If 10% of the vatting is Sherry casks, then the liquid-to-wood ratio is 37.6:1 ( $1/3.76 \times 1/10 = 1/37.6$ ), certainly *batul b'sheish*. As noted above, according to Rav Moshe Feinstein, a *ba'al nefesh* must be concerned that the wine *blios* are still not *batul b'shishim*, even when dilution is taken into consideration.



generally perceived as enhancing the whisky.<sup>72</sup>

#### D) Blended Scotch Whisky

It should be noted that this entire discussion refers only to Single Malt Scotch Whisky. Blended Scotch Whisky (e.g., Grant's, Johnnie Walker), consisting mainly of grain whisky, is generally not a problem.<sup>73</sup> According to *scotchwhisky.net*, a blended Scotch whisky may contain a combination of whiskies from over 40 or 50 different malt and grain distilleries. It is generally accepted that only a very small percentage, if any, of grain whisky is aged in Sherry casks. As such, even if whisky from Sherry casks were blended in, it is likely to be only a small amount of the entire blend lending itself to *bitul*. Further, if the label makes no mention of Sherry casks then a doubt exists if such casks were used, as mentioned above.

**Summary of Section VI:** Sherry-matured Scotch is problematic only if it was certainly 100% Sherry cask matured (e.g., the label declares “exclusively matured,” “finished,” or “double-matured” in Sherry or other wine cask). If, however, a doubt exists if it was 100% Sherry-matured or the Scotch is a mixture of bourbon and Sherry casks, one may assume that the Sherry wine is *batul b'sheish* (a *ba'al nefesh*, though, must be concerned that it isn't *batul b'shishim*). Further, if the label makes no mention of Sherry casks, then one may assume Sherry casks were not used. This is certainly true if the label claims that the whisky was matured in bourbon or American oak casks. The vast majority of Single Malt Scotch currently on the market is not 100% Sherry-matured or finished and is therefore permitted (*mei'ikur hadin*). Blended Scotch is almost certainly not a problem.

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72. As heard from Rabbi Akiva Padwa.

73. Malt Whisky refers to whisky made only from malted barley. Single Malt Scotch Whisky refers to malt whisky produced in Scotland in a single distillery, and not vatted or blended with whisky made in any other distillery. (Single Malt Whisky may be produced elsewhere in the world, but no other nation may call a product “Scotch.”) Vatted or Blended Malt refers to malt (barley) whisky combined from different distilleries. Blended Scotch Whisky (not Malt) refers to whisky produced from a mixture of malted barley, wheat, or corn (maize) whiskies.

## VII. LOOKING FORWARD: POSSIBLE SOLUTIONS

Due to the serious concern of Scotch matured in Sherry casks, let us explore possible solutions and various alternative methods to mature Scotch.

### A) Kashering Sherry Casks

A vessel which absorbs non-kosher *blios* may not be used to store kosher food until it is *kashered* (made kosher). Numerous *kashering* methods are discussed in the *Poskim* and we must identify which methods may be effective on Sherry casks.

#### a. Hagalah (*scalding with water*)

A vessel which absorbed *blios* through *kavush* (soaking), such as Sherry casks, may be *kashered* through a process known as *hagalah* (*Shulchan Aruch* OC 451:21). The process consists of boiling water in the vessel, or alternatively, dunking the vessel in a large pot of boiling water, allowing all the *blios* to be nullified.<sup>74</sup> Let us clarify if such a process works to *kasher* Sherry casks.

The *Shulchan Aruch* (YD 135:15, OC 451:8) states that one may *kasher* a wooden vessel with *hagalah*. *Mishnah Brurah* (451:56) notes that this may be done only if the vessel is smooth, without cracks or holes. This halacha is based on *Shulchan Aruch* (OC 451:3) and *Rama* (OC 451:5) who write that any vessel that has cracks or holes may not be *kashered* with *hagalah*. The *Taz* (ad loc. *s.k.* 24) notes that the custom is to remove one of the barrel ends in order to clean and remove any residue stuck between the boards, but concludes in the name of the *Bach* that one should not attempt to *kasher* beer barrels for Pesach use due to the difficulty in cleaning them. This custom is echoed by the *Taz* (*s.k.* 20) as well (with regards to borscht barrels), and the *Pri Migadim* (ad loc. *s.k.*

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74. Some *Poskim* allow one to pour boiling water in a non-kosher barrel and roll the barrel back and forth to allow the water to hit all the sides. The *Rama* (YD 135:15) writes that one may rely on this opinion *bidieved*. The *Shach* (ad loc. *s.k.* 34) notes that this is a special leniency for vessels which absorbed non-kosher *blios* through *kavush* – such as Sherry casks.

24) supports this custom.<sup>75</sup> However, The *K'nesses Hag'dolah* (*YD Hagahos Tur*, 121:22) notes that this custom refers only to barrels which absorbed *chometz*; barrels which absorbed other forbidden foods – such as Sherry casks – may be *kashered* with *hagalah*, provided that the barrel is opened and cleaned well before *kashering*. The *Mishnah Brurah* (s.k. 119) writes that if one did *hagalah* without opening one end and cleaning very well, the *hagalah* does not work even *b'dieved* (*ex-post-facto*). Accordingly, *hagalah* may be an effective method of *kashering* Sherry casks provided that the cask is opened and cleaned well. It is unknown, however, whether this would ruin the delicate nature of the Sherry cask.

### b. Libun (*scorching*)

An alternative method to *kasher* vessels is through a process called *libun* (scorching). The *Shulchan Aruch* (OC 451:4) writes that for *libun* to be effective, a vessel must be exposed to such extreme heat that sparks fly from the other side of the vessel (a process known as *libun chamur*). This process will obviously not work on Sherry casks due to its wood construction.<sup>76</sup>

The *Rama* (ad loc.), however, notes that some *Poskim* are of the opinion that it is sufficient to heat the vessel to a degree that straw placed on the exterior of the vessel will burn (a process known as *libun kal*). With regard to wine casks, the *Shulchan Aruch* in *Yoreh Deah* (135:14) rules that it is sufficient if the exterior walls have reached the temperature of *yad soledes bo* (hot enough that the hand recoils upon contact) which is around 160°F according to Rav Moshe Feinstein (*Igros Moshe* OC IV, 74: *bishul*:3).<sup>77</sup> Accordingly, Sherry casks may be *kashered* with *libun kal*, i.e.,

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75. See also *T'shuvos Tzemach Tzedek* (OC *simanim* 51-52). The *Taz* (s.k. 20) suggests that such barrels may be cleaned well and *kashered* provided that water was stored in them for many days, but the *Mishnah Brurah* (s.k. 94) writes in the name of the *Chayei Adam* that barrels constructed from many boards may not be *kashered* in such a fashion.

76. See *Tosfos* (*Avodah Zara* 33b) who rule that *libun chamur* may not be performed on wooden barrels out of concern that the process may not be done effectively so as not to damage the wood.

77. The *Rama* (OC 451:5) notes that any vessel that may not be *kashered* with *hagalah* due to cracks or holes – such as a wine barrel – may be *kashered* using *libun kal*. Although the *Rama* generally is of the opinion that the exterior of the vessel must reach sufficient heat to burn straw (a degree hotter than *yad soledes bo*), it is quite possible that the *Rama*

the interior of the cask is heated to such an extent that the exterior of the barrel reaches the temperature of *yad soledes bo*. However, this process would likely ruin the barrel. (See below, Section VIII:I, with regard to charring.)

### c. *Miluy V'iruy*

A third method of *kashering* is *miluy v'iruy*: a non-kosher vessel is filled with water, allowed to rest for 24 hours, and then emptied; the process is repeated three times (see *Shulchan Aruch YD* 135:7, 12; *Shulchan Aruch OC* 451:21 and *Mishnah Brurah* ad loc. s.k. 118). Is this process effective to *kasher* Sherry casks?

The *Shach* (135:33) writes that *miluy v'iruy* is effective only if it is uncertain that wine rested in the barrel for 24 hours; if, however, it is certain that wine was stored in a wine barrel longer than 24 hours, *miluy v'iruy* is not effective.<sup>78</sup> The *Shach* earlier (135:24) records this halacha and quotes the *Levush* as arguing and allowing *miluy v'iruy*. It is quite interesting that the *Shach* in a third location (135:13) seems to contradict himself – the *Shach* writes quite clearly that even if wine was stored in a barrel longer than 24 hours, *miluy v'iruy* helps. How can this contradiction be reconciled? See *Noda B'Yehuda (Mahadurah tinyana, YD siman 58, at the end)* who points out this apparent contradiction. The *Atzei Livona*

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is stringent only with vessels that absorbed *blios* through heat, or when dealing with the stringent prohibition of *chometz*; when dealing with a vessel that absorbed *blios* through *kavush*, such as Sherry casks, however, perhaps he agrees that it is more lenient and may be *kashered* to a degree sufficient to heat the exterior walls to *yad soledes bo*, as indicated by *Shulchan Aruch YD* (135:14). This is indicated as well by the fact that the *Rama* in *Yoreh Deah* does not record any objection to the *Shulchan Aruch's* opinion. In fact, many *Poskim (Taz OC* 451:8, *Magen Avrohom* 451:27) argue on the *Rama* and are of the opinion that a vessel that may be *kashered* through *hagalah* – if not for its cracks and holes – need only be heated to the extent that the exterior walls have reached the temperature of *yad soledes bo*. Rabbi Akiva Eiger (gloss to *OC* 451:4, *Be'er Hagolah* s.k. 30) appears to side with the lenient *Poskim*; see, however, gloss to *Magen Avrohom* *ibid.* where he sides with the *Rama*. Additionally, the *Mishnah Brurah* does not quote the lenient opinion, indicating that he sides with the opinion of the *Rama* that the heat must be sufficient to burn straw. See also *Shulchan Aruch Harav* (451:16) who records a custom to be stringent and require sufficient heat to burn straw placed on the exterior, as stated in *Rama*.

78. The *Shach* concludes, though, that this halacha is *tzarich iyun*.

(gloss to *Rama* 135:9) answers that the *Shach's* opinion is that *miluy v'iruy* doesn't work in such a situation – the earlier comment of the *Shach* (s.k. 13) is merely citing the *Levush's* opinion (quoted in s.k. 24) that *miluy v'iruy* does help. Rav Moshe Feinstein (*YD* III *siman* 32), however, is troubled by the contradiction in the *Shach* and concludes on this basis that the halacha follows the simple understanding of the other *Poskim*, that *miluy v'iruy* helps for wine barrels even if non-kosher wine sat in the barrel longer than 24 hours. Accordingly, *miluy v'iruy* may be a solution to *kasher* Sherry casks. This is also the ruling of *Noda B'Yehuda* (cited in *Pischei T'shuvah* 135:2).<sup>79</sup>

## B) Other Casks

As explained previously, distillers generally do not use new casks to mature Scotch because the sharp tannins found in the wood would ruin its delicate flavor. Used casks are utilized instead, with many distillers preferring wine casks for many reasons (as explained above, Section III: B:a). Such casks present Kashrus concerns due to the *blios* of *stam yeinam*. Let us discuss other options which do not present such concerns.

### a. Kosher Wine Casks

One possible solution is to mature Scotch in Kosher wine casks. One such Scotch does exist, namely the Bruichladdich (pronounced “brook laddie”) 18 Year Old, distilled in 1989. According to the label, it was matured in bourbon casks and additionally matured in “Kosher wine casks from Carmel Winery, Israel.” It is unclear if this company is trying to avoid the problematic maturation in Sherry casks by using kosher wine barrels or is just trying to create a unique marketing gimmick. It would appear that the issue of *stam yeinam* is indeed avoided because the *blios* of kosher wine presumably do not become *stam yeinam* when gentiles handle the wine cask.<sup>80</sup>

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79. See Addendum 2 for further analysis.

80. If a small amount of wine was left in the barrel during shipping, it may become *stam yeinam* upon contact with gentile workers. This small amount of wine would certainly be nullified in the Scotch. See Addendum 9 for further analysis.

*b. Rum Casks*

An additional solution is to mature Scotch in Rum casks, which is actually becoming more popular amongst distillers. Some varieties of Scotch recently appeared on the market that were finished in Rum casks, e.g., Glenfiddich 21 Year Old, The Balvenie 14 Year Old Caribbean Cask. Since Rum is produced from distilled sugar and molasses, no concern of *stam yeinam* exists.<sup>81</sup>

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81. See Addendum 10 for further analysis.

## VIII. SEVERAL SUGGESTIONS TO PERMIT SCOTCH MATURED IN SHERRY CASKS

### A) Rav Moshe Feinstein's *Heter* (lenient ruling)

Many people maintain that Scotch matured or finished in Sherry casks is permitted based on Rav Moshe Feinstein's ruling in *Igros Moshe* (YD I *simanim* 62-64) with regard to "blended whiskey." Rav Moshe concludes that "blended whiskey" is permitted *mei'ikur hadin* due to the fact that *stam yeinam* added to the whiskey is *batul b'sheish*. (Rav Moshe advises a *ba'al nefesh* to be stringent; see Addendum 6.) However, it is of vital importance to realize that Rav Moshe was not referring to Scotch; rather, he was referring to whiskey (perhaps Canadian or American) into which a small amount of wine (less than 2½%) was added. Thus, it was quite clear that the small volume of added wine was indeed nullified. Our discussion, however, refers to Scotch; the issue of concern is that it is matured *in* wine casks – wine is *never* poured into the barrel (it is actually illegal to do so). Although one might think that Scotch is more lenient since it is only an issue of absorbed wine (*blios*) – not actual wine (*bi'en*), it may be more stringent due to the opinion of the *Shach* and other *Poskim* that the volume of *blios* is measured by the entire thickness of the walls, and there is not sufficient volume of Scotch to nullify the *blios b'sheish*. Accordingly, Rav Moshe's *heter* does not apply to Scotch.

### B) Addition of Water Prior to Bottling

As mentioned in Section I, after Scotch has fully matured it is generally diluted to a bottling strength of between 40-46% alcohol content. Accordingly, the argument goes, even if wine *blios* truly require *bitul b'sheish*, this addition of water, together with the Scotch itself, is enough to nullify the wine *b'sheish*.<sup>82</sup>

However, this argument is fraught with difficulty. Chazal teach us that the principle of *chaticha na'asis neveila* ("chanan" – the entire mixture

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82. It is important to note that according to Rav Moshe Feinstein (quoted above, Sec. III: A:c) a *ba'al nefesh* should require *bitul b'shishim*; this ratio is not present even when the addition of water is taken into consideration.

becomes forbidden) generally disallows the addition of kosher liquid to recalculate the original ratio that existed at the time the forbidden substance was added (see *Shulchan Aruch* 92:4). Accordingly, nullification is necessary against the entire contents of the barrel – not just the wine *blios* – and the addition of water prior to bottling is not sufficient to nullify this large volume of forbidden Scotch.<sup>83</sup>

It appears, though, that there is a strong argument that *chanan* does not apply with respect to *stam yeinam*. The *Poskim* discuss whether *chanan* applies to Rabbinical prohibitions, such as *stam yeinam*. Some *Poskim* rule that *chanan* does not apply to Rabbinical prohibitions (*Pri Chodosh* 92:17 based on *Ran*, *Chulin* 44b; *Aruch Hashulchan* 92:25). Other *Poskim*, however, rule that *chanan* applies to both Biblical and Rabbinical prohibitions (*Taz* 92:11 and *Pri Migadim* ad loc.). Although the accepted ruling follows the stringent opinion, some *Poskim* allow one to follow the lenient opinion with regards to prohibitions other than *basar b'chalav* (milk and meat mixtures), such as *stam yeinam* (*K'sav Sofer siman* 52; see also *Chochmas Adam* 44:13, and *Tzvi L'Tzaddik*, gloss to *Taz* 92:11). Additionally, liquid mixtures (*lach b'lach*) have certain leniencies. The *Rama* (92:4) rules that *chanan* does not apply when dealing with a liquid mixture (involving prohibitions other than *basar b'chalav*) in situations of *hefsed gadol* – when faced with a great financial loss. If this principle were applied, it would follow that nullification is necessary only against the actual wine *blios*.<sup>84</sup> Even though the *Rama* is lenient with regards to *chanan* only when faced with a great financial loss, the *Igros Moshe* (*YD II siman* 36) rules that when dealing with a Rabbinical prohibition, such as *stam yeinam*, one may be lenient even without a great loss. Although some *Poskim* rule that one may not be lenient even with regard to a Rabbinical prohibition unless there is a *hefsed gadol* (see *Noda B'Yehuda*, *Mahadurah tinyana YD siman* 58, *Tzemach Tzedek YD* 66:6), it appears that there are sufficient grounds to be lenient in this issue (see footnote).<sup>85</sup>

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83. The issue of *chanan* has ramifications for those Single Malts which are a mixture of Sherry and bourbon casks; see Sec. VI:A:b. If the concept of *chanan* applies, nullification would be necessary against the entire portion of spirit which originated in Sherry casks.

