

HALOCHOSCOPE

This week's question:

At a gathering of Jews and gentiles, an observant Jew will be giving away samples of kosher, unboiled wine. Some of the gentiles do not practice a non-Jewish religion, (and in fact consider themselves Jewish). How should one go about serving the wine?

The issues:

- A) "Gentile's" wine, the various prohibitions
- B) What is considered forbidden benefit
- C) *Gair toshav*, a gentile who does not worship idols

A) *Gentile wine*

There are a few levels of prohibition with regard to a gentile's effect on wine. Scripturally, *yayin nesech*, wine used for libation to or for an idol, is forbidden to drink. It is also forbidden to benefit from it. There are also stringencies, mostly Rabbinical, applied to its mixtures. *Nisuch*, libation, is done without actually depleting the wine. Thus, a gentile will not feel that he has taken something from the Jew. He removes some wine, mutters his idolatrous words over it, and pours it back into the receptacle. He means to proclaim all the wine 'sacred' in some way. Apparently, it is even possible that he might perform some form of idolatry by just touching the wine with certain intentions.

Yayin nesech applies primarily to wine belonging to the gentile. If a gentile did *nisuch* to a Jew's wine, the Talmud debates whether the *isur hana'ah*, benefit prohibition, applies. This is based on the concept that one has no power to forbid something that does not belong to him, unless something physical is done to it. We follow the stringent view.

Stam yainam, literally, 'their plain or unspecified wine', is wine belonging to a gentile that is not known to have had *nisuch* done to it. It applies to wine manufactured or processed by, or purchased from a gentile. It is forbidden by Rabbinical decree. This is not due to doubt. That would not require a Rabbinical decree. It would be forbidden anyhow due to the law of *safek deoraisa lechumra*, a doubt about Scriptural status must be dealt with stringently. Rather, it is due to two precautionary decrees. First, the Rabbis extended the laws of *yayin nesech*, due to its serious idolatry connection. Second, there is a concern that if Jews socialize with gentiles, sharing a drink, it will lead to intermarriage.

Various institutions were made to deter socializing. At social gatherings wine is served. Therefore, all gentile wine was forbidden. Rabbinical decrees are usually modeled on Scriptural *mitzvah* – in this case, *yayin nesech*. This being the case, for both reasons, the Rabbis forbid benefit from *stam yainam* as well. In addition, they also forbade mixtures with some stringencies. However, as we shall see, certain leniencies are debated by the poskim, due to the Rabbinical nature of this decree and the prevalence of idolatry or lack thereof. These apply to both the issue of benefit and mixtures.

Maga'an, 'their touch', applies to Jewish owned wine touched by a gentile. This is a

related Rabbinical decree to *stam yainam*. It is the most likely issue to arise nowadays for a Jew. If the gentile did not touch the actual wine, but raised the container and shook it, or moved it in some other way, it could become forbidden. This depends on whether libations could be done this way. In addition, indirectly touching or moving it raises the issues of *kocho*, his indirect action. In such cases, though there is the secondary issue of deterring socializing, the patterning of the decree on *yayin nesech* allows for leniencies.

If a gentile is left alone with wine, the issues of *nisuch* and *maga* arise. Rather than an issue of *safeik*, doubt, or *chashad*, suspicion, this is a more definite institution to forbid wine left alone in the company of a gentile, based on the chances of this happening. If the wine is sealed, many of these issues seem to be avoided. The gentile can not touch the actual wine without breaking the seal. There is no standard form of worship with a sealed bottle of wine, that forbids it. However, if wine is left in the trust of a gentile, even with a seal, the issues of *nisuch* and *maga'an* indeed arise. There is still a possibility that the seal was removed and resealed with a forgery. Nonetheless, some leniencies apply, especially in the area of benefit. A double seal is considered sufficient to avoid this concern.

Idolatry is forbidden to gentiles as well as to Jews. There are four standard services, including pouring wine out as an offering. *Nisuch* is another practice that was prevalent among idolaters. The wine was not used to serve the idol. Rather, whenever an idolater comes across wine he pours some of it into his hand in the name of his idol. Or he removes some with the palm of his hand. The idol is not present. The main issue is his intention at that time. He then pours it back. Thus he considers the entire mixture 'blessed' by his idol. Another view is that the wine removed is poured out in the name of the idol. The wine used in this way is forbidden, and the act of taking some to perform *nisuch* causes the remaining wine to be forbidden. Pagans apparently are very superstitious about this. They try their hardest to do *nisuch* whenever they can get away with it.

