

HALOCHOSCOPE

This week's question:

May a Jew import and sell non-kosher wine to non-Jews on a generic website open to a general audience? May he have a kosher wine section for Jewish clientèle on the same website? Should he post a separate website as part of the same business?

The issues:

- A) *Stam yainam*, gentile wine
- B) Trading in non-kosher items or *stam yainam*
- C) *Lifnei ivair*, leading others to sin

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. Benefit from it is also forbidden. There are also stringencies applied to its mixtures. *Nisuch*, libation, is done without depleting the wine. The gentile feels that he has not taken something from the Jew. He removes some wine, mutters his idolatrous words over it, and pours it back. He means to proclaim all the wine 'sacred' in some way. It is even possible that he performs 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.

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. They also forbade mixtures with some stringencies. 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, by doing *nisuch*, 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 is forbidden, and the act of 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, at least 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) Trading in *stam yainam*

There are two kinds of benefit. Direct benefit is forbidden, Scripturally from *yayin nesech*, and Rabbinically from *stam yaianam*. Indirect benefit, such as the profit from the sale of *yayin nesech*, or the profits from the sale of items purchased with the money received for *yayin nesech*, are forbidden Rabbinically. This is a precaution against the first type of benefit. To be in violation of either type of benefit, one need not own the actual

wine. If a Jew benefits from the existence of the wine, known as *rotzeh bekiyumo*, he is in violation. There is an opinion that permits *rotzeh bekiyumo* of *stam yainam* nowadays, based on the aforementioned leniency. If a Jew acts as a middle-man, but never owns the wine, this view would certainly permit it. The original seller will be transferring the wine directly to the final buyer. A website can be set up to do this type of trade. Depending on how it is viewed *halachically*, an incorporated company could conceivably be included in the same category. Legally, the company owns the wine, rather than the Jewish shareholder. His benefit could be considered indirect.

Items forbidden to eat but permitted to benefit from, may be used for any purpose. However, they may not be used for commercial gain, or sold even for non-food uses. The Talmud derives this from the terminology of the Torah. Many consider this a Scriptural restriction. Some maintain that it is Rabbinically instituted, linked to the language of the verse, to reinforce the original prohibition against eating the food. As a Rabbinical institution, it would be considered precautionary or a decree to safeguard a Scriptural *mitzvah*. As a Scriptural *mitzvah*, it would be a prohibition in its own right. The rabbis place limitations on the extent of this prohibition. This indicates that it is of Rabbinical nature. Those who consider it Scriptural say, indeed it is stated by the Torah, but no details are given on how it applies. This was left to the Rabbis to decide.

The main prohibition applies to animal products. There are specific dispensations for forbidden fats. Carcasses may also be sold to gentiles. However, this usually applies to cases where the Jew never meant to own the carcass. It died or was incorrectly slaughtered. If a trapper catches a non-kosher species with his kosher species, he may sell it. If he skins a non-kosher species, selling the meat is debated.

Food products that are not forbidden Scripturally but Rabbinically may be sold. *Stam yainam* is Rabbinically forbidden to drink. According to the opinion that this prohibition is based on the concern that one might come to eat the food, in our case, the Jew could arrange not to come in contact with it. The poskim debate whether one may invest with a gentile dealing with *davar he'asur*, based in part on this issue. If so, a corporation could also help. [See Halochoscope XII:49:B.]

The poskim actually debate trading with *stam yainam* nowadays. Since gentiles no longer do *nisuch*, any concern about confusing the two and permitting *yayin nesech* should no longer apply. In one view, all trade is forbidden, even if one already has the *stam yainam*. According to some, in cases of major loss, benefit is not restricted even according to the stringent view. In another view, one may benefit once he already has the wine, but should not buy the wine in order to trade with it. This view would allow benefit to avoid minor loss. The third view permits all trade nowadays.

The debate centers on how to interpret the two reasons for the institution. The Rabbinical institution needs a Scriptural model. If there had been a Scriptural model of wine that was not forbidden to benefit from, that would have been used. Since the model was *yayin nesech*, benefit had to be included in the restriction. On the other hand, the way it was structured included a precaution against possible *nisuch*. To complicate matters, usually a later authority has no power to cancel an institution by an earlier authority. The poskim debate whether this applies here. Some point out that the part of the original insti-

tution forbidding benefit was not made due to a definite concern. It was made due to a suspicion. Therefore, once the suspicion leaves, the institution may be canceled. Furthermore, it is not even clear that this part of the prohibition was formally instituted.

In practice, many *Ashkenazic* poskim justify trading with *yayin nesech* nowadays. In addition, the *minhag*, prevailing practice, is to trade in *stam yainam*. Some recommend that a G-d-fearing Jew should avoid this business. Others maintain that really even drinking the wine should be permitted nowadays, so trade can certainly not be prohibited. [See Tur BY Sh Ar YD 123:1 132:1, commentaries. Noda Biyehuda I:YD:39. Levushei Se-drad YD, yayin nesech 62:note 158. ST Pri Tevua I:1.]

C) *Lifnei ivair*

Assuming the website can be launched to sell *stam yainam*, may the same site be used for kosher wine? The questioner's issue here is that if a Jew sees the kosher wine being sold on the site, he might think that the other wine is really kosher. There is an additional issue, that could be positive or negative. A good part of the dispensation given to sell the wine nowadays is the need for livelihood. Keeping an inn with a bar was a common livelihood for Jews. Selling only kosher wine would have been prohibitive. In our case, if the vendor sells kosher wine as well, it could negate his urgent need to sell the *stam yainam*. On the other hand, without the non-kosher wine, the business could close. The fact that he is unable to sell only kosher wine proves that there is a loss here.

In regard to *lifnei ivair*, on a single website, the best he can do is to make a clear distinction between the different wines. The sign would need to be in the kosher department, stating that only this section is kosher. While this would help, separate websites would be better. They could belong to the same business. This would allow for the aforementioned dispensation to be applied. [See Halochoscope XII:24.]

In conclusion, the preferred way is to incorporate the company. The business may use the same accounts. However, an *Ashkenazic* Jew may rely on the general dispensation to sell *stam yainam*. Separate websites are also preferable. At the very least, a sign should be posted on the kosher section stating that only these wines are kosher.

On the Parsha ... Shall I call a wet nurse from among the Hebrew women, and she will nurse for you .. nurse this boy for me and I will pay you .. [2:7] To consider the boy her own, she would need to nurse him herself, or pay the nurse [see *Malbim*]. She realized that her attempts to do this through an Egyptian were not going to work. She had just converted. Miriam showed her that now she could connect to a Hebrew woman. She would pay, and the commercial act would have a spiritual result. She would be connected to the Hebrew boy. Perhaps, even selling wine to an idolater was rejected, to prevent a connection between the Jew and the idolatry.

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