84. See *Shach* (103:20) and *Gr"a* (103:26) that *blios* are considered *lach b'lach*.

85. See *Shach* (134:16) who cites both the leniency of the *Ran* with regard to Rabbinical prohibitions and the opinion of the *Rama* with regard to *lach b'lach*. (See *Nekudos Hakesef*, gloss to *Taz* 137:5.) There is further room to be lenient based on the position of the *Rashba*,



It must be noted, however, that this leniency applies only to Scotch which is diluted *after* the maturation in the Sherry cask is complete; Scotch which is diluted *before* being placed in a Sherry cask would not have this leniency. “Cask Strength” whisky is not diluted before bottling and is therefore not subject to this leniency. (See footnote with regard to “finishes.”<sup>86</sup>)

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*Toras Habayis* 4:1, pg. 14, who is of the opinion that wine – which is *batul b’sheish* – is not subject to the limitations of *chanan*. This combination of leniencies will allow one to be lenient even in the absence of a great loss (Harav Shlomo Miller *shlita*). [This leniency certainly applies according to those that follow the opinion of the *Shulchan Aruch* (*ibid.*) that *chanan* does not apply to prohibitions other than *basar b’chalav*.]

Additionally, some *Poskim* (*Hagahos Yad Shaul*, gloss to *Shach* 134:16; *Imrei Boruch*, gloss to *Shach* 137:11, based on *Yam Shel Shlomo*, *Chulin* 7:60) rule that *chanan* never applies to *stam yeinam* stored in a barrel. The rationale for this ruling is that Chazal prohibited *lach b’lach* only if the mixture may occasionally be cooked; a mixture which will never be cooked, such as *blios* in a wine barrel, is not subject to the limitation of *chanan*.

Furthermore, some *Poskim* argue on the *Rama* and permit *lach b’lach b’shaar issurim* in certain situations even without *hefsed gadol* (see *Taz s.k.* 15, *Zer Zahav* ad loc. citing *Bach* and *Levush*). Many *Poskim*, however, rule in accordance with the *Rama* (*Shach* 103:20, 134:16; *Gr”a* 103:26, *Chochmas Adam* 44:9, *Aruch Hashulchan* 92:28). [The *Aruch Hashulchan* (*ibid.*) notes that *hefsed gadol* refers to a loss greater than *hefsed mirubah*; other *Poskim* (*Chavas Daas* 92:10, *Pri Migadim*, *M”Z* 92:15, *Chochmas Adam* 51:24) equate *hefsed gadol* with *hefsed mirubah*.] Based on the above considerations, it appears that there are sufficient grounds to be lenient on the issue of *chanan*.

86. Some have suggested that “finishes” are diluted to bottling strength *before* being placed in a Sherry cask. Consequently, “finishes” would not be subject to this leniency. This appears to be vindicated by Ian Wisniewski in *Mixing the grain with the grape* (*Whisky Magazine*, Issue 51, 07/10/2005) who quotes Glenmorangie’s Dr Bill Lumsden: “We fill finishing casks with whiskies that could be in the mid-40s or up to 60% ABV (alcohol by volume).” It is quite clear that those whiskies which have been filled in the mid-40’s ABV have been diluted *before* placement in the finishing cask, thus the leniency of dilution would certainly not apply.

However, numerous distilleries (including The Glenlivet, Lagavulin, and surprisingly, Glenmorangie) affirmed by email that all dilutions are done immediately before bottling. The Glenlivet explained that doing so certainly makes sense: “Remember, a cask will lose 0.25% to 0.33% of alcohol strength every year so if we put it back into the cask at 40% it may end up under strength.” (According to the Scotch Whisky Regulations, Scotch must

Most importantly, it must be noted that this leniency generally does *not* apply to Sherry casks. Due to the relatively thick walls of European wine barrels which contain a large amount of *blios* (as opposed to the thinner walls of American wine barrels), the addition of water is not sufficient to nullify the wine *blios*.<sup>87</sup>

### C) *Aino Ben Yomo* Wine Casks

Generally speaking, non-kosher food taste that has been absorbed in a vessel (*blios*) becomes stale after the passage of a 24 hour period. This is referred to as “*aino ben yomo* – it is not of today.” Such *blios* cannot affect kosher food subsequently cooked in the pot (see *Shulchan Aruch* 103:5). It has been noted that wine *blios* remain potent even after 24 hours and are not subject to the general leniency of *aino ben yomo* (*Shulchan Aruch* 135:16, *Rama* 137:1). The reason for this is that *blios* in general become stale over time; wine *blios*, on the other hand, actually improve over time (*Shach* 137:10).<sup>88</sup> [The exception is if twelve months have elapsed since the barrel was emptied; after such a lengthy time, even wine *blios* are assumed to turn stale (*Shulchan Aruch* and *Rama* *ibid.*); see below, subsection D, Dried-out Barrels.] The simple understanding of this halacha is that wine *blios* remain potent (within 12 months) regardless of what is subsequently stored in the pot – be it wine, other liquids, or food. This is indeed the opinion of the *Magen Avrohom* (*OC* 447:25) who applies this halacha

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be at least 40% ABV.)

87. For example, the liquid-to-wood ratio of a standard Sherry cask from *Antex Rioja* is 3.76:1, as stated above. If the whisky is 58% ABV (alcohol by volume) when it is disgorged and water is added to reduce the strength to 40% ABV (a fairly standard rate of dilution) then we must multiply the original ratio by  $1/1.45$  ( $.58/x = .40$ , which is  $x = .58/.40 = 1.45$ ). As a result, the original ratio (1/3.76) multiplied by percentage watered down (1/1.45) is 5.452:1 and is still not *batul b'sheish*.

88. This halacha is based on the *Ran* and *Rosh* (quoted in *Beis Yosef* 137:1, *Darkei Moshe* 137:2). Although the *Ramban* is quoted as permitting wine vessels which are *aino ben yomo* (see *Ramban*, *Avodah Zara*, *hashmatos* 75b *d.h. im emes*), see *T'shuvos HaRosh* (19:6) who asserts that this ruling was fabricated. The *Ran* (*Avodah Zara* 40a *d.h. v'kulan*) suggests that the *Ramban* never intended his ruling to be applied as practical halacha. See also *T'shuvos HaRashba Hamiyuchosos L'Ramban* (*siman* 167) who is unsure if the *Ramban* may be used in combination with other factors even *b'shaas hadchak*.

even to a honey drink cooked in a wine barrel, and assumes that the wine *blios* remain potent even after 24 hours have elapsed.

The *Pri Migadim* (*Aishel Avrohom* 447:25) suggests a novelty: Perhaps this halacha that wine *blios* always remain potent and do not have the leniency of *aino ben yomo* is true only when *wine* is subsequently stored in the barrel; if food or other drinks are stored in the barrel after 24 hours have elapsed from the removal of the non-kosher wine, perhaps the *blios* are indeed considered stale with regard to these mixtures. Accordingly, since Sherry casks likely remain empty for at least 24 hours before being filled with Scotch (*stam kli aino ben yomo*), and wine *blios* turn stale when mixed with liquids other than wine, the Scotch would be permitted based on the concept of *nosen ta'am l'pgam*.

However, the *Pri Migadim* notes that this position is at odds with the *Magen Avrohom* (ibid.) who applies this halacha even to foods and other drinks, and therefore concludes that this halacha is *tzarich iyun* – requires further research. Accordingly, it is difficult to rely on this leniency.

#### D) Dried-out Barrels

As mentioned above, the *Shulchan Aruch* (135:16) and *Rama* (137:1) write that if kosher wine is stored in a non-kosher wine barrel which remained empty for at least twelve months, the wine is permitted because at that point, the wine *blios* are assumed to be stale.<sup>89</sup> Based on this halacha, some have suggested an additional reason to be lenient with Sherry casks: It is quite possible that the barrels were left to dry for twelve months during shipping and transport, which makes the *blios* of wine *pagum*. This is especially likely if the barrels were disassembled prior to being shipped to Scotland, allowing plenty of time for the barrels to dry during shipping and storage until being reassembled. However, it is unlikely that this reason applies nowadays. Since Sherry casks are now so expensive, it is assumed that the wine casks were used as soon as possible and did not sit unused for twelve months.<sup>90</sup>

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89. See *Gilyon Maharsha* (gloss to *Shulchan Aruch* ibid.) as to why Chazal did not forbid such a barrel out of concern that one may mistakenly permit a barrel which sat empty less than twelve months, similar to the initial prohibition of *aino ben yomo*.

90. Further, the distilleries want to assure that the barrels remain fresh. “Being a ‘wood extractive’ liquid rather than simply wine, it [i.e., the wine absorptions] also includes

Even if twelve months were to transpire from the time the barrels leave Spain until their use in Scotland, this leniency does not apply for the simple reason that the barrels often contain wine during shipment. Research shows that many companies currently ship their barrels while still assembled<sup>91</sup> and, according to *Antex Rioja*, a used-barrel supplier in Spain, it is common to ship wine barrels with some wine still inside, often as much as 10 liters, which prevents the barrels from drying out.<sup>92</sup> Accordingly, this leniency does not apply to Sherry casks.<sup>93</sup>

### E) Second Fills

Another suggestion to be lenient is the fact that Sherry casks may be used numerous times (called fills), possibly even three times. Perhaps one may assume that the wine *blios* already came out in the first fill, and the subsequent fills do not contain any wine *blios*. Accordingly, Sherry-matured Scotch should be permissible. Since most of the bottles on the market are from second or later fills, any particular bottle is assumed

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flavour compounds derived from the oak. Consequently, casks for special finishes need to be a first fill, and as fresh as possible to retain maximum levels of residual liquid (the sooner casks reach Scotland the less 'dehydrated' they are)." (Excerpt from *Mixing the grain with the grape*, by Ian Wisniewski, *Whisky Magazine*, Issue 51, 07/10/2005.)

Additionally, according to Ian Wisniewski (*Lets do the char char*, *Whisky Magazine*, Issue 34, 5/10/2003) the trip to Scotland generally takes under two months: "Prior to being shipped, each cask receives 'one for the road' in the form of 5 litres of wine, helping to maintain freshness during a 4-6 week journey to Scotland. (This is of course emptied prior to filling with spirit in Scotland)."

91. "The traditional practise of dismantling and shipping barrels as 'shooks' (staves) for reassembly in Scotland, has declined enormously over the past 10-15 years." (Excerpt from *Lets do the char char*, by Ian Wisniewski, *Whisky Magazine*, Issue 34, 5/10/2003.) "The [Sherry] casks are shipped whole, thus maintaining the sherryish character of the wood. This would diminish if they were knocked down into staves." (Excerpt from *Michael Jackson's Complete Guide to Single Malt Scotch*, 6<sup>th</sup> Edition, pg. 61.)

92. To quote another source, "Seasoned casks are kept fresh en route to Scotland by giving them four to five litres of 'transport sherry' (emptied of course prior to filling with new make spirit in Scotland)." (Excerpt from *No Spain no Grain*, by Ian Wisniewski, *Whisky Magazine*, Issue 53, 12/01/2006.)

93. See Addendum 7 for further analysis.

to be from the majority of kosher bottles and permitted. However, this argument does not carry weight in halacha, as will be explained.

The *Rama* (98:4), based on the *Gemara Chulin* (97b), writes that if a piece of non-kosher meat falls in a pot of kosher food, and subsequently falls in a second pot of kosher food, the second pot is permissible only if it contains a volume of *shishim* against the entire piece of non-kosher meat. This rule applies even though a large amount of flavor already went out in the first pot, regardless of how many pots the non-kosher meat falls into. Since it is impossible to know if and when the entire flavor went out, *bitul* is required in every pot against the entire piece of meat.

We must clarify if the same halacha is true with regard to different batches of food cooked in the same pot. For example, if non-kosher food falls into a pot of soup and there is not *shishim* against the non-kosher food, the soup is prohibited. If one cooks a different batch of soup in the same pot within 24 hours, is *shishim* necessary against the non-kosher food or is it sufficient to have *shishim* in total between the first and second batches of soup? For example, if the first batch of soup had a thirty-to-one ratio and the second batch had a thirty-to-one ratio, is the second pot of soup permitted because there is a grand total of *shishim* against the non-kosher food, or do we say that since we don't know when and where the *blios* came out, we must have *shishim* in every batch, similar to a non-kosher food which falls into two different pots?<sup>94</sup>

The *Rama* (103:2) rules that if forbidden food falls into a mixture in which it is *nosen ta'am l'pgam*, the food is permitted but the pot is prohibited. If one cooks food (which is *l'shvach* with the forbidden food) in the pot before *kashering* it, the food is prohibited unless there is *shishim* against the original non-kosher food.<sup>95</sup> Accordingly, it is quite clear that, even without *chanan*, *shishim* is required against the original non-kosher food even though the first mixture definitely nullified some of the *blios*. The reasoning must be that since we can't know at which point the *blios* were released, we must require *shishim* in every mixture, just like the non-kosher food which falls into two pots. Thus we see that every mixture

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94. This question is only applicable where there is no concern of *chanan*, e.g., *lach b'lach b'shaar issurim b'hefsed gadol* – see *Rama* (92:4) and above, Sec. VIII:B.

95. See *Issur V'Heter Ha'aruch* (32:12) and *Biur HaG'ra* (s.k. 8) for the explanation of this halacha. See also *Shach* (s.k. 9) who explains that the principle of *chanan* does not require *shishim* against the entire first pot of food because the first mixture was *l'pgam*.

cooked in a pot which absorbed non-kosher taste requires *shishim*.<sup>96</sup>

According to the above, even if a wine barrel is used numerous times to mature Scotch, every fill of Scotch must have *sheish* against the *blios* of wine, and if *sheish* is not present, every fill is prohibited.<sup>97</sup>

Some suggest that the above ruling applies only to situations of Biblical prohibitions; Rabbinical prohibitions, on the other hand, are treated more leniently, based on the dictum *safek d'rabbanan l'hakel* (when in doubt regarding a Rabbinical prohibition, one may be lenient). As stated above, it is unknown when and if the forbidden wine *blios* went out. Since *stam yeinam* is a Rabbinical prohibition, the argument goes, one may assume that any particular bottle of Scotch is from a fill which did not receive prohibited wine *blios*. This argument, however, appears to be refuted by the *Poskim*.

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96. Another example of this concept: The *Shulchan Aruch* (92:5) writes that if a drop of milk splashes against the outside wall of a pot filled with meat soup and there is *shishim* in the soup against the drop of milk and the drop fell below the soup level, the soup is permitted (and must be emptied out immediately from the other side of the pot). What is the status of the pot? The *Rama* (92:6) writes that the pot requires *hagalah*, and if the pot is used without *hagalah* to cook soup within 24 hours of the first cooking then the second batch of soup is also forbidden unless it has *shishim* against the drop of milk. (See *Shach* 92:27 why *chanan* does not require *shishim* against the entire volume of the walls.) The *Shach* (92:19, 27) agrees with the *Rama* that the second batch of soup is forbidden (unlike the *Taz s.k. 17* who permits *bdieved* the second batch of soup) and explains that we are concerned that some of the milk did not spread in the walls of the pot and may subsequently come into the second batch. Although most of the milk likely spread inside the walls and was nullified, *shishim* is required against the *entire* drop because it is impossible to know how much of the absorbed milk remains in the wall. Thus we see another example of a pot which absorbed non-kosher taste and requires *shishim* against the entire non-kosher food every time something is cooked in the pot (within 24 hours) even though some of the *blios* likely went out in the previous cooking.

97. Perhaps after the third fill one can assume the *blios* have all been nullified – just like we find that *miluy v'iruy* three times can *kasher* a wine barrel. Although the *Shach* (135:33) is of the opinion that *miluy v'iruy* does not work to *kasher* a wine barrel which definitely stored non-kosher wine longer than 24 hours, Rav Moshe Feinstein (*Igros Moshe YD III siman 32*) rules in accordance with the *Noda B'Yehuda* (*Mahadurah tinyana, YD siman 58*) who is of the opinion that *miluy v'iruy* may be done. See Section VII:A:c for further analysis.

The *Shulchan Aruch* (109:1) rules that a mixture of two pieces of meat (both pieces are the same flavor – *min b'mino*), one kosher and one not, may not be consumed. Only if the mixture consists of three pieces, two kosher and one not, may the mixture be consumed, based on the concept of *bitul chad b'trei*; see *ibid.* for more details. The *Shach* (109:9), explaining a seemingly difficult *Rama*, clarifies that this halacha applies even when the mixture consists of two pieces, one kosher and one Rabbinically prohibited. Even in this situation, the mixture is prohibited (unless there are at least two kosher pieces larger than the non-kosher one). He explains that this ruling follows the majority of *Poskim*, unlike the ruling of *Or Zarua* who actually permits a mixture with only two pieces. *Or Zarua* reasons that either piece may be assumed to be the kosher piece, based on the dictum *safek d'rabbanan l'hakel*. (However, one person may not consume both pieces.) The *Shach*, based on the *Beis Yosef* and other *Poskim*, rules that neither piece may be consumed, because the dictum *safek d'rabbanan l'hakel* does not apply. (In a situation of three pieces the mixture may be consumed based on *bitul chad b'trei*.) Thus, it is apparent that *safek d'rabbanan l'hakel* (without qualifications of *bitul*) cannot permit a questionable mixture. Accordingly, although Sherry casks may have been used for numerous fills, every fill remains prohibited (unless the laws of nullification apply).