The reason connecting *stam yainam* to *yayin nesech* should forbid benefit. The reason connected to socializing should only forbid drinking. It is patterned on the Scriptural prohibition, but has some leniencies. Nowadays, according to many poskim, the gentiles are not genuine pagans. They do not practice idolatry in the same ways. Accordingly, in cases of major loss, many *Askenazic* communities practice leniency with regard to *stam yainam* of non-pagan gentiles. The Talmud permits benefit in certain cases, even in those days. Nowadays, in such cases, some poskim permit drinking the wine as well.

Idol-worshippers follow the same rules for their service as the holy *avodah*. Wine that has been cooked, *mevushal*, is invalid for an offering. Pagans do not do *nisuch* on *yayin mevushal*. Therefore, if a gentile handled wine after it was *mevushal* it does not become forbidden. Nowadays, some wine is cooked to arrest fermentation. Containers of non-*mevushal* wine must be doubly sealed when handled by a gentile. Nowadays, the cork or stopper is considered one seal. It often has the *hechsher* on it. This could conceivably be removed and replaced with a forgery. An additional seal is added in the form of a standard tamper-proof seal. [See Ha'azinu 32:38. Shabbos 17b Avoda Zara 29b 30b-31a 36b 39b 55a 59b 60a, Poskim. Rambam Maach. Asu. 13:9. Tur Sh Ar YD 123:1 124:4 11 17 18 25 125:11-12 130:2, commentaries. Halochoscope VI:43-4.]

B) Hana'ah, benefit

Forbidden benefit includes indirect benefit. If the Jew is *rotzeh bekiyumo*, desires the

continued existence of the wine for his personal purposes, even if the wine no longer belongs to him, he may not benefit. If a Jew pours wine for a gentile, as long as the gentile does not move his cup, the wine need not become forbidden immediately. When the gentile lifts his cup, he causes the wine to become forbidden, through *kocho*.

One must deal justly with all beings. However, free gifts may not be given to idolaters or most other gentiles. Nonetheless, one may not do anything to arouse even slight wrath of gentiles, unless it is a *mitzvah* activity. Giving a 'gift' to a gentile to allay his wrath or to win a return favor later on is not considered a 'free' gift. This being the case, pouring wine for a gentile would not necessarily violate free gifting if one hopes to gain from it. The problem is that this would be considered benefit.

[A second issue is that the drains after the gentile drinks forbid any wine added to them. Furthermore, depending on the amount, the drains forbid the flow that connects to it, which in turn forbids the the remainder in the bottle being poured. Based on various considerations, this might depend on how fast the fresh wine is poured and whether it can overwhelm the forbidden wine before it gets a chance to become forbidden.]

Since wine owned by a gentile is *stam yainam*, one must take care when selling wine to him. First one agrees on the price, charging it as a debt. Then one transfers the ownership. This way, it does not become forbidden before the money is payable. It is preferable to actually take the money first. However, in cases of loss, this is one example where the poskim apply leniency to modern day non-pagan gentiles. Pouring wine for a gentile to taste and then advertise it is considered benefiting from the wine of the gentile.

Basically, one should gain all benefit before the wine is forbidden. He must also avoid *rotzeh bekiyumo*, the desire to maintain the existence of the wine after it is forbidden. The basic case study is the Talmud's example of paying a gentile employee with wine. One may not tell the employee to go to a store and have them charge the Jew for the wine. The Jewish employer may pay in advance. The poskim discuss serving wine to a gentile guest. To avoid benefiting from the wine that the gentile picks up, the Jew gives money to his gentile servant to buy wine for this guest. The host has in mind to transfer the money to the guest through his servant's acceptance of it. The gentile servant then 'buys' wine with the guest's money. A second case involves a waiter hired to pour wine for a gentile. Some poskim point out that even if he is not paid, he is *rotzeh bekiyumo*. The same issue is also raised in the first case. A third case is hiring a gentile wine taster and advertiser. When the Jew hands wine to the taster it becomes forbidden. He wants the gentile to taste it. This is considered benefit even if he does not own the wine.