It should be noted that, with regard to finishes, it is highly unlikely that a second (or later) fill was used. According to Rabbi Akiva Osher Padwa, Senior Rabbinical Coordinator & Director of Certification, Kashrus Division – London Beis Din, nearly every finish takes place in a fresh fill. This is because there is currently a dearth of Sherry casks in Scotland (largely due to the Solera system commonly used in Spain where barrels are constantly refilled). Therefore, distilleries generally hire cooperages to construct barrels for them, and then contract with Spanish bodegas to fill the barrels with Sherry for an extended period of time. (The Sherry is subsequently discarded or used for wine vinegar.) This is obviously an expensive endeavor resulting in Sherry casks costing as much as ten times the cost of standard barrels. Distilleries therefore wish to get the most they can out of these barrels and second fills do not give as strong a flavor as first fills. Therefore, nearly all finishes take place in first fills (with second fills going for blends or lower quality Scotch). Accordingly, Scotch finished in Sherry casks likely came from a first fill and there is no doubt that perhaps a particular bottle of Scotch finished in Sherry casks came

from a second (or later) fill.<sup>98</sup> (See Addendum 8 for further analysis.)

### F) Are *Blios* of *Stam Yeinam* Prohibited?

The *Mishne Halachos* (10:109) suggests a novel idea to allow Sherry-matured Scotch. Many *Poskim* are of the opinion that since most gentiles do not serve idols in contemporary times, the prohibition against *stam yeinam* in modern times is solely to prevent intermarriage – not out of concern that it was used for idol worship (see *Tur* and *Beis Yosef* YD 123). Accordingly, the *Ran* (quoted in *Beis Yosef* 123:26) is of the opinion that ‘honey’ produced by gentiles from wine is permitted because the concern of intermarriage arises only from actual wine – not honey. (This refers to ‘honey’ produced by cooking and concentrating sweet wine. A thick, sweet syrup is produced, similar to honey.) Although the halacha does not follow the *Ran* and the honey is prohibited (*Shulchan Aruch* 123:26), the *Mishne Halachos* suggests that all *Poskim* agree that wine *blios* – as opposed to actual wine – which mix into Scotch were not included in the original prohibition. Because the drink is classified as Scotch – not wine – and the wine taste is indiscernible, it is not included in Chazal’s prohibition against wine. Consequently, Sherry casks, which contain only *blios* of wine, will not prohibit Scotch stored in them.

Besides for the fact that this highly novel approach does not appear in other *Poskim*, it must be noted that this leniency is predicated on the fact that wine is undetectable in Sherry-matured Scotch – thus there is no concern of intermarriage. If the wine is discernable in the Scotch then even *blios* are subject to Chazal’s concern of intermarriage. As noted above (Section III:B:a), although the actual taste of wine cannot be distinguished, the wine affects the overall flavor and is discernable. Accordingly, this leniency does not seem to apply to Sherry casks.<sup>99</sup>

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98. Based on a phone conversation with the author, 10/28/2011.

99. Rabbi Akiva Padwa offered a further reason to argue on this leniency. It is curious to note that the *Beis Yosef* cites the stringency of the *Rashba* (that a non-kosher ingredient customarily added to a mixture may never be nullified – see above, Sec. III:B:b) only with regard to *yayin nesech* but does not mention the concept elsewhere. Rabbi Padwa notes that his grandfather, Harav Henoah Padwa *zt”l*, noted on the margin of his *Shulchan Aruch* that there is a fascinating *Tzemach Tzedek* who writes that the *Rashba* is only referring to prohibitions that are prohibited out of concern of intermarriage and not to any other



### G) Standard Absorption of Vessels – *Mishnah Baba Metzia 40a*

As mentioned earlier (Section IV), if one wishes to nullify wine *blios* absorbed in a Sherry cask, nullification must take place against the entire thickness of the walls. Although one would intuitively take the wood mass into consideration when calculating how much wine is absorbed, the *Shulchan Aruch* (98:4) writes that we measure the *blios* contained in the walls as if the walls were hollow and full of *blios*. Since it is impossible to ascertain the precise volume of non-kosher taste absorbed in the walls, we must consider the walls to be completely imbued with non-kosher taste.<sup>100</sup>

It is interesting to note that although the *Poskim* write that a vessel generally does not contain 60 times the volume of its walls (see *Shach* 93:1), some *Poskim* provide general measurements for the liquid-to-wood ratio. Based on these general rules some suggest that we may assume that Sherry casks have the necessary liquid-to-wood ratio to allow *bitul*.

The *Pri Migadim* (*Hanhagas Ha'nishal* 2:5) writes that the contents of a vessel are certainly thirty times the volume of its walls, but he does not give a source for his ruling. The *Ginzei Yosef* (ad loc.) and *Minchas Shai* (ad loc.) are greatly disturbed by the lack of source and suggest that the *Pri Migadim* actually means that the contents are 30 times greater than the *klipah* – not the entire thickness of the walls. The *Machatzis Hashekel* (OC 451:40), *Nishmas Adam* (*Hilchos Pesach siman* 24) and *Chasam Sofer* (OC *siman* 120) appear to side with the *Pri Migadim* that the contents are thirty times the walls, but *Ginzei Yosef* (ibid.) points out that the *Chasam Sofer* appears to be unsure about the matter.

The *Yad Yehuda* (*Hilchos Melicha*, 69:64, pg. 69a, column 2) asks that

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type of *issur*. The reason is simple and brilliant. Chazal generally formulated their decrees according to Torah standards. Therefore, if non-kosher wine is added to a kosher mixture incidentally or accidentally then it is nullified according to the guidelines of any other *issur*, i.e., 1 part in 60 or in 6. If, however, the wine is an integral part of the recipe then the original decree applies. Accordingly, even if the wine taste is not recognizable in its own and even if the quantity is so small that under normal circumstances it would be nullified, the *Rashba* says it will never become nullified. According to this interpretation, non-kosher wine intentionally added to a mixture will remain prohibited even if they are only in *blios* form, contrary to the opinion of *Mishne Halachos*.

100. The *Shach* (98:10) extends this ruling to Rabbinical prohibitions, such as *stam yeinam*. See *Shach* (98:9) for the rationale behind this ruling.

the opinion of the *Pri Migadim* seems to be contradicted by a *Mishnah*. The *Mishnah* (*Baba Metzia* 40a) states that if a custodian was entrusted with wine (and poured the wine into his own vessel), he may deduct a sixth when returning it, for this proportion is absorbed by the barrel (see *Rashi* ad loc. See also *Rashash* ad loc.). Thus it appears that the contents are only six times the walls – not 30? The *Shoel U'maishiv* (1:3:28) was also asked this question and responds that the *Mishnah* in *Baba Metzia* refers to a case of cold liquid stored in a vessel (*kavush*); accordingly, a sixth is absorbed. The *Pri Migadim*, on the other hand, is referring to a case of cooking (*bishul*); in such a case the contents are thirty times the walls. (See *Darkei Ho'ra'ah* perek 39 who explains why *kavush* absorbs more than *bishul*.)

Based on the above, there seems to be a clear *Mishnah* that *kavush* absorbs a sixth of the contents, and this is the opinion of *Yad Yehuda* and *Prisha* (YD 135:34, in *haga'ah*. See also 103:7). Accordingly, some *Poskim* rule that Sherry casks are permissible because, being a case of *kavush*, we may assume that the contents are six times the volume of the walls (see *Mishne Halachos*, Vol. X *siman* 109).

This position is difficult for numerous reasons: The *Darkei Ho'ra'ah* (*ibid.*) points out that the *Mishnah* states that a sixth was absorbed in the walls, implying that the contents are a *fifth* against the walls – not a sixth. For example, if 30L of wine are poured in a barrel and a sixth is absorbed, 5L of wine were absorbed, which is one fifth of the remaining wine (25L). Accordingly, the necessary liquid-to-wood ratio of *sheish* is not present.<sup>101</sup>

Furthermore, the *Darkei Ho'ra'ah* (*ibid.*) points out that many *Poskim* explain the *Mishnah* differently. The *Shitah Mekubetzes* (ad loc.) quotes the *Rosh* who understands that the deduction of a sixth is caused not only by the absorptions but also by the sediments. Accordingly, there is no proof from the *Mishnah* as to the exact ratio of wine absorptions. (See, however, *Yad Yehuda* *ibid.* who questions this explanation.)

Additionally, this position is subject to dispute. Some *Poskim* bring proof from elsewhere that a vessel contains *eight* times the volume of its walls. The *Darkei Ho'ra'ah* (*ibid.*), *Kreisi U'Pleisi* (94:9) and Rav Moshe

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101. This argument, however, is quite difficult to understand. If the barrel subsequently stores 30L of Scotch, it should nullify the 5L of wine originally absorbed with a 6:1 ratio. It is curious that the *Darkei Ho'ra'ah* calculates the nullification ratio based on the remaining wine – not on the subsequent storage.

Feinstein (IG”M YD II *siman* 36) prove this from *Tosfos* (*Chulin* 100b end of *d.h. b’she’kadam*) and the *Rosh* (*Chulin* 7:38) who explain that it is possible to *kasher* a large vessel within 24 hours of use for non-kosher (*ben-yomo*) by boiling water in it two times (provided that there is no concern of *chanan*). The rationale is that although some *blios* came out of the walls during the first boiling and subsequently returned to the walls because the contents were unable to nullify them, the *blios* were diluted before returning to the walls. Therefore, when one boils water a second time, there is sufficient water to nullify the diluted *blios*. For example, if two ounces of non-kosher food are absorbed in the walls, and one boils 100 ounces of water in the pot, the two ounces are not nullified by the first cooking because the pot does not contain sixty times their volume. However, the two ounces were diluted somewhat in the water, allowing only a small amount of non-kosher food to be returned to the walls. After the second boiling the non-kosher food is indeed nullified because there is sixty times against the non-kosher food. Since two times will always nullify the non-kosher food, it must be that the maximum *blios* that come out of the walls is an eighth of the contents, thereby allowing the second boiling to nullify all forbidden *blios* (the double dilution is represented by the square root of 60, which is approximately 8). Thus, these *Poskim* assume that the contents of a pot are at least eight times the walls.<sup>102</sup>

The question therefore arises that the above conclusion, based on *Tosfos*, that a pot contains eight times the volume of its walls, seems to be refuted by the *Mishnah* which indicates that a vessel contains six times its walls? The *Darkei Ho’ra’ah* (*ibid.*) proves from here that the deduction allowed by the *Mishnah* is not due solely to the wine absorptions, but also to other factors.

The *Maharsham* (Vol. I *siman* 191, Vol. VIII *siman* 148) addresses this issue as well and concludes that it is impossible to assume a standard ratio in this matter, and every vessel has a different liquid-to-wood ratio dependant upon the thickness of the walls. He concludes that most vessels contain at least four times the walls, and some even contain five or six times the walls. See also *Darkei T’shuvah* (93:11).

The *Minchas Shai* (*ibid.*) also concludes that there is no standard

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102. It is interesting to note that the *Minchas Shai* (*ibid.*) suggests that the above *Tosfos* proves that the contents are *thirty* times the walls – not eight – in support of the *Pri Migadim* mentioned above.

ratio and it depends on the size of the pot and the thickness of its walls. Although *Tosfos* seems to give a standard ratio for pots, perhaps he was referring to huge vats with thin walls. Alternatively, *Tosfos* does not mean that two times boiling will nullify the *blios* in every pot; most pots will suffice two times boiling, but some pots will require extra boilings in order to nullify all the absorptions.

In conclusion, although some *Poskim* write that a standard vessel contains 30 times the volume of its walls, it appears that they were referring only to a case of *bishul*; *kavush* has a different ratio. Although some *Poskim* prove from the *Mishnah* in *Baba Metzia* that a pot absorbs a sixth of its contents, the proof is inconclusive. Other *Poskim* prove that a standard vessel contains eight times its walls, but many *Poskim* write that there is no standard rule to determine the volume of a pot's walls, and every pot must be judged based on its size and wall thickness. Therefore, in a case such as Sherry casks, where the liquid-to-wood ratio is unknown, we must view the walls as hollow, full of *blios*, requiring nullification against the entire thickness of the walls.

## H) Absorptions of Liquids in Vessels

As mentioned above numerous times (Sections IV and VIII:G), if the liquid-to-wood ratio of a vessel is unknown, such as the case with Sherry casks, it is necessary to view the walls as hollow, full of *blios*, requiring nullification against the entire thickness of the walls (as discussed in *Shulchan Aruch* 98:4). Although the volume of the non-kosher wine does not appear to have decreased by such a large amount, one must assume that all of the taste of the non-kosher wine was imparted into the walls of the barrel (*ibid.*). The reason for this halacha is simple: since it is impossible to ascertain the precise amount of non-kosher taste that was imparted from non-kosher food, one must assume that all of the taste was imparted. For example, if one ounce of non-kosher food falls into soup, one needs to have 60 ounces of kosher soup relative to the entire ounce even if the ounce of non-kosher food is still intact (see *Taz* ad loc. *s.k.* 7 and *Aruch Hashulchan* 98:51).

A novel approach suggested by the *Netziv* and Rav Moshe Feinstein may permit Sherry casks. The *Netziv* (*Maishiv Davar* Vol. II *siman* 23) and Rav Moshe (*Igros Moshe*, *YD I siman* 41) write that although the halacha is that a sixty-to-one ratio is required against the entire non-kosher food,

the halacha is different with regard to liquids. A liquid can only impart flavor when it itself is absorbed; if the liquid remains at its original volume then one does not need 60 times relative to all the liquid (e.g., if one cooks 10 ounces of pork brine in a kosher pot and, after cooking it, discovers that 8 ounces remain, one needs 60 times only against 2 ounces). The rationale for this distinction is that when it comes to solids, it is possible to separate the taste (*ta'am*) from the food (*mamash*), as opposed to liquids where it is impossible to do so. Accordingly, since many experts maintain that the walls of a barrel do not absorb more than 5-10% of the liquid contents,<sup>103</sup> one would require the proportion of *bitul* only relative to this minute amount, which is certainly present.

However, many *Poskim* argue against this leniency and feel that the proportion of *bitul* required is relative to all the liquid that was in the pot, and that no distinction is made between solids and liquids. This is quite apparent from the *Rama* (92:8) who writes that if one places a pan of milk under a pot of meat inside the oven, a sixty-to-one ratio is required relative to the milk, including the milk remaining in the pot.<sup>104</sup> In addition, *Badei Hashulchan* (92:146 and *biurim d.h. mah* & 92:8 *biurim d.h. u'v'inan*) cites many *Poskim* (including the *Chavos Yair*, *Kreisi U'Pleisi*, and *Chavas Daas*) who rule that the proportion of *shishim* is required against all the liquid and therefore concludes that this leniency requires further research (*tzarich iyun*).

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103. "The freshness of the cask also affects the level of "indrink," meaning the amount of malt absorbed by staves when the cask is filled. This is typically two to three per cent, though drier casks could achieve up to eight per cent." (Excerpt from *Mixing the grain with the grape*, by Ian Wisniewski, *Whisky Magazine*, Issue 51, 07/10/2005.)

"The level of wood extractive liquid within the staves of the cask, which is not simply residue sherry, as it also incorporates wood-derived compounds, could total around five-10 litres in a (500L) butt." (Excerpt from *No Spain no Grain*, by Ian Wisniewski, *Whisky Magazine*, Issue 53, 12/01/2006.)

"In a large Butt (cask that holds 110 gallons, or 415L) you get approx 11 litres of 'indrink', liquid absorbed into the wood, so clearly you do get a small direct influence from the previous liquid held in cask, on both color and taste." (Ian Millar, *Chief Brand Ambassador*, William Grant & Sons, quoted in *Sherry; "Sherry Oak" - which is it?*, by Kevin Erskine, *TheScotchBlog.com*.)

104. אם ה"י חלב במחבת (ו) בעינין ס' בתבשיל שבקדירה נגד החלב שבמחבת.

## I) Charred Sherry Casks

It is of interest to note that some distilleries char their casks before use, i.e., the interior of the casks are scorched with fire (see Photo Section). Some argue that this may be considered a form of *libun*, which would *kasher* the Sherry cask and permit Scotch stored inside such barrels.

However, many (if not most) distillers do not char their Sherry casks. According to Kevin Erskine in *Into the Wood* (<http://inebrio.com/thescotchblog/?p=138>), it is quite unusual to char Sherry casks: “How ex-sherry casks are treated, once whiskey distillers get their hands on them, differs by distiller. Most will empty the cask of any residual sherry, nose the cask (to ensure the cask smells fresh), and then fill with new spirit. [The Macallan’s] Dave Robertson doesn’t believe any one would char fresh sherry casks unless the sherry cask does not smell ‘right’, in which case they might char, or may simply reject the cask.” This was confirmed by Rabbi Akiva Padwa, who said that charring is generally not performed on Sherry casks; after all, such a process would completely ruin the Sherry effect of the barrel.<sup>105</sup>

Even if charring were to take place before filling the barrel with spirit it is likely not considered a form of *libun*. Charring may be considered *libun* only if the exterior of the barrel reaches the temperature of *yad soledes bo*, as stated in *Shulchan Aruch* (135:14).<sup>106</sup> According to Chris Ballard from

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105. Based on a phone conversation with the author, 10/28/2011. Rav Padwa said that charring a Sherry cask before filling with spirit would be “suicidal.” This is also the opinion of Jeff Herschauer from *ScotchHobbyist.com* (in an email): “Scotch distilleries do not make a regular practice of charring before filling their casks. They usually rely on the charring that has already taken place in the production of Bourbon and Sherry [barrels] (heavy charring of the bourbon barrels, and lighter “toasting” of the sherry casks). While charring/toasting is desired at some point in the process in order to activate the oak, they don’t necessarily want such a strong influence from the char in Scotch as can be found in Bourbon/Rye whiskeys.” Another source: “A sherry butt or bourbon barrel will impart considerable aroma and flavor to its first fill... Some distillers feel that the more restrained second fill provides a better balance. A third fill will impart little... If there is a fourth fill, it is likely to go for blending after which, 30 or 40 years on, the inside of the cask might be recharred. The preferred word is ‘rejuvenated.’” (Excerpt from *Michael Jackson’s Complete Guide to Single Malt Scotch*, 6<sup>th</sup> Edition, pg. 63.) Thus we see that casks are generally not recharred until perhaps the fourth fill.

106. See above, Section VII:A:b, for further discussion.

Kentucky Cooperage, the exterior of the barrel definitely does not reach a high temperature during charring and it is certainly possible to place one's hand on the exterior during charring (indicating that the exterior did not reach the degree of *yad soledes bo*).<sup>107</sup> Therefore, charring is not an effective form of *kashering* Sherry casks.

Some distilleries rechar, or “rejuvenate,” used, worn-out Sherry casks, i.e., the interior of the casks are scorched with fire, the burnt part is scraped off, and the barrels are then steamed for a while. This process is also not considered *kashering*. The burning procedure is not considered *libun*, as explained above. With regard to the scraping, a thin layer of the interior of the barrel is removed, possibly considered *k'dei klipah* (similar to *Shulchan Aruch* 135:13 allowing the removal of the *klipah* with a plane). This, however, is effective only if the forbidden *blios* are located solely in the *klipah* (like the opinion of the *Chacham Tzvi* quoted in Section III:A:b). According to the *Shach* and other *Poskim* mentioned earlier (*ibid.*), however, the *blios* are located in the entire thickness of the walls. According to the latter opinion, scraping off a *klipah* (as well as shaving off a *klipah* with a plane) is not an effective form of *kashering*.

Most importantly, after rejuvenating Sherry casks, distillers generally “recharge” the casks with fresh wine: “Rather than retiring casks from the ageing process, another option is to extend a cask’s life-span by recharring... Recharring can take around three to four minutes using gas burners (which also of course partially caramelises wood sugars in the layer underlying the char). Recharred casks can either be filled with spirit, or undergo additional ‘re-seasoning.’ European oak casks, for example, may be filled with sherry to help ‘recreate’ the original influences, prior to filling with spirit.”<sup>108</sup>

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107. Based on an interview conducted by the author in Kentucky Cooperage, Lebanon, Kentucky, 8/18/2011. This fact was confirmed by Rabbi Akiva Padwa, who says that he’s watched the charring process and seen the employees holding the barrels with their bare hands. See also *Lets do the char char*, by Ian Wisnieski (*Whisky Magazine*, Issue 34, 5/10/2003): “[When charring bourbon barrels] a surface level typically 2-4 mm deep essentially becomes pure carbon, with wood sugars partially caramelised in the underlying 2-3 mm, releasing flavour compounds such as vanilla (the majority of the stave, around 20 mm, remains unaffected).” This seems to indicate that the exterior of the vessel did not reach *yad soledes bo* and is thus not affected in the least.

108. Excerpt from *Lets do the char char*, by Ian Wisnieski, *Whisky Magazine*, Issue 34,

In summary: Scotch distillers generally do not char Sherry casks before filling with spirit. Even if some casks were charred, such an act is not considered a valid form of *kashering*. Furthermore, after charring, casks are generally recharged with fresh (non-kosher) wine. Accordingly, one may not rely on charring to permit Sherry casks.

**Summary of Section VIII:** Numerous suggestions have been proposed to permit Sherry-matured Scotch. However, analysis of the suggestions has revealed that they are questionable from a halachic standpoint, and are unable to comfortably permit such Scotch.



## IX. ADDENDUM

### 1) Analysis of discussion in *Shulchan Aruch* 137:4 regarding permissibility of liquids stored in a barrel which previously stored non-kosher wine (relevant to Section III)

The *Gemara* in *Avodah Zara* (33b) states that Ravina allowed Rav Chiya to store beer in a barrel which previously stored non-kosher wine. Many *Poskim* extend this ruling to all liquids other than wine. What is the reasoning behind this leniency?

The *Tur* (137:4) writes: אף ע"פ שאסור ליתן בהם יין בכלי שנשתמש בהן הנכרי – although one may not store kosher wine in a barrel which previously stored non-kosher wine, one may store water, beer, and other drinks in those barrels because “the wine is *pogem* (ruins) them,” i.e., the wine ruins and detracts the flavor of the kosher liquids. The *Taz* (s.k. 7) concurs with this explanation. The *Bach* (s.k. 5) explains that the *Tur* follows the opinion of the *Rosh* (*Avodah Zara perek 2 siman 23*) who writes: ואף על גב דבכוליה משערינן ואין במים ובשכר ששים לבטל [היין] אפ"ה שרי, כי טעם היין הנפלט לתוכו (פגום מעיקרא) [פגום הוא] הוא – מעיקרו (כן גרס הבי"ח) הוא *pogem* (ruins) the liquids as soon as it enters. This explanation is based on the classic dictum that *nosen ta'am l'pgam* is permitted, i.e., a non-kosher food item will not prohibit a kosher mixture if it ruins the mixture upon contact.<sup>109</sup>

The *Shach* (s.k. 15), however, explains this halacha differently: מפני שמבטלין טעם היין – “the other liquids are *mivatel* (nullify) the wine flavor.” This is similar to *Rashi* (*Avodah Zara ad loc. d.h. lo chash*) and the *Ran*

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109. The *Bach* (ibid.) questions why liquids may be stored initially in a non-kosher wine barrel; after all, *nosen ta'am l'pgam* is only an allowance *bidieved* – not *l'chatchila*. The *Bach* therefore explains that Chazal placed a prohibition *l'chatchila* on *nosen ta'am l'pgam* only in a situation where the non-kosher food may occasionally impart a positive flavor. Wine in other liquids, however, always contributes a detrimental flavor; accordingly, Chazal permitted storage of other liquids in non-kosher wine barrels even *l'chatchila*. The *Taz* (ibid.) offers an alternative explanation. Wine barrels absorb non-kosher *blios* through soaking (*kavush*), a lenient form of absorption (as opposed to, for example, cooking non-kosher food in a pot). Such absorption has certain leniencies, one of them being that *nosen ta'am l'pgam* is allowed even *l'chatchila*.

(*Avodah Zara* 12b d.h. *i'ba'i*) who write: דשכרא מבטל ליה לטעמיה דחמרא – “the beer is *mivatel* (nullifies) the wine flavor.” The *Bach* (ibid.) points out that *Rashi*’s explanation appears to be the opposite of the *Rosh* and *Tur*: According to *Rashi* the wine is nullified in the beer, as opposed to the *Rosh* and *Tur* who are of the opinion that the wine ruins the beer.

There appears to be a practical difference between these two opinions: May a liquid be stored in a non-kosher wine barrel if it is not ruined when mixed with wine? For example, Scotch stored in a wine barrel does not get ruined by the wine – in fact, it may actually be enhanced by the wine. May it be stored in such a barrel? According to the *Taz*, this leniency is based on *nosen ta'am l'pgam*; therefore, only liquids which are ruined when mixed with wine may be stored in a barrel which previously stored non-kosher wine. Consequently, Scotch, which is not ruined when mixed with wine absorptions, will be prohibited when stored in a non-kosher wine barrel. According to the *Shach*, however, this leniency appears to be based on *bitul* – nullification. Accordingly, it is possible that any liquid (other than wine) may be stored in a non-kosher wine barrel – even if the liquid is not ruined – because it nullifies the wine flavor. As such, Scotch stored in a wine barrel would be permitted because the wine flavor is nullified. However, the *Shach*’s position is not clear, as will be explained below.

The *Rashba* (*Toras Habayis Hakatzer*, 5:6 pg. 66b) takes a third approach. He writes: דפליטתן מועטת ואי אפשר לבא לידי נתינת טעם – “the volume of *blios* that emerge from the walls of the barrel is quite minimal and it is impossible for those *blios* to give flavor to the liquid.” (This is commonly referred to as the rule of *tashmisho b'shefa* – see *Shulchan Aruch* 122:5.<sup>110</sup> See also *Bach* ibid. who quotes the *Rosh* as being of the opinion that there is not enough liquid to nullify the wine *blios* – unlike the *Rashba*.)

The *Ran* (ibid.) quotes a fourth opinion in the name of *Acheirim*: ואחרים פירשו דשכר נמי מיקלא קלא לחמרא משום מרריתא דכשותא דאית ביה, והראשון – “some say that the bitterness (sharp flavor) of the beer ruins the wine.”<sup>111</sup>

110. The *Rashba* is of the opinion that *tashmisho b'shefa* is permissible even *l'hatchila*; see *Ran* (*Avodah Zara* 12b d.h. *i'ba'i*) who quotes *Rabbeinu Yonah* as subscribing to the same position. See *Taz* (99:15) for further analysis of *Rashba*’s position.

111. It’s curious that the *Bach* (s.k. 5) at first understands *Rashi* to have a different opinion than the *Rashba* (see *Shach* s.k. 17), but in a later edition (ibid. *Kuntres Acharon*) understands *Rashi* to be of the same opinion as the *Rashba*, that a large volume of other

The *Bach* suggests that there is a practical difference between the explanations of *Rashba* and *Acheirim*: may liquids other than beer (the scenario described in the *Gemara* above) be stored in a wine barrel? According to *Rashba* it is permissible to store other liquids because the large volume of liquid will nullify the wine *blios*, whereas according to *Acheirim* this is prohibited because beer is unique in that it ruins the wine flavor. He quotes *Tosfos* (*Avodah Zara* 33b *d.h. shara*) as being lenient with other liquids, thus indicating that *Tosfos'* view is not like the *Acheirim*.<sup>112</sup> The *Rambam* (*Hilchos Ma'achalos Asuros* 11:16) codifies this halacha by stating that one may store beer and brine in a barrel that previously stored non-kosher wine. He does not state that *all* liquids (other than wine) may be stored, indicating that he argues on the other *Poskim* and disallows other liquids to be stored in a non-kosher wine barrel.<sup>113</sup>

Thus, it appears that we have many explanations for this halacha: 1) *Rosh*, *Tur* and *Taz*: the wine is pogem other liquids when it comes in contact with them. 2) *Rashi*, *Ran* and *Shach*: the other liquids are *mivatel* (nullify) the wine flavor. 3) *Rashba*: the minute volume of wine is nullified in the larger volume of liquids. 4) *Acheirim* in the *Ran*: the bitterness of the beer ruins the wine. As mentioned above, a practical ramification of this dispute is whether liquids (other than wine) may be stored in a barrel

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liquids will surely nullify the minute amount of wine. Alternatively, the *Bach* suggests that *Rashi* means like the *Acheirim*, that the sharp beer flavor ruins the wine. Both latter suggestions differ with the simple understanding of *Rashi*, as mentioned above.

See also *K'nesses Hag'dolah* (*Hagahos Tur* s.k. 8) who initially understands *Rashi* as agreeing with the *Rashba* and subsequently suggests that *Rashi* sides with *Acheirim*.

112. It's interesting to note that the *Bach* writes that the halacha doesn't follow the reasoning of the *Rashba* because in *Tur* and *Shulchan Aruch siman* 122, the *Poskim* (see *Bach* 122:5, *Shach* s.k. 3) argue on the *Rashba* and are of the opinion that *tashmisho b'shefa* is forbidden. (See below, footnote 117.) The *Shach* (137:17) argues that although the halacha does not follow the *Rashba* that *tashmisho b'shefa* is permissible, *b'dieved* one may be lenient like him, and our case certainly has *shishim* because only the *klipah* was affected. The *Taz* (s.k. 8) seconds this idea and writes that we may rely on the *Rashba* with regard to *yayin nesech*.

113. See *K'nesses Hag'dolah* (*Hagahos Beis Yosef* s.k. 22). The *Rosh* (*Avodah Zara perek* 2 *siman* 23) writes that water may also be stored in such a barrel, seemingly indicating that all liquids (other than wine) may be stored in the barrel, similar to the position of *Rashba* and *Tosfos*.

which previously stored non-kosher wine. The *Tur* (137:4) and *Shulchan Aruch* (ibid.) rule that it is permissible to store all liquids (other than wine) in a barrel which previously stored non-kosher wine, in accordance with the position of *Rashba* and *Tosfos*.

Let us return to the *Shach's* explanation. In 137:15, the *Shach* apparently sides with *Rashi's* opinion that other liquids nullify the wine flavor. In a later comment (137:17) the *Shach* quotes *Rashi* and understands that he is of the same opinion as the *Tur* and *Rosh*, that the wine ruins other liquids on contact. In truth, this understanding is quite difficult; *Rashi* indicates that the beer ruins the taste of the wine, whereas the *Tur* indicates that the wine ruins other liquids. Does beer ruin wine or vice versa? It is also difficult to understand how the *Shach* equates the *Tur* and *Rosh*. The *Rosh* writes clearly that the *blios* are “פגום הוא מעיקרא” indicating that the wine is ruined by the liquids (unlike the *Bach's* version of the *Rosh*, that the *blios* are “פגום מעיקרו הוא”), whereas the *Tur* writes the opposite: that the wine ruins other liquids.<sup>114</sup> Apparently, the *Shach* is of the opinion that both are true – first the beer ruins the wine *blios*, and then those ruined *blios* ruin the liquids into which they get mixed.

Accordingly, it comes out that the *Shach s.k.* 15 – who seems to quote *Rashi* that other liquids nullify the wine – really understands that other liquids may be stored in wine barrels because it is *nosen ta'am l'pgam* – like the *Taz*. Thus it appears that both the *Taz* and *Shach* understand that one may store other liquids in a wine barrel based on *nosen ta'am l'pgam*. Consequently, only liquids which are ruined when mixed with wine may be stored in a barrel which previously stored non-kosher wine. As a result, Scotch stored in such a barrel will be prohibited because it is not ruined when mixed with wine.

This is further supported by careful analysis of *Ba'er Hataiv* (137:7). The *Shulchan Aruch* (137:4) writes that if any liquid (other than wine) is stored in a barrel which previously stored non-kosher wine, the liquid is permitted. The *Taz* (137:7) comments that this is true even if other liquids were stored in the wine barrel longer than 24 hours. Although such a length of time generally allows transfer of *blios* (*kavush*), thus allowing non-kosher wine *blios* into the liquid stored in the barrel, the liquid is

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114. The *Tur* himself, in an earlier location (134:5), appears to understand that the wine ruins the water – unlike what he writes later (137:4) that the wine ruins the water; see *Igros Moshe* (YD I siman 62 d.h. v'heenei).

nevertheless permitted because the wine ruins them and is *nosen ta'am l'pgam*. The *Ba'er Haitaiv* (137:7) apparently understood initially that the *Shach* would argue on the *Taz* because the *Shach* in *s.k.* 15 understands that the leniency of the *Shulchan Aruch* to permit other liquids stored in a wine barrel is based on *bitul* – not *nosen ta'am l'pgam*; accordingly, the liquid is permissible only if its volume is sufficient to nullify the wine *blios*. Since the *Shach* (137:9, 135:33) is of the opinion that wine stored in a barrel longer than 24 hours imparts *blios* into the entire thickness of the barrel, the volume necessary for *bitul* is generally not present. Therefore, other liquids that are stored in a barrel which previously stored wine are permitted only if stored less than 24 hours. If, however, they are stored longer than 24 hours, the large volume of wine *blios* cannot be nullified, unlike the *Taz's* position.

However, the *Ba'er Haitaiv* suggests that the *Shach* agrees to the *Taz* that other liquids are permitted even if they are stored in the wine barrel 24 hours, because he agrees to the *Taz* that wine *blios* in other liquids are *nosen ta'am l'pgam*.<sup>115</sup> He concludes that the *Shach* (137:17) himself supports this theory because he understands the *Rashba* as being of this opinion as well, that other liquids in a wine barrel are permitted even if they remain for 24 hours.

The *Shach* concludes that although the *Rashba's* leniency is based on *tashmisho b'shefa* and the halacha does not follow his opinion (see footnote 112), *bdieved* we may be lenient like him, and our case certainly has *shishim* because only the *klipah* was affected. Although the *Shach* earlier (137:9, 135:33) writes clearly that a wine barrel that stored wine for longer than 24 hours has *blios* in the entire thickness of the barrels – not just the *klipah*, the *Shach* explained (*ibid.*) that when the *Shulchan Aruch* writes that only a *klipah* is affected (see *Shulchan Aruch* 135:13 and 137:1) he is referring to a case where it is uncertain if non-kosher wine was stored for 24 hours. So too, *Shulchan Aruch* 137:4 refers to a case where it is uncertain if the barrel stored wine for 24 hours – similar to the other cases in the *Shulchan Aruch*. (The *Shach* apparently feels no need to

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115. Although the *Shach* (134:21, *Nekudos Hakesef* on *Taz* 114:4) is of the opinion that wine in other liquids is *lshvach* – thus requiring *shishim* – that is only when the wine is *bi'en*; wine *blios*, on the other hand, are considered *l'pgam* when mixed with other liquids (see *Gr"a* 103:16). This, however, may not be true with all liquids. As explained above (Sec. III:A:a), wine *blios* mixed with Scotch may be considered *lshvach*.

speak this out again because he just explained this in *s.k.* 9.)