In our case, none of the avoidance ideas are feasible. However, one could make the following stipulation. The Jew should only pour wine into cups on the table, rather than those being held by the attendees. In addition, the cups should not be in front of specific attendees, but lined up in front of the person pouring. Attendees will take a cup themselves. The tasting of the Jewish attendees will accomplish all the benefit needed. Letting the gentiles taste as well would be considered avoiding their wrath. [See Avoda Zara 62a-64a, Poskim. Tur Sh Ar YD 132:4 133:5, commentaries. Halochose VI:43-4.]

C) *Gair toshav*

Any gentile forbids wine when he touches it, regardless of whether the actually worship idols. For this reason, even a young child can cause problems. However, he might

not always forbid benefit. As mentioned, the prevailing *Ashkenazi* practice is to permit benefit from *maga'an* in cases of major loss, since these gentiles are not pagans. In addition, the Talmud debates the status of *maga* of a *gair toshav*. This is a gentile who has accepted upon himself to observe the seven *mitzvos Benei Noach*. The poskim follow the opinion that it is permitted to benefit from, and some even rule leniently on drinking it. Some poskim point out that to permit benefit, the gentile's undertaking to refrain from idol-worship and nothing more, is sufficient. This does not apply to their wine. The decree to prevent weddings still applies. In fact, it would seem to be even more important at this point. Nonetheless, *maga'an* seems to be taken less seriously than *yainam*. The Talmud also discusses a regular *gair* who has not yet undergone *tevilah*, immersion for the purposes of conversion. This person's status is also somewhat more lenient than any other gentile. This seems to bear on our case, in which a gentile considers himself Jewish.

To become a *gair toshav*, one needs to go before a *bais din* and undertake this status. In addition, many poskim maintain that it can only apply in *Eretz Yisroel*. However, for the purposes of *yayin nesech* and *stam yainam* the poskim agree that we consider any Noahide gentile a *gair toshav*. Thus, their status is even better for these purposes than that of a Jewish brazen intentional desecrater of *Shabbos*, whose *maga* forbids the wine. The poskim also discuss wayward sects of Jews, and conclude that they also forbid wine with their *maga*. However, if a Jew was never educated as to the waywardness of his sect, he is considered an unintentional violator. In our case, the gentiles consider themselves to have converted under auspices of a wayward sect. Nonetheless, they do not understand the waywardness, and their intent was to abandon all ties to paganism. Their *maga* would be considered permissible to benefit from, and according to many poskim, even to drink. [See Avoda Zara 64b-65a, Poskim. Tur Sh Ar YD 124:2, commentaries.]

In conclusion, the Jew may pour wine into cups lined up on the table, but not for individual attendees.

On the parsha ... *Let some water be taken and wash your feet .. [18:4] [Avraham] thought that [the angels] were Arabs who worship the dust of their feet .. [Rashi] He took butter and milk and the calf he had prepared and put it before them .. [18:8] In the order that they were prepared. [Rashi] He did not serve meat and milk together, or the meat first. Avraham observed the entire Torah and Rabbinic extensions thereof. [Daas Zekeinim] Why was Avraham concerned with serving the angels, whom he considered idolaters, forbidden mixtures? One may not benefit from basar bechalav. Avraham considered the privilege and pleasure of serving guests a major benefit. If they are not served together, but the meat is served first, since it is Rabbinical, there is no isur hana'ah. Nonetheless, Avraham preferred to avoid any connection to this. For this reason, we may suggest, he did not serve wine, as was customary. In fact, Avraham was meticulous about the laws of gentile wine. [See Or Hachaim to Lech Lecha 14:18]*

Sponsored by Richard and Marsha Walters in memory of his father Binyamin ben Yehuda z"l,

whose *yahrzeit* was on the 5th of *Cheshvan*, and of her father Meir ben Refael *Hakohain* z"l,

whose *yahrzeit* is on the 21st of *Cheshvan*. ☞

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