To summarize, the *Ba'èr Haitaiv* suggests that the *Shach* agrees with the *Taz* that other liquids are permitted when stored in a wine barrel even if stored longer than 24 hours because it is *pogem* the liquids. He writes that this is true even if the non-kosher wine was initially stored in the barrel longer than 24 hours. Thus it appears that the *Ba'èr Haitaiv* understands that the *Shach* agrees to the *Taz* that wine *blios* ruin other liquids. Although in *s.k.* 15 the *Shach* seems to suggest otherwise, the *Shach's* true position is that liquids stored in a wine barrel are permitted based on *nosen ta'am l'pgam*.

Thus it appears that according to both the *Taz* and *Shach*, liquids stored in a wine barrel are permitted only if they are ruined by wine *blios*. Since Scotch stored in wine barrels is enhanced by the wine, the above leniency does not apply and the forbidden *blios* require *bitul*, similar to kosher wine stored in a non-kosher wine barrel.

## 2) Position of the *Shach* vis-à-vis *miluy v'iruy* (relevant to footnote 25)

The *Shach* (135:33) discusses two halachos which, at first glance, seem to be related. The first issue is whether barrels that stored wine longer than 24 hours may be *kashered* by removing a *klipah*, and the second is whether such barrels may be *kashered* with *miluy v'iruy*. The two issues seem to hinge on one issue: are the *blios* located only in the *klipah* or have they been absorbed in the entire thickness of the walls. If the *blios* are located only in the *klipah*, then removing the *klipah* is sufficient, and *miluy v'iruy* will be effective. If, however, the *blios* are absorbed in the entire barrel – not just the *klipah* – then removing the *klipah* is not sufficient, and *miluy v'iruy* is likewise not strong enough to remove *blios* past the *klipah*. Accordingly, if one is lenient regarding the latter halacha (i.e., that *miluy v'iruy* is effective to *kasher* wine barrels), one should be lenient with regard to the first halacha as well (i.e., that the *blios* are located only in the *klipah*).<sup>116</sup>

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116. This is the position of the *G'vul Yehuda* (*OC siman* 5). He maintains that since the *Shach* writes *tzarich iyun* with regard to *miluy v'iruy*, the halacha follows the view of the *Poskim* who argue on the *Shach* (as recorded in *Pischei T'shuvah* 135:2) and allow *miluy v'iruy* even in a situation where wine was definitely stored in the barrel 24 hours. Because

Careful analysis of the *Shach*, however, reveals that these two issues are unrelated. Regarding the issue of *k'dei klipah*, the *Shach* maintains that a barrel which stored wine longer than 24 hours absorbs *blios* more than the *klipah*, and removing the *klipah* is not effective. [He even repeats this halacha in a later comment (137:9).] Regarding *miluy v'iruy*, however, the *Shach* appears to be unsure, and is willing to accept that *miluy v'iruy* is effective even if the barrel definitely stored wine longer than 24 hours. [He concludes that the latter halacha is “*tzarich iyun*” (the matter requires further research).] This appears to be contradictory; at first glance, *miluy v'iruy* appears to be effective only on the *klipah* – how then can *miluy v'iruy* be effective if *blios* are absorbed past the *klipah*? Apparently, the *Shach* is of the opinion that *miluy v'iruy* is effective even when *blios* are located in the entire thickness of the wall. This is in fact the opinion of many *Rishonim*, as will be explained.

*Shulchan Aruch* (135:13) rules that removing a *klipah* of a wine barrel is an effective method of *kashering* a non-kosher wine barrel. This follows the opinion of *Tosfos* (*Avodah Zara* 74b *d.h. darash*), *Rosh* (*T'shuvos* 19:4), and *Rabbeinu Yonah* (quoted in the *Rashba*, *Toras Habayis Ha'aruch* 66b). Other *Poskim*, however, argue that removing the *klipah* is ineffective. This is the position of the *Ran* (*Avodah Zara* 12b *d.h. i'ba'i*) and *Ramban* (*Avodah*

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this halacha is dependant on the earlier question of *kli* vs. *klipah*, he continues, the halacha does not follow the *Shach* in the first question as well, and only the *klipah* is affected.

The *G'vul Yehuda* brings a proof to his position: The *Shulchan Aruch* states in *Hilchos Pesach* (OC 451:21) that *miluy v'iruy* is an effective method of *kashering* a barrel used for *sheichar* (*chometz* beer) even if the *sheichar* was stored in the barrel for many days (as pointed out by the *Mishnah Brurah*, ad loc.). The fact that *miluy v'iruy* is effective on the *chometz* barrel seemingly indicates that only a *klipah* was affected – even though the barrel stored *chometz* for many days, contrary to the *Shach*'s position that the entire *kli* is affected. However, the *Shach* himself (135:33) seems to counter this proof with two approaches: 1) *Miluy v'iruy* is effective on a beer barrel only in a scenario of *aino ben yomo* (this approach is quoted in *Mishnah Brurah* 451:117); 2) *Chometz* has a unique leniency because it is *heteira bala* – the absorption happened before Pesach began, before the *blios* were prohibited (this approach is alluded to in *Mishnah Brurah* s.k. 118). Since both of these scenarios (i.e., *aino ben yomo* and *heteira bala*) are not as stringent as standard *issurim*, a lenient form of *kashering* (e.g., *miluy v'iruy*) is allowed. Accordingly, there is no proof from this halacha against the *Shach*, for the *Shach* himself agrees by *chometz* that *miluy v'iruy* is effective even though the entire *kli* is affected.

Zara 33b end of *d.h. v'hai*). What is the source for this argument?

The *Ran* (*ibid.*) records the following discussion: The *Rashba* deduces from the *Gemara* in *Avodah Zara* (33b) that water used for *miluy v'iruy* may be consumed. Why is this not a concern of *bitul issur l'chatchila*? After all, the water used for *miluy v'iruy* was utilized to nullify forbidden wine *blios*; if so, this should be considered intentional nullification? *Rabbeinu Yonah* explains that since the wine absorptions were minimal, unable to impart flavor to the barrel contents, nullification of such *blios* is not subject to the general rules of *bitul issur l'chatchila*. *Rabbeinu Yonah* continues that this is proof to the ruling of *Tosfos* that removing the *klipah* of a wine barrel is sufficient; since the wine absorptions were minimal, removing the *klipah* successfully eradicates all forbidden *blios*.<sup>117</sup>

The *Ran* (*ibid.*) counters that this is logical only if *miluy v'iruy* works similar to *hagalah*, i.e., that the forbidden *blios* are purged from the walls into the contents of the pot and nullified. If that were the case, *miluy v'iruy* would be subject to the same limitations as *hagalah* (e.g., *bitul issur l'chatchila*), and the fact that *miluy v'iruy* is not considered *bitul issur l'chatchila* is proof that the *blios* only occupy the *klipah*. However, this is not the case. The mere fact that *miluy v'iruy* is performed with cold water indicates that it cannot possibly purge *blios*; only hot water can purge *blios*. It must be that *miluy v'iruy* works with a different methodology: *miluy v'iruy* ruins the wine *blios* and destroys their flavor without actually purging the *blios*.<sup>118</sup> Such a mechanism is not subject to the general rules

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117. According to some *Poskim*, this is also the source for the law of “*tashmisho b'shefa* – its general usage is plentiful,” i.e., one may use a large vessel which absorbed a minute volume of non-kosher *blios* without prior *kashering* because the minute volume of non-kosher *blios* is unable to impart taste to the large contents of the pot. This is the opinion of the *Rashba* (*Toras Habayis Ha'aruch* 66b). Other *Poskim* argue and forbid use without *kashering*; see *Shulchan Aruch* (99:7) and other *Poskim* (*ad loc.*). There appears to be a contradiction in the *Tur* in this regard: In one location (135:13) the *Tur* sides with the *Rashba* that removing the *klipah* is effective, whereas earlier (122:5) he argues with the *Rashba* and rules that *tashmisho b'shefa* is prohibited, presumably siding with the *Ran* and *Ramban* that *blios* are assumed to fill the entire thickness of the vessel walls. If so, how does removal of the *klipah* obliterate all the forbidden *blios*? See *Taz* (99:15) who addresses this issue.

118. This appears to be based on the concept of *nosen ta'am l'pgam*; see *T'shuvos HaRashba* (Vol. I *siman* 633) who quotes such an approach.



of *bitul issur l'chatchila*. Accordingly, it is quite possible that the wine *blios* actually fill the entire thickness of the walls, and accordingly, removing a *klipah* is ineffective. The *Ramban* (*Avodah Zara* 33b end of *d.h. v'hai*) is also of the opinion that removing the *klipah* is insufficient, and the *Bach* (135:22) explains that the *Ramban* is of the opinion that *miluy v'iruy* purges *blios* even deeper than the *klipah*.<sup>119</sup>

Thus, it appears that both the *Ran* and *Ramban* understand that *miluy v'iruy* is effective even if *blios* are contained in the entire thickness of the walls. Although the *Shulchan Aruch* rules that removing the *klipah* is effective, the *Shach* is of the opinion that this is true only if it is uncertain that wine was stored for 24 hours; if it was definitely stored longer than 24 hours, removing the *klipah* is ineffective. Yet, the *Shach* maintains that although removing the *klipah* is ineffective, *miluy v'iruy* may still be effective, in accordance with the position of the *Ran* and *Ramban* that *miluy v'iruy* is effective even though the entire thickness of the walls contain *blios*, either because *miluy v'iruy* burns *blios* – not purges them, or because *miluy v'iruy* has the ability to purge *blios* even past the *klipah*.<sup>120</sup>

Accordingly, we may rule that *miluy v'iruy* is an effective method of *kashering* wine barrels (even those that stored wine longer than 24 hours) and still rule like the *Shach* that such barrels contain *blios* past the *klipah*, filling the entire thickness of the barrels.

### 3) Position of the *Taz* with regard to *kli* vs. *klipah* (relevant to footnote 26)

As mentioned above, Sec. III:A:b, the *Poskim* disagree whether *blios* of non-kosher wine are absorbed through the entire *kli* or only in the *klipah*. The position of the *Taz* in this matter is unclear. When discussing the laws of *kavush* (soaking) in general, the *Taz* (105:1) begins with a quote of the *Issur V'Heter* that *kavush* affects the entire thickness of the walls. The *Issur V'Heter* asks on himself that this seems to be contradicted

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119. The *Bach* implies that these *Poskim* are of the opinion that *miluy v'iruy* is indeed able to purge *blios* past the *klipah* – unlike the *Ran's* explanation that *miluy v'iruy* only burns and destroys. This explanation can also be found in the *T'shuvos HaRashba* (ibid.).

120. The *Shach* (135:33) concludes that *miluy v'iruy* is effective only with regard to *yayin nesech*; vessels prohibited by other *issurim* may not be *kashered* with this process (see above, footnote 116).

from *Hilchos Yayin Nesech* where we see that removing the *klipah* is sufficient, indicating that *blios* are stored only in the *klipah*. He explains that although *kavush* generally affects the entire thickness of the walls, Chazal were lenient with regard to *yayin nesech*. The *Taz* points out that the *Rashba* seems to argue on this theory because the *Rashba* is of the opinion that *kavush* affects only the *klipah* and his source is *Hilchos Yayin Nesech*. The *Rashba* obviously understands that *yayin nesech* is not an exception to the rule, and all *issurim* affect only a *klipah*.

The *Taz* continues that in certain situations, non-kosher liquids stored in a vessel 24 hours (*kavush*) will prohibit the vessel, which will subsequently prohibit food stored inside such a pot. This situation applies only to *yayin nesech* which remains potent even after 24 hours. If, however, the pot contains *blios* of other prohibitions they will not affect the food stored inside since the prohibited *blios* become stale (*aino ben yomo*) before they have the ability to affect the food stored inside. The *Taz* concludes, לפי הנראה דאין לאסור בדיעבד מה שנשרה או נתבשל בכלי ששרה בו, וז"ל – “it appears that food items stored or cooked in a vessel that previously stored a forbidden food item longer than 24 hours, will not be prohibited *b'dieved* (*ex-post-facto*).” The words או נתבשל – or cooked, are difficult to understand. If one cooks kosher food in a pot previously used for forbidden food (other than wine) within 24 hours, why should the food be prohibited only *l'hatchila*? What does he mean that it is permitted because it is *nosen ta'am l'pgam*? If the cooking takes place within 24 hours of the removal of the non-kosher food, the *blios* are still fresh (*ben yomo*); why would food subsequently cooked in the pot be permitted *b'dieved*?

There appears to be two approaches: 1) The *Pri Migadim* (ad loc.) explains that the *Taz* is referring to a scenario where one cooked kosher food after 24 hours have elapsed; if one cooks within 24 hours then the food would, in fact, be prohibited. (He explains that the novelty of this halacha is that *kavush* is not worse than cooking, as could be understood from the opinion of the *Issur V'Heter* that *kavush* can prohibit food even after 24 hours. The *Taz* therefore tells us that *kavush* cannot prohibit after 24 hours.) According to this explanation the *Taz* seems to conclude that *kavush* affects the whole *kli* – not just the *klipah* – because if only the *klipah* was affected (as per the opinion of the *Rashba*) why would it prohibit food cooked within 24 hours – there is certainly *shishim* against the *klipah*? It must be that the *Taz* is concluding like the opinion of the

*Issur V'Heter* that *kavush* affects the whole *kli*. In fact, this is how the *Taz* writes in an earlier comment (93:2) (with regard to *kli cheres yoshon* – a used earthenware vessel).

2) The *Pri Migadim* (ibid.) quotes the *Orach Mishor* as having another approach. He explains (based on the hand-written manuscript of the *Taz*) that the case of cooking is *within* 24 hours and it is permitted because the *blios* only entered the *klipah*, like the position of the *Rashba*. The *Taz* mentioned the leniency of *nosen ta'am l'pgam* only to explain why *kavush* will not prohibit the kosher food. (The gloss of the *Shulchan Aruch* actually brings down such an approach from the *Hagahos HaTaz*.) According to this approach the *Taz's* conclusion is that *kavush* only affects a *klipah* (not like he seems to suggest in his earlier comment at 93:2).

What is the *Taz's* opinion if *stam yeinam* was stored in a barrel longer than 24 hours? This appears to depend on the above explanations. According to the *Orach Mishor*, the conclusion of the *Taz* is that a vessel never absorbs more than a *klipah*; accordingly, the *kli* will absorb only a *klipah* of *stam yeinam*, like the simple reading of the *Shulchan Aruch* (135:13). According to the *Pri Migadim*, however, the conclusion of the *Taz* is that vessels generally absorb the entire thickness of the walls. Why, then, does the *Shulchan Aruch* rule that *stam yeinam* is only absorbed a *klipah*? There are two approaches: 1) There is a special leniency with regard to *stam yeinam* that applies even if the wine is stored longer than 24 hours. 2) The *Shulchan Aruch* is lenient only if it is uncertain if wine was stored more than 24 hours; if it was definitely stored longer than 24 hours, the entire vessel is affected. Accordingly, the *Taz's* position is unclear.

The *Chikrei Lev* (ibid.) and the *G'vul Yehuda* (OC *siman* 5) write that the *Taz* (105:1) is of the opinion that even if *yayin nesech* was stored in a barrel longer than 24 hours only the *klipah* is prohibited. It is likely that they understand the *Taz* like the *Orach Mishor* that the *Taz's* conclusion is like the *Rashba* that *kavush* never affects more than the *klipah*. According to this explanation, the *Taz's* opinion is, in effect, halachically inconsequential, because the *Poskim* clearly write with regard to other *issurim* that *kavush* affects the entire *kli*.

It is possible, however, that they understood the *Taz* like the *Pri Migadim*, that *kavush* generally affects the entire *kli*, and they understood that there is a special leniency with *stam yeinam* that only a *klipah* is affected.

Thus it appears that the *Taz's* opinion is unclear and it is possible that

the *Taz* agrees with the *Shach* that the entire *kli* may be affected.

#### 4) *Rishonim* on *Kli* vs. *Klipah* (relevant to Section III:A:b)

Non-kosher wine stored in a barrel for at least 24 hours imparts non-kosher wine *blios* into the walls. How deep are the *blios* absorbed? Do they enter the entire thickness of the walls of the *kli* or only the thickness of a *klipah*? This question has two halachic ramifications: Is removing the *klipah* an effective method of *kashering* the barrel? If the *blios* merely penetrated the *klipah*, this is indeed effective; if the *blios* entered the entire walls of the *kli* then this is ineffective. Similarly, if kosher wine was subsequently stored in the barrel before *kashering*, is the wine permitted? This would depend if the nullification ratio is measured relative to the *klipah* or to the entire thickness of the walls. If *blios* are located only in the *klipah* then the kosher wine is assumed to be at least sixty times the volume of non-kosher wine *blios*; if the *blios* are located in the entire *kli* then the volume of kosher wine may not even be six times – let alone sixty – the volume of non-kosher wine *blios*. This question of how deep the *blios* penetrate appears to be a dispute amongst the *Rishonim*.

Many *Rishonim* (*Tosfos*, *Avodah Zara* 74b; *Rosh*, *T'shuvos* 19:4; and *Rabbeinu Yonah*, cited in *Rashba*, *Toras Habayis Ha'aruch* 66b) rule that removing a *klipah* of a wine barrel is an effective method of *kashering* a non-kosher wine barrel. What is the source for this ruling?

Two sources are quoted. *Tosfos* (ibid.) proves the above halacha from the fact that *iruy kli rishon* (pouring hot water from a scalding pot) is an effective manner of *kashering* wine barrels (as stated in *Avodah Zara* 74b). Now, *Tosfos* is of the opinion that *iruy kli rishon* affects only the *klipah* (see below for other opinions), and nevertheless, is effective to remove all wine *blios*. This proves that the forbidden *blios* are located solely in the *klipah*. Therefore, removing the *klipah* effectively removes all forbidden *blios*.

*Rabbeinu Yonah* (ibid.) proves this same halacha from a different source. The *Gemara* (*Avodah Zara* 33a) rules that *miluy v'iruy* is an effective means of *kashering* non-kosher wine barrels, and this is indeed the ruling of *Shulchan Aruch* (135:7). *Rabbeinu Yonah* understands that *miluy v'iruy* is unable to purge *blios* deeper than the *klipah*, and nevertheless, is an effective method of *kashering*. Accordingly, removing the *klipah* is

sufficient to remove all forbidden *blios*.<sup>121</sup>

The simple reading of these *Rishonim* indicates that the above leniency applies even if non-kosher wine was stored in the barrel long-term (see *Bach* 137:1 and *Shach* 137:9). Furthermore, the fact that these *Poskim* were discussing barrels generally used for long-term storage seems to imply that only a *klipah* is affected even if it is known that the wine was stored longer than 24 hours in the barrel (*Shach* 137:9 and 17). This, however, may not be correct, as will be explained.

Other *Rishonim* argue that removing the *klipah* does not *kasher* a non-kosher wine barrel, because the *blios* are absorbed in the entire thickness of the barrel walls. This is the position of the *Ramban* (*Avodah Zara* 33b end of *d.h. v'hai*) and *Ran* (*Avodah Zara* 12b *d.h. i'ba'i*).<sup>122</sup> How do they counter the above sources which seem to indicate that *blios* are located solely in the *klipah*? With regard to *Tosfos'* proof from *iruy kli rishon* one can counter that *iruy kli rishon* does not affect only the *klipah* – it actually has the same qualifications as a standard *kli rishon* (a scalding pot of water) and is able to purge *blios* from the entire thickness of the barrels (in line with the first position quoted in *Tosfos* *ibid.*). Alternatively, these *Poskim* side with the *Rashbam* (quoted in *Tosfos* *ibid.*) who rules that *iruy kli rishon* has the status of a *kli sheini* and is generally unable to *kasher* utensils. The fact that *iruy kli rishon* is able to purge *blios* from the

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121. Interestingly enough, the *Ran* (*Avodah Zara* 12b *d.h. i'ba'i*) quotes *Rabbeinu Yonah* a bit differently: *Rabbeinu Yonah* understands that the water used for the *miluy v'iruy* process may be consumed even though *blios* of non-kosher wine were nullified in it. Why is this not a concern of *bitul issur l'chatchila*? After all, the water used for *miluy v'iruy* was utilized to nullify the forbidden wine *blios*; if so, this should be considered intentional nullification. *Rabbeinu Yonah* explains that since the wine absorptions were minimal (and thus unable to impart flavor to the barrel contents) nullification of such *blios* is not subject to the general rules of *bitul issur l'chatchila*. *Rabbeinu Yonah* concludes that this is proof to the ruling of *Tosfos* that removing the *klipah* of a wine barrel is sufficient; since the wine absorptions were minimal, removing the *klipah* successfully eradicates all forbidden *blios*.

122. See *Beis Yosef* (135:13) who quotes the *Ran's* position as being inconclusive. See, also, *T'shuvos HaRashba Hamiyuchosos L'Ramban* (*siman* 167) who states explicitly that wine *blios* are absorbed only *kdei klipah*, seemingly contradicting the *Ramban* quoted above. This may be an additional proof that this *t'shuvah* was in fact authored by the *Rashba* – not the *Ramban*.

entire thickness of wine barrels is only because the forbidden *blios* were absorbed through *kavush*. Since *iruy kli rishon* is effective on the entire thickness of the vessel (for either of the reasons given above), no proof can be brought to the effectiveness of removing the *klipah*.

Regarding the proof from *miluy v'iruy*, these *Poskim* understand that *miluy v'iruy* is effective even if *blios* fill the entire thickness of the walls. This is either because *miluy v'iruy* burns *blios* – not purges them (as suggested by *Ran* *ibid.*) – or because *miluy v'iruy* has the ability to purge *blios* even past the *klipah* (see *Bach* 135:22 and *T'shuvos HaRashba*, Vol. I *siman* 633).

According to the opinion that *blios* are located solely in the *klipah* and removal of the *klipah* is sufficient to remove the forbidden *blios*, it follows that kosher wine stored in a non-kosher barrel prior to removal of the *klipah* is permitted. As explained above, the contents of a standard vessel are assumed to be at least sixty times the volume of the *klipah*, and the forbidden wine *blios* located in the *klipah* are therefore automatically nullified. Indeed, this is the position of the *Rashba*. The *Rashba* (*Toras Habayis Hakatzer* 5:6, 66b) rules that liquid stored in a non-kosher wine barrel is permitted if the contents are at least six times the volume of the *klipah*. This is also the position of the *Rosh*. The *Rosh* (*T'shuvos* 19:4) writes that kosher wine stored in a non-kosher wine flask may be consumed because the kosher wine nullifies the non-kosher wine *blios* located in the *klipah*. The *Rosh* apparently sides with the opinion of the *Rashba*, stated above, that forbidden *blios* are located solely in the *klipah*.

The *Beis Yosef* (137:1) asks that this ruling seems to be refuted by a *Mishnah*. The *Mishnah* (*Avodah Zara* 29b) states that kosher wine which was stored in a non-kosher wine flask may not be consumed due to the absorption of non-kosher wine *blios*. How can this be reconciled with the *Rashba* and *Rosh*'s opinion that the forbidden *blios* are located solely in the *klipah* and are therefore assumed to be nullified?

There are a number of approaches to answer this question. The *Beis Yosef* (*ibid.*) answers that the *Mishnah* is referring to a case where the flask is not full of kosher wine; thus, the volume of kosher wine is not great enough to nullify the non-kosher wine *blios*. The *Rosh*, on the other hand, is referring to a full flask; accordingly, the volume necessary for nullification is indeed present.

The *Bach* (137:1) points out that the simple understanding of the *Mishnah* is that the flask is filled with kosher wine. Why, then, is the

forbidden wine not nullified? The *Bach* offers an alternative explanation: The *Rosh* is of the opinion that wine *blios* are absorbed *k'dei klipah* only when wine is stored for a short period of time; if, however, wine is stored for an extended period of time, the wine is absorbed in the entire thickness of the walls. Accordingly, the *Mishnah* refers to non-kosher wine stored for a lengthy time, thus imparting a large volume of non-kosher wine *blios* in the walls. When kosher wine is subsequently stored in the barrel, the large volume of *blios* located in the walls cannot be nullified. The *Rosh*, however, refers to short-term storage, and the minimal volume of *blios* located in the *klipah* is therefore nullified in the kosher wine.

The *Bach* continues that this is apparently the position of *Rabbeinu Tam* as well. *Rabbeinu Tam* (quoted in *Tosfos, Avodah Zara 73a d.h. yayin*) posits that although *yayin nesech* may never be nullified when mixed with kosher wine (even when mixed with *shishim*; see *Mishnah, Avodah Zara 73a*), *stam yeinam* is nullified in *shishim*. If so, asks the *Bach*, why does the *Mishnah* (*Avodah Zara 29b*) prohibit kosher wine stored in a non-kosher wine flask – let the non-kosher wine *blios* be nullified in the kosher wine? It must be that the *Mishnah* refers to non-kosher wine stored long-term. Such storage imparts *blios* in the entire thickness of the walls, not allowing them to be nullified.

Thus it appears that the *Rosh* and *Rabbeinu Tam* are of the opinion that short-term storage of non-kosher wine imparts *blios* only in the *klipah* whereas long-term storage imparts *blios* in the entire thickness of the barrel walls.<sup>123</sup> This appears to also be the opinion of *Rashba* and

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123. The *Shach* (137:9), however, suggests parenthetically that the above deduction is not necessarily true. Perhaps the *Rosh* and *Rabbeinu Tam* are of the opinion that non-kosher wine imparts *blios* only in the *klipah*. Why, then, does the *Mishnah* imply that non-kosher wine *blios* are unable to be nullified? The *Shach* explains that the author of the *Mishnah* is of the opinion that non-kosher wine mixed with kosher wine may never be nullified (*min b'mino lo batul*). Alternatively, the *Mishnah* refers only to an era where idol worship was prevalent; in such times wine could not be nullified. The *Rosh*, however, refers to contemporary times where idol worship was less prevalent and, as a result, *stam yeinam* has a more lenient status and is subject to nullification. According to this approach, it is possible that the *Rosh* and *Rabbeinu Tam* side with the *Rashba* and other *Poskim* that non-kosher wine imparts *blios* only in the *klipah*. [It should be noted that in a later comment (137:17) the *Shach* seems to side with the *Beis Yosef*'s interpretation that the barrel was not full. Another note of interest: The *Bach* himself subsequently suggests the first explanation

other *Poskim*, mentioned above, who rule that removal of the *klipah* is an effective method of removing forbidden *blios*. These *Poskim* must understand that the *Mishnah's* prohibition of wine stored in a non-kosher wine barrel refers to wine stored long-term; such storage imparts *blios* through the entire thickness of the walls, a volume that cannot be nullified by the contents of the barrel.

The *Bach's* explanation resolves an additional difficulty. There appears to be a seeming contradiction in the *Rosh*: The *Rosh*, quoted above (*T'shuvos* 19:4), states explicitly that *shishim* is present against the wine *blios* located in the *klipah*, whereas elsewhere (*Avodah Zara* 2:23) he writes explicitly that *blios* fill the entire thickness of the walls and the contents do not contain *shishim* against the non-kosher wine *blios*.<sup>124</sup> Are *blios* located solely in the *klipah* or do they fill the entire thickness of the walls? According to the *Bach's* explanation, there is no contradiction. The latter comment of the *Rosh* (in *Avodah Zara*) refers to short-term storage of wine which imparts *blios* only in the *klipah*; as such, the contents surely contain *shishim* against the *klipah*. In *T'shuvos*, however, the *Rosh* refers to long-term wine storage which imparts *blios* into the entire thickness of the wall. In such a case, the contents of a barrel are not *shishim* against such a large volume of *blios*.<sup>125</sup>

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of the *Shach*, mentioned above, and appears to prefer this explanation. However, the *Shach* quotes only the first explanation of the *Bach*, seemingly implying that this is the accepted explanation.]

Although the *Shach* writes that this explanation is feasible, it is apparent from the rest of his commentary that he still accepts the *Bach's* assertion that *Rabbeinu Tam* is stringent when wine is definitely stored for 24 hours and assumes that the entire thickness of the barrel walls are full of *blios*.

124. The *Rosh* in a previous comment (*Avodah Zara* 2:20) also implies that the wine *blios* are located in the entire thickness of the walls.

125. The *Shach* (137:17) suggests parenthetically an alternative approach to answer the contradiction: The *Rosh* in *T'shuvos* was discussing a full wine barrel which is assumed to contain sixty times the volume of *blios*, whereas the *Rosh* in *Avodah Zara* was discussing a partially full barrel which may not contain the required volume of wine necessary to nullify the *blios*.

This explanation, however, doesn't completely answer the contradiction. The *Rosh* in *Avodah Zara* assumes that the *blios* fill the entire thickness of the walls, whereas in *T'shuvos* he assumes that the *blios* merely fill the *klipah*. According to the explanation of the *Bach*,



Moving on to the *Poskim*, the *Tur* (135:13) cites two opinions as to whether removal of the *klipah* is effective. He concludes that it is in fact effective, following the opinion of the *Rashba* and other lenient *Poskim*. This is also the ruling of the *Shulchan Aruch* (135:13). In addition, the *Tur* and *Shulchan Aruch* (137:1) rule that kosher wine mixed with water stored in a non-kosher wine barrel is permitted if the water is at least six times the volume of the *klipah*. Although the *Shulchan Aruch* makes no distinction as to the length of time wine was stored in the barrel, the *Shach* (135:33) writes that if wine was definitely stored for at least 24 hours, removing the *klipah* is ineffective due to the fact that the wine *blios* have been absorbed in the entire thickness of the walls. This ruling is in accordance with the opinion of *Rabbeinu Tam* and *Rosh* (as noted in *Shach* 137:9). The *Shach* (137:9) further writes that if non-kosher wine was definitely stored in the barrel for longer than 24 hours then nullification is required relative to the entire thickness of the walls. The *Shach* (ibid.) notes that the simple understanding of the *Rashba* and other *Poskim* indicates that wine *blios* are never absorbed more than the *klipah* – even when stored 24 hours. However, the *Shach* concludes that it is possible that all *Poskim* agree with *Rabbeinu Tam* that *blios* are absorbed into more than just the *klipah* if it is certain that the wine sat in the barrel for at least 24 hours. Based on the above, this assertion is very likely made to avoid contradicting the *Mishnah*.

As mentioned above (Section III:A:b), some *Poskim* argue with the *Shach* and maintain that removing the *klipah* is always effective, but others side with the *Shach*. As was just explained, many *Rishonim* appear to side with the *Shach*.

### **5) *Avida l'ta'ama* with regard to food items other than spices (relevant to Section III:B:a)**

The *Rama* (98:8) writes that anything which is *avida l'ta'ama* (added for taste purposes), such as salt and spice, is not *batul*. Therefore, if forbidden spices fall into a mixture, the mixture is forbidden even if it contains *shishim* against the spices. The *Taz* (s.k. 11) wonders if this limitation applies only to spices or even to other foods, such as forbidden fat. He concludes with a quote of the *Issur V'Heter Ha'aruch* who maintains

that this halacha applies only to sharp items, similar to salt and spices; all other items are *batul b'shishim*.

The *Pri Migadim* (ibid.) quotes the *Chidushei Hagirshuni* who is of the opinion that all food items are subject to the limitation of *avida l'ta'ama*, but also quotes the *Beis Lechem Yehuda* as siding with the *Issur V'Heter Ha'aruch* that only spices may not be nullified. The *Chochmas Adam* (53:30) also maintains that this halacha applies only to sharp items.

The *Minchas Yaakov* (85:61) and *Shulchan Aruch Harav* (*OC Kuntres Acharon* 513:4) point out that this seems to be at odds with a statement of the *Rambam* (*Pirush LMishnayos, Orlah* 2:10) that “spices” are not limited to pepper and the like, but include any food added to enhance the flavor of a mixture. How can this be reconciled with the position of the *Taz* and other *Poskim* who are of the opinion that the limitation of *avida l'ta'ama* applies only to sharp items? The *Shulchan Aruch Harav* answers that it depends how the forbidden food became mixed in: if the food was specifically added to the mixture then the *Rambam* is correct that any food added for flavor is not *batul*. If, however, the food fell in to the mixture on its own accord, it is indeed subject to *bitul* unless it is a sharp food, as the *Issur V'Heter Ha'aruch* writes.

The *Badei Hashulchan* (98:87) writes that it is unclear whose opinion we follow. He adds (*Biurim, d.h. vi'l'achen*), however, that these two opinions differ only if the actual taste of the forbidden food cannot be detected; if the actual taste can be sensed then all agree that the food is not *batul*, as stated by the *Rama* (ibid.) that any food which is *avida l'ta'ama* is not *batul*.

To summarize: According to the *Taz* only spices are subject to the limitation of *avida l'ta'ama*, but according to the *Chidushei Hagirshuni* any food used to flavor a mixture is not *batul*. According to the *Shulchan Aruch Harav*, all agree that if one intentionally added food for flavor then it is never *batul*. According to the *Badei Hashulchan*, if the actual forbidden food can be tasted then all agree that it is not *batul*. Accordingly, it appears at first glance that wine *blios* in Scotch are not subject to nullification because the actual forbidden food can be tasted. This appears to be confirmed by the *Rama* (114:6) who repeats this halacha with regards to wine. See, however, discussion above (Sec. III:B:a) whether wine *blios* are, in fact, limited by this concern.

## 6) Rav Moshe's Five Reasons for a *Ba'al Nefesh* to be Stringent (relevant to footnote 64)

Rav Moshe in *Igros Moshe* (YD I *siman* 62) discusses the question of “blended whiskey.” Rav Moshe concludes that “blended whiskey” is permitted *me'ikur hadin* due to the fact that *stam yeinam* added to the whiskey is *batul b'sheish*. As explained above (Sec. VIII:A), Rav Moshe was not referring to Scotch; rather, he was referring to whiskey (perhaps Canadian or American) into which a small amount of wine (less than 2½%) was added. Rav Moshe mentions a number of reasons to suggest that a *ba'al nefesh* (a scrupulous individual) should be stringent and avoid drinking blended whiskey, and many of these reasons may be applicable to Scotch matured in Sherry casks.

- 1) In the days of old when gentile wine had the status of *yayin nesech*, it was forbidden to have any benefit, directly or indirectly, from the wine (*assur b'hana'ah*). There is a question in the *Poskim* whether *stam yeinam*, wine prohibited by Chazal but not actually *yayin nesech*, is less problematic or not. Some *Poskim* (see *Shulchan Aruch* 123:1) are of the opinion that *stam yeinam* is *assur b'hana'ah* (even indirect benefit is forbidden) even in contemporary times. Although the *Rama* (*ibid.*) argues that *stam yeinam* is more lenient, for though one may not drink it, one may benefit from it indirectly, for instance, by selling it (*mutar b'hana'ah*), some *Poskim* (see *Taz s.k.* 2 and *Shach* 124:71) rule that one may be lenient only when faced with financial loss. Blended whiskey is enhanced by the addition of non-kosher wine and, therefore, a *ba'al nefesh* should be stringent and not drink such whiskey. Since Scotch is also enhanced by non-kosher wine and, therefore, a *ba'al nefesh* should avoid drinking such whisky.
- 2) Some *Rishonim* (see above, Sec. III:A:c) rule that non-kosher wine requires *shishim* for nullification even when mixed with water. Even though the *Shulchan Aruch* and *Rama* (134:5) rule that *sheish* is sufficient, a *ba'al nefesh* should require *shishim* to accommodate the stringent opinion.
- 3) The *Nekudos Hakesef* (gloss to *Taz* 114:4) requires *bitul b'shishim* when wine is mixed with liquids other than water, as mentioned above (Section III:A:c). This is also the simple understanding of *Rama* (114:4 and 6). Although most *Poskim* rule that *sheish* is

sufficient, a *ba'al nefesh* should require *shishim*.

- 4) The *Mateh Yehonoson* (gloss to *Rama* 114:4) rules that *sheish* is sufficient to nullify wine mixed with other liquids only if the wine ruins the mixture; if, however, the mixture is enhanced by the wine, *shishim* is required to nullify the wine, like other prohibited foods. Although Rav Moshe doesn't understand the logic of this ruling, he concludes that a *ba'al nefesh* should require *shishim* if the non-kosher wine enhances the mixture, to accommodate the position of *Mateh Yehonoson*. Since Scotch is enhanced by the wine *blios*, a *ba'al nefesh* should require *shishim* to nullify the wine *blios*.
- 5) In a later *t'shuvah* (*siman* 63), Rav Moshe cites an additional reason for a *ba'al nefesh* to be stringent. As explained above, the *Shulchan Aruch* (134:13), quoting the *T'shuvos HaRashba* (Vol. III *siman* 214), rules that one may not drink any beverage of a gentile if it is customary (*darkon b'kach*) to add (non-kosher) wine to it (even if there is enough kosher liquid to nullify the wine), because any food or liquid which is an integral ingredient of a mixture can never be nullified. Although many *Poskim* argue on the *Shulchan Aruch* and allow nullification, a *ba'al nefesh* should be stringent in order to accommodate the *Rashba's* opinion.<sup>126</sup>

Based on these considerations, Rav Moshe advises a *ba'al nefesh* to abstain from blended whiskey, and commends Rav Teitz for arranging Kashrus supervision on blended whiskey without added wine. It should be noted that although Rav Moshe himself generally avoided drinking blended whiskey, he would drink a little if offered a *l'chaim* shot in public so as not to appear haughty (and perhaps cause embarrassment).

As explained above (Sec. IV), according to the *Shach* and other *Poskim* quoted above (Sec. III:A:b), Sherry casks do not contain *shishim* against the forbidden wine *blios*. Accordingly, a *ba'al nefesh* should avoid drinking Sherry-matured Scotch.

## 7) Twelve Months (relevant to Section VIII:D)

It was explained that a non-kosher wine barrel may be used to store kosher liquid provided that the barrel sat empty for twelve months. This

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126. It is questionable if this stringency applies to Scotch; see footnote 50.

leniency likely does not apply to Sherry casks because they are filled with Scotch before twelve months have elapsed. Some suggest that even if twelve months did not elapse from the removal of the wine until the first fill, twelve months will certainly have elapsed before the second and later fills go in. Although the barrels did not sit empty for twelve months, the *Tur* (135:16) quotes the *Rosh* that even if water was stored in the barrel after the removal of the wine, the twelve months are counted from the wine removal. The *Beis Yosef* (ad loc.) explains that although the water prevents the wine from drying out, it also ruins wine and causes the wine to go bad. The *Shach* (135:36) writes in the name of the *Rosh* (quoted in *Beis Yosef* *ibid.*) that even if kosher wine is stored in the barrel, the clock starts from the removal of the non-kosher wine [provided that the volume of kosher wine is sufficient to nullify the non-kosher wine *blios*]. Accordingly, since the second and later fills certainly take place after twelve months have elapsed from the removal of the non-kosher wine, the wine *blios* will not prohibit the Scotch, even though Scotch was stored in the barrels in the interim. Since most bottles on the market are from second or later fills, any particular bottle is assumed to be from the majority of permitted bottles.

However, careful analysis of the *Beis Yosef* reveals that this leniency applies only if the liquid stored in the barrel is not prohibited by the wine *blios*, i.e., the volume of liquid is great enough to nullify the non-kosher wine *blios* in the walls. If, however, the wine *blios* are not nullified, which is the case with standard Sherry casks (according to the *Shach* and other *Poskim* that *bitul* is necessary against the entire thickness of the walls), all *Poskim* agree that the twelve months count only when the barrel remains empty. Accordingly, since the first fill is forbidden and did not nullify the wine *blios*, it reinvigorates the wine, thus requiring a new twelve months of sitting empty, which is generally not the case with Sherry casks.

### **8) Bitul B'rov – Nullification in a Majority (relevant to Section VIII:E)**

According to halacha, even if a non-kosher wine barrel is used numerous times to mature Scotch, every fill of Scotch requires a ratio of 6:1 (i.e., *sheish*) against the *blios* of wine. If *sheish* is not present, every fill is prohibited, as was explained previously (Section VIII:E). Although some wine *blios* are nullified in the first fill, we continue to consider the

barrel walls full of non-kosher wine *blios* for later fills because we do not know at which point the wine *blios* left the walls. It is important to realize that if Sherry casks were used for three fills, only 1/3 of the total bottles produced actually contain forbidden wine *blios*; the other 2/3 do not contain wine *blios* because the *blios* definitely went out in only one of the fills (after all, wine can only impart non-kosher *blios* up to six times its volume). Nevertheless, we must treat each fill as if it contains the wine *blios* because we don't know which one got the *blios*. If so, some suggest that perhaps all the bottles are permissible based on the concept of *bitul b'rov* (nullification in a simple majority).<sup>127</sup> This form of nullification works if the majority of a mixture is kosher and the non-kosher taste is not noticeable (*min b'mino*). (If, however, the taste of the non-kosher food is noticeable – *min b'she'aino mino*, a stronger form of nullification is necessary, either *bitul b'sheish* or *b'shishim* – nullification in a six-to-one or sixty-to-one ratio.) A common example of *bitul b'rov* is if a piece of non-kosher food becomes mixed up with a majority of similar tasting kosher food, the non-kosher food is nullified.<sup>128</sup> Accordingly, the bottles which contain *blios* of wine may be nullified in the bottles that don't, thereby permitting all Scotch.

In order to deal with this issue, it is necessary to explore the concept of *bitul b'rov*. The *Shulchan Aruch* (105:9) writes that if pieces of kosher meat are salted with forbidden *cheilev* (fat), every piece of meat that came in contact with the fat requires *shishim*. If *shishim* is not present, the meat is forbidden. Even if the combined volume of meat that came in contact with the fat is *shishim* against the fat, the meat is still forbidden because the fat does not spread evenly to all the meat. However, if the fat touched only one piece and the piece got mixed into other pieces of kosher meat, the meat is permitted based on *bitul chad b'trei*. The *Shach* (105:30) asks that if the fat touched many pieces, it is obvious that only one piece became forbidden because fat can only give forbidden flavor (*ta'am*) into *shishim* – we just don't know which piece absorbed the forbidden flavor. If so, we should say that the piece which has forbidden flavor is *batul chad b'trei*

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127. Some *Poskim* require a ratio of two-to-one – indeed, classic sources describe *bitul b'rov* as *bitul chad b'trei* (one piece is nullified in two pieces), whereas others rule that a simple majority is sufficient; see *Shach* (109:6) and *Pischei T'shuvah* (109:1).

128. Some *Poskim* rule that the entire mixture should not be eaten at once but others are lenient (see *Shulchan Aruch* 109:1 and *Rama* 109:2).

in the majority of kosher pieces, just like the *Shulchan Aruch* rules in the second case, where the fat touched only one piece?<sup>129</sup>

Many explanations are suggested by the *Poskim*. Some *Poskim* (*Pri Chodosh* s.k. 39, *Pleisi* s.k. 21) answer that the *Shulchan Aruch* is referring specifically to a case where the majority of pieces do not have *shishim* against the non-kosher fat, so the majority of pieces are definitely forbidden and therefore *bitul chad b'trei* won't work, but if most pieces have *shishim* then all pieces are indeed permitted. However, the *Pri Migadim* (ad loc.) and *Aruch Hashulchan* (105:59) argue that the simple reading of the *Shulchan Aruch* indicates that the meat is always prohibited – even if the majority of pieces have *shishim*.

The *K'nesses Hag'dolah* (*Hagahos Beis Yosef* s.k. 58) answers that *bitul chad b'trei* can only take place with pieces that are definitely permitted. Pieces which are under scrutiny, like our situation where all the pieces touched the fat, cannot enact *bitul chad b'trei*. However, he writes that this distinction may not be true. Further, the *Pri Migadim* (ad loc.) writes that, if anything, the opposite is true; since each piece started off kosher, why shouldn't they be able to enact *bitul*?

The *Chavas Daas* (s.k. 16) answers that a forbidden piece of food can give off *blios* even beyond *shishim*, because the flavor which was exuded can return to the forbidden piece and become rejuvenated. Therefore, all the pieces that came in contact with the fat become forbidden. Since each piece is definitely forbidden, we cannot enact *bitul chad b'trei*. However, this is extremely difficult to understand. The halacha is quite clear that if forbidden food falls into a pot of food with *shishim* against the forbidden food, the pot of food is permitted. According to the *Chavas Daas*, however, the food should be prohibited because the forbidden food gives off *blios* even past *shishim*! See *Imrei Baruch* (ad loc.) who is also disturbed by this question.

The *Chazon Ish* (33:2) offers an alternative explanation for the *Shulchan Aruch*. Since it is impossible to ascertain at which point the *blios*

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129. The *Shach* writes that this halacha is very understandable according to the *Rama* (92:4) who is of the opinion that we say *chanan b'shaar issurim*. It is quite possible that the piece that absorbed the forbidden flavor then became forbidden and gave its own forbidden flavor back to the fat which subsequently gives forbidden flavor to the next piece, etc. The *Shulchan Aruch* (ibid.), however, is of the opinion that we do not say *chanan b'shaar issurim*. If so, asks the *Shach*, why are all the pieces forbidden?

came out, Chazal made a special decree to treat the forbidden food as if it were still full of flavor, thus requiring *shishim* in every pot to which it falls. Accordingly, each piece of meat that did not contain *shishim* is definitely forbidden – not a *safek* (a doubt) – and therefore, we are not permitted to nullify any of the pieces based on the concept of *bitul chad b'trei*.

The discussion above helps explain the position of the *Shulchan Aruch*, that if pieces of kosher meat are salted with forbidden fat, and *shishim* is not present against the fat, every piece of meat that came in contact with the fat is forbidden. However, the *Shach* (ibid.) disagrees and maintains that if the combined volume of meat that came in contact with the fat is *shishim* against the fat, all the pieces are permitted. This is also the position of the *Pri Migadim* (ibid.).

In summary, if forbidden food touches three pieces of meat and there is *shishim* in the sum total against the fat, the *Shulchan Aruch* rules that all the pieces are prohibited. According to the *Shach*, however, all the pieces are permitted (provided that there is no concern of *chanan*). The *Chavas Daas* and *Chazon Ish* rule in accordance with the *Shulchan Aruch*, whereas the *Pri Migadim* sides with the *Shach*.

Returning to our situation, it was stated previously that although every fill of Scotch requires *sheish* because we consider the barrel to remain full of wine *blios*, the fact is that 2/3 of the bottles cannot contain the *blios*. If so, perhaps we may say that all the bottles are permitted based on the concept of *bitul chad b'trei*? This would seem to depend on the aforementioned dispute. According to the *Shulchan Aruch*, *Chavas Daas* and *Chazon Ish*, *bitul* cannot take place because all the bottles are considered to contain *blios* with certainty. In contrast, the position of the *Shach* and *Pri Migadim* would seem to allow *bitul*.

However, there is room to argue that in our case, all the *Poskim* would agree that *bitul chad b'trei* is effective. It is quite possible that the *Shulchan Aruch* disallows *bitul chad b'trei* only in a situation where the actual forbidden food is present, similar to the case he discussed where the pieces of meat came in contact with the actual piece of forbidden food. Accordingly, the *Shulchan Aruch* rules that the forbidden food can continuously forbid other pieces of meat, either because the forbidden food can give off *blios* even past *shishim* (like the *Chavas Daas* explained), or because Chazal treated the forbidden food as if it constantly retains its flavor (like the *Chazon Ish* explained). However, when dealing with pots that absorbed flavor of forbidden food, not the actual forbidden



food, it is likely that Chazal never gave it a status of actual *issur*. (When judged individually, *sheish* is needed in every fill because it is impossible to know with certainty when, and if, the *blios* were nullified. However, when numerous fills are mixed together, only a minority of the sum total of bottles contain the forbidden *blios*.)<sup>130 131</sup>

Accordingly, it is likely that the *Shulchan Aruch* and *Chavas Daas* agree that when dealing with pots and barrels, the concept of *bitul chad b'trei* does apply. Based on this reasoning, it would come out that after three fills have taken place, all the bottles of Scotch are permitted. Since only 1/3 of the bottles actually contain *blios* of wine, they are nullified in the other bottles. As a result, it would be permissible to drink any Single Malt Scotch – even those that were matured in Sherry casks – for one may assume that even if this particular bottle contains those forbidden wine *blios*, the bottle was nullified in the other fills.

However, it appears that there is a strong impediment to *bitul* with

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130. The *Poskim* discuss whether the above logic is applicable even according to the *Chazon Ish*. *Minchas Pri* (*Melicha* pg. 145) writes that the above logic certainly makes sense according to the understanding of the *Chavas Daas* who assumes that the forbidden food has never-ending *blios mei'ikur hadin*; accordingly, one can argue that only the actual *issur* has the power to rejuvenate – not absorbed flavor. However, according to the *Chazon Ish* who is of the opinion that even with regards to a piece of *issur* we assume that it does *not* give off *blios* more than *shishim* and it is a special rule that we must treat it as if it still has flavor, this should apply to absorbed flavor as well and should still be forbidden.

On the other hand, it is possible to argue that even according to the *Chazon Ish*, Chazal created a special rule only with regard to the actual piece of forbidden food – since it was originally a piece of forbidden food, Chazal declared it permanently *assur*. When dealing with absorbed flavor, however, something which was never an actual piece of forbidden food, it is quite possible that Chazal did not enact such a rule to consider it like permanent *issur*. Accordingly, it is likely that even according to the *Chazon Ish* a pot which absorbed *issur* was not included in this special rule to be considered definite *issur*.

131. The *Mishnah Brurah* (447:89) rules that olives cut with a knife previously used for *chometz* are forbidden even if cut before Pesach. The *Sha'ar Hatziyun* (ad loc. s.k. 128) explains that since we require *shishim* against the entire knife and it is unknown when the *blios* come out, every olive must be treated as having absorbed *chometz* inside. Why don't we say that since the forbidden flavor was only absorbed in some of the olives, those olives are *batul chad b'trei*? Perhaps he is referring to a case where the grand total of olives does not contain *shishim* against the knife.

regard to Scotch bottles. The second fill is bottled many years after the first fill was bottled (usually 10+ years) and it is extremely likely that the bottles from the first fill have already been drunk. This is certainly the case with the third fill which is bottled many years after the second fill, and there is likely a span of 20+ years since the original bottling. Accordingly, *bitul* cannot possibly take place. In order for the non-kosher bottles to be nullified, they must be nullified in a mixture of other kosher bottles; if the kosher bottles have already been consumed or not yet produced, the non-kosher bottles are not considered nullified. The *Yad Yehuda (Hilchos Melicha 69:63:7, pg. 55b)* rules that *bitul chad b'trei* cannot take place if some of the pieces have been eaten or discarded before the mixture was discovered (*lo noda ha'tàaruvos*). In our case, where there was never a *tàaruvos* (mixture) to begin with (because the bottles from the first fill left the factory years before the second fill, and certainly the third fill, was bottled) it certainly is not possible to rely upon *bitul chad b'trei*.<sup>132 133</sup>

Accordingly, it appears from the *Poskim* that every fill requires *sheish* against the wine *blios*, and the concept of *bitul chad b'trei* does not apply to our situation.

### 9) Kosher wine casks (relevant to Section VII:B:a)

As mentioned above (Sec. VII:B:a), it would appear that Scotch matured in kosher wine casks is permitted and the issue of *stam yeinam* is avoided. However, using Israeli wine casks raises other serious questions. Fruit grown in Israel is subject to restrictions not applicable to fruit grown elsewhere, including the requirement to separate *ma'aser* (tithes). Wine produced from grapes grown in Israel is subject to the same requirement. Accordingly, it is important to ascertain that *ma'aser* was removed from

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132. Although the *Chamudei Daniel (Hilchos Ta'aruvos 1:3)* is unsure about this halacha and seems to indicate that he would be lenient with regard to an *issur d'rabbanan*, it is highly unlikely that he would agree that *bitul* can take place in our case where there was never a *tàaruvos* to begin with (*aino b'olam*).

133. Although *bitul chad b'trei* can take place even though the bottles are not in one location, as stated in the *Darkei T'shuvah (109:4)* in the name of many *Poskim*, *bitul* cannot take place if the pieces were not in the world at the same time (*aino b'olam*). In a conversation with the author (10/27/2011), Rav Shlomo Miller agreed that *bitul chad b'trei* cannot take place.

the wine stored in wine barrels originating in Israel; if *ma'aser* was not removed, the wine *blios* located in such barrels are prohibited (referred to as *tevel*).<sup>134</sup>

In an email correspondence with Rabbi Aryeh Ganz, Mashgiach of Carmel Wineries, Israel, he asserted that his company is careful to separate *ma'aser* (after grapes are pressed) within two months of harvest (either while in storage bins or in the barrels themselves) in order to avoid mixing *tevel* with non-*tevel* wine. Since the wine sits in barrels far longer than two months, the wine barrels definitely do not contain *blios* of *tevel*.

### 10) Rum Casks (relevant to Section VII:B:b)

As mentioned above (Sec. VII:B:b), Rum is produced from distilled sugar and molasses and, therefore, no concern of *stam yeinam* exists. Although flavored Rum requires kosher certification due to the addition of non-kosher flavorings, there is no concern that Rum barrels used for Scotch maturation contained flavored Rum. Standard protocol in the field is to mature unflavored liquor in barrels, with the flavor being added after maturation, right before bottling. Since the barrels only stored unflavored Rum, no Kashrus concern exists.

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134. One can assume that there are no issues of *orlah* and *shvi'is* because the Kashrus agency that supervises Carmel wineries would not allow storage of wine that had such problems.



# **A PICTORIAL GUIDE TO SCOTCH PRODUCTION**



Maiting Floor/ The Balvenie. Photo Credit: Neil Wilkie

*The barley is first steeped and spread out to germinate*



Kiln / The Balvenie. Photo Credit: Neil Wilkie

*The barley is then dried in a kiln*



Grist Mill/ Ardberg, Photo Credit: Chris Schaefer

*The grinding takes place in the Grist Mill*



Mash Tun / Speyside: Photo Credit: Rabbi Simcha Smolenski

*It is then steeped in the mash tun (“the coffee filter”)*



Washback / Auchentoshen: Photo Credit: Rabbi Simcha Smolenski

*Next, it is transferred to the washback for fermentation*



Washback / Woodford Reserve: Photo Credit: A. Niehaus

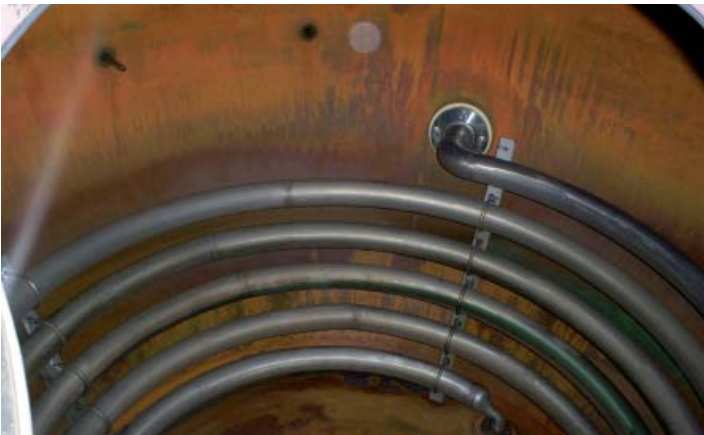
*Inside look at fermentation (Notice bubbling yeast)*





Pot Stills/ Speyside. Photo Credit: Rabbi Simcha Smolenski

*The distillation process takes place in the Pot Stills*



Pot Still/ Woodford Reserve. Photo Credit: A. Niehaus

*The Pot Stills are heated by steam coils running inside*



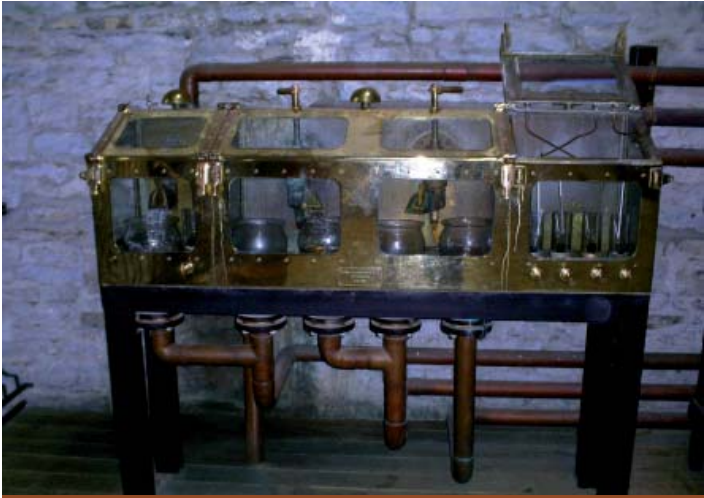
Worm Tub/ Glen Elgin, Photo Credit: Ed Stuart

*It is then condensed back into liquid in the Worm Tub*



Worm Tub/ Hiramatsu, Japan, Photo Credit: © Chris Bunting, author of 'Drinking Japan', a guide to Japanese drinking culture

*Inside look at Worm Tub*



Spirit Safe/ Woodford Reserve. Photo Credit: A. Niehaus

*The stillman tests the strength of the spirit in the Spirit Safe*



Sherry Cask/ Auchentoshen. Photo Credit: Rabbi Simcha Smolenski

*The whisky is mixed and left to mature in a Sherry Cask (center) or bourbon barrels (right and left)*



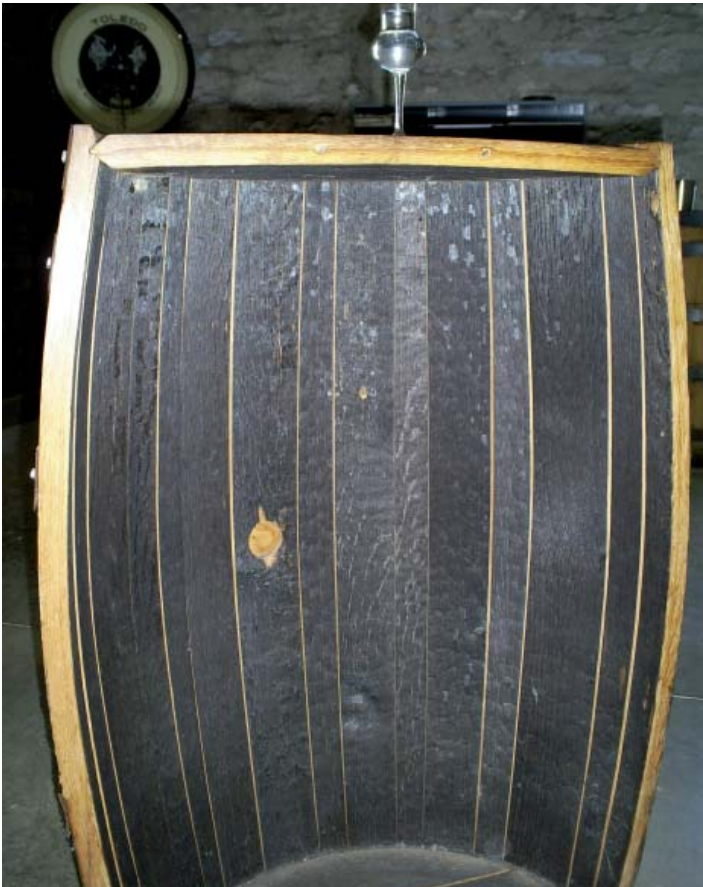
Charring Barrels/Kentucky Cooperage. Photo Credit: scout\_magazine

*Charring Barrels (see Page 72)*



Charred Bourbon Barrel/Woodford Reserve. Photo Credit: A. Niehaus

*Charred Stave*



Charred Bourbon Barrel/ Woodford Reserve. Photo Credit: A. Niehaus

*Charred Barrel*

## XI. GLOSSARY

***Ain mivatlim issur l'chatchila***: one may not intentionally nullify forbidden foods. There is a difference of opinion among the *Rishonim* if this prohibition is Biblical or Rabbinical (see *Beis Yosef YD siman 99*). One who intentionally causes nullification of non-kosher food may not partake of the food. Others may eat from the mixture unless it was specifically nullified on their behalf.

***Aino ben yomo***: Literally, “it is not of today” – non-kosher ***blios*** that remained in a vessel longer than 24 hours; such ***blios*** are generally assumed to have lost their flavor and are deemed ***pagum***. (Note: this rule does not apply to wine ***blios*** which remain potent up to one year – see *Shulchan Aruch* 135:16, 137:1.)

***Avida l'ta'ama***: Literally, “added for taste purposes” – non-kosher food that is generally used to flavor mixtures (e.g., spices) retains its potency even when added to a large mixture and therefore cannot be nullified. See *Rama* (98:8).

***B'dieved***: *ex-post-facto* – once the action is done (opposite of *l'chatchila*); its halachic status is generally more lenient.

***Ben yomo***: Literally, “it is of today” – non-kosher ***blios*** that were absorbed in a vessel within 24 hours; such ***blios*** are generally assumed to remain potent and have the ability to prohibit other foods with which they come in contact (as opposed to ***aino ben yomo***).

***Bi'en***: Literally, “actual” – referring to tangible substance of non-kosher food which is mixed into kosher food (as opposed to ***blios***).

***Bitul*** (or ***batul***) ***b'sheish***: Literally, “nullified in six” – when ***yayin nesech*** or ***stam yeinam*** becomes mixed into kosher liquid six times its volume, the non-kosher wine becomes nullified.

***Bitul*** (or ***batul***) ***b'shishim***: Literally, “nullified in sixty” – when non-kosher food becomes mixed into a kosher mixture sixty times its volume, the non-kosher liquid becomes nullified.

**Bitul issur l'chatchila:** see “*Ain mivatlim issur l'chatchila*”

**Blios:** Literally, “absorptions” – the absorption of non-kosher food without tangible food substance (as opposed to *bi'en*). For example, non-kosher wine which sits in a barrel for 24 hours will impart *blios* into the walls of the barrel. These *blios* retain the capacity to enter subsequent batches of wine, potentially rendering them forbidden.

**Chanan** (acronym for *chaticha na'asis neveila*): Literally, “the piece becomes prohibited like a carcass” – If non-kosher taste is mixed into kosher food in which it is unable to be nullified, the entire mixture becomes a prohibited entity (in certain situations; see *Shulchan Aruch* 92:4). If this mixture becomes mixed into other kosher food, nullification is required against the entire mixture.

**Chazusa:** color – non-kosher food that adds color to a mixture retains its identity and cannot be nullified. See *Rama* (102:1).

**Chometz:** Leavened bread product; may not be consumed, or be found in one's possession, during *Pesach*.

**Davar ha'ma'amid:** Literally, “an item that supports” – A forbidden food that acts as a “support” for the final product cannot be nullified. Common examples are yeast in dough, and rennet used for production of cheese. See *Shulchan Aruch* (87:11).

**Distillation:** the process of purifying a liquid by successive evaporation and condensation.

**Foreshots:** Also known as the head of the distillation or heads. The first cut of the output from the low wines or spirit still. This liquid is returned back to the low wines and feints charger for re-distillation as part of the next batch.

**Kasher** (or *kashered* or *kashering*): process of making a vessel previously used for non-kosher acceptable for kosher use (or vessel already made kosher). See *Shulchan Aruch* (*YD siman* 135 and *OC siman* 451).

**Kavush:** soaking – if non-kosher liquid soaks in a kosher pot for twenty-four hours, the vessel absorbs non-kosher *blios*.

**Klipah** (or *k'dei klipah*): Literally, “(an amount sufficient to be) peel(ed)” – When kosher and non-kosher items come in contact under certain circumstances, only minimal *blios* are transferred. In these situations only the least amount that can be removed in one piece from the surface of the food or vessel must be discarded.

**L'chatchila**: initially (opposite of *b'dieved*).

**Libun**: a form of *kashering* – removing non-kosher absorptions from a vessel; a non-kosher vessel is exposed to intense fire, thereby burning out the *blios*.

**Lyne arm**: The part of a pot still extending from the top of the neck down to the worm tub or condenser (sometimes called the lye pipe or swan neck). There is considerable variation in its design and distilleries will vigorously defend their own design as having a unique contribution to their final product.

**Mash**: crushed malt or grain meal steeped and stirred in hot water to produce **wort**.

**Mei'ikur hadin**: the letter of the law (usually indicates that there is good reason for a scrupulous individual to be stringent).

**Miluy v'iruy**: Literally, “filling and pouring” – a form of *kashering* applicable to certain non-kosher vessels; a non-kosher vessel is filled with water, allowed to rest for 24 hours, and then emptied. The process is repeated three times. See *Shulchan Aruch* (YD 135:7, 12 and OC 451:21).

**Nosen ta'am l'pgam**: contributes a detrimental flavor. The taste or flavor of a prohibited food will prohibit other foods only when the resultant mixture is improved. A non-kosher food which compromises the taste of the food to which it is added does not prohibit the mixture. See *Shulchan Aruch* (*siman* 103).

**Orlah**: Produce in its first three years since planting; such produce is forbidden to be consumed. See *Shulchan Aruch* (YD *siman* 294).

**Pagum** or *pagem*: ruined or ruins – non-kosher food which ruins a kosher food mixture upon contact; such food will



generally not forbid the mixture.

**Peat:** an accumulation of partially decayed vegetation matter.

**Poskim** (singular, *Posek*): Rabbinic decisors.

**Protected Designation of Origin (PDO):** A certification that officially guarantees the origin and quality of products with a history and tradition behind them. The PDO was created by the European Union to help consumers by informing them about the specific features of the products, and to protect their geographical appellations against imitations and usurpations.

**Shvi'is:** Produce grown in Israel during the seventh and final year of the *Shemita* cycle; such produce may be consumed only under certain circumstances.

**Steep:** a vessel in which the mixture of unmalted whole barley and regularly-changed, fresh water is left to soak prior to the soaked grain being spread on the Floor Maltings to germinate (or, as a verb, the action of soaking the barley in water).

**Still:** a utensil in which the heat of the fire is applied directly to the pot containing the **mash**.

**Stam yeinam:** wine touched by a gentile, even if not used for idolatry; according to many *Poskim*, *stam yeinam* was prohibited by Chazal to avoid social interaction which could lead to intermarriage (see *Tur* and *Beis Yosef YD siman 123*, *Kehilos Yaakov*, *Avodah Zara siman 13*).

**Tevel:** Untithed produce; it is forbidden to be eaten until tithed.

**Wash:** The low-strength beer product of fermentation in the **Washback** which is used in the Wash Still for the first stage of distillation. Typically, the wash is at about 8% alcohol by volume (ABV). Sometimes known as the brew or (in the US) beer.

**Washback:** The Washback is a vessel, traditionally made of Oregon Pine, in which the wort and yeast are left to ferment into a **wash**. It is sometimes called a fermenter.

**Wort:** An infusion of malt which is in the act of fermentation; the sweet infusion of malt, which ferments and forms

beer. Note: Wort consists essentially of a dilute solution of sugar, which by fermentation produces alcohol and carbon dioxide.

**Yad soledes bo:** Literally, “a hand recoils from it” – the degree of heat sufficient to cause one’s hand to recoil upon contact is the minimum degree of heat necessary to cause transfer of taste.

**Yayin nesech:** wine used for idol worship. One may not derive any benefit from this wine. See *stam yeinam*.

**Zeh v’zeh gorem:** Literally, “this and this caused it” – a forbidden food will not prohibit a mixture if the flavor (or taste) that it provides could have otherwise been attained from permissible food in the mixture had it been present in a larger quantity. See *Rama* (87:11).