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prepared for publication
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A CASE OF VINEGAR MADE FROM ALCOHOL THAT WAS DISTILLED FROM *STAM YEINAM**

R. Abraham Danzig, in *Hokhmat Adam* (75:1), quotes sources which stress the seriousness of the prohibition against drinking Gentile wine. Indeed, one tradition maintains that drinking *stam yeinam* ultimately leads to the sin of having illicit relations with a Gentile woman. To be sure, *posekim* quote the Yerushalmi which states that one need not be overly strict when investigating cases of *yein nesekh*¹, a rule which would especially apply when there is great potential monetary loss involved. Still, one may employ a *heter* only if it is legitimate.

A. A Gentile May Create Stam Yeinam without Touching the Wine.

There are two reasons why *Hazal* prohibited *stam yeinam* (*s.y.*). Besides the possibility that the Gentile may have used the wine for libation, drinking Gentile wine may lead to intermarriage. A particular wine may be designated as *s.y.* even if only one of the two reasons apply. Rashash (*Avodah Zarah* 55a) points out that physical contact by the Gentile with the wine is necessary to create *s.y.* only in cases where the potential for a Jewish-Gentile relationship does not apply (i.e., wine produced by Jews). Wine made by Gentiles becomes *s.y.*

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even without actual Gentile contact. Although R. Joseph Caro seems to rule (*Yoreh De'ah* 123:17) that even wine manufactured by non-Jews must be touched by non-Jews to create *s.y.*,² in the case we are investigating we are unsure whether the Gentile workers in France did indeed touch the wine. The halakhic rule *safek de-rabbanan lekula* does not apply here, for the mere possibility that a Gentile touched wine is sufficient to give that wine the halakhic status of *s.y.*³

B. The Wine Had Not Been Neutralized by the Water Mixed with It.

Not all of the alcohol under discussion was extracted from wine. To produce some of the alcohol, water was mixed with the husks and stalks of pressed grapes. Water was poured several times over the husks and stalks, until the flavor of wine was absorbed into the water. (This is called *temed*.) Can we assume that the husks do not possess the halakhic status of wine, and that the slight amount of actual grape juice remaining in the husks is neutralized (*batel*) by the greater than six-fold amount of water in the admixture?⁴

From the reports of the company in France, we know that the husks contained 70% moisture before being mixed with the water. Obviously, the husks contained a significant amount of wine that had already been designated as *s.y.* (as explained above). Alcohol comes from the wine and the husks, not from the water, and when alcohol is distilled from a vessel that contained water and husks, the water will remain in the vessel. Alcohol boils at 65 degrees Centigrade; water does not boil until 100 degrees Centigrade. Thus boiling alcohol has been separated from the water. Hence, even were we to accept the questionable proposition that the water poured upon the husks had neutralized the taste of the wine by six to one, by separating the alcohol from the water the halakhic principle of *hozer ve-ne'or* (a prohibition that had been removed by neutralization is revived) becomes applicable. Disputes between *posekim* as to the scope of *hozer ve-ne'or* are irrelevant here, as Rema writes, for when we separate a permitted substance from a previously prohibited substance we certainly say *hozer ve-ne'or*, and the prohibition is revived.⁵

C. Alcohol Cannot Be Neutralized by Adding Only Six Parts Water.

Even if the distilled alcohol is mixed with six parts water before turning to vinegar, one cannot claim that, as a result, the *s.y.* has been neutralized. Halakhically, only wine can lose its status by neutralization with six parts water (or some other liquid). Alcohol retains its status even if it is mixed with more than six parts water.⁶

R. Moshe Feinstein, *zt'l*, writes that 60 parts of water are needed to neutralize non-kosher alcohol.⁷

D. Transformation of Wine into Vinegar Is Not a Sufficient Halakhic Change of Status and Does Not Eliminate the Prohibition of Stam Yeinam.

The Mishnah (*Avodah Zarah* 29b) states that one is forbidden to derive any benefit from vinegar that was formerly *s.y.* wine. The Talmud (*ad loc.*) comments upon that Mishnah: “This, surely, is obvious! Shall its prohibition disappear because it turned sour?” There is a dispute among *rishonim* whether non-kosher foods that have been transformed into different substances retain their prohibited status. *Peri Megadim* adopts a compromise position. Foods that are Biblically prohibited retain their status, whereas those that are merely prohibited by the Rabbis lose their status after being transformed. Similarly, Hatam Sofer states that *s.y.* which has been transformed would become kosher, as the prohibition of *s.y.* is of Rabbinic origin.⁸ If this is the case, why does the Talmud assume that non-kosher wine which turns into vinegar will “surely” remain forbidden? Shouldn’t the transformation from wine to vinegar cause the *s.y.* to lose its non-kosher status? Evidently, the Talmud assumes that the wine/vinegar transformation is not a sufficiently significant change. As a result, the vinegar cannot shed its non-kosher status. Conceivably, one may claim that as vinegar retains the taste of wine, the transformation from wine to vinegar is not significant. When distilled alcohol is converted to vinegar, however, one does not taste the wine. Hence, according to *Peri Megadim* and Hatam Sofer, one might want to declare the vinegar kosher. This exact issue arose in 1931, and the overwhelming majority of the Rabbis involved ruled in accordance with Rema in *Yoreh De’ah*, that even in this instance, there is not sufficient change for the vinegar to be declared kosher.⁹

E. The Ta’am of the Alcohol Spreads to the Water Mixed with It.

*Peri Megadim*¹⁰ suggests a startling *kula*. Even those *rishonim* who maintain that non-kosher food that has been completely transformed is still prohibited would admit that if this transformed food would subsequently be mixed with kosher food, the mixture would not be *treif*, even if one can detect the taste of non-kosher food. Only the taste of the original non-kosher food is considered *ta’am issur* with respect to the principle of *ta’am ke-ikkar* (i.e., if a non-kosher food gives its flavor to a kosher food, the entire mixture may not be eaten). Here, however, the flavor which can be discerned in the mixture is not that of the original food.

Based on the suggestion of *Peri Megadim*, one might suggest that as the non-kosher alcohol does not give any wine flavor to the water into which it is mixed, it should be considered as a substance that gives a taste that is neither beneficial nor repugnant. A controversy exists between Shakh and *Peri Hadash*^{10a} over whether a prohibited substance with a neutral taste mixed with kosher foods (where there is less than a sixty-to-one ratio) causes the entire mixture to be prohibited. A lenient position in that dispute might lead one to the conclusion that the vinegar cannot be prohibited, as it has not technically absorbed a beneficial prohibited taste. Such a *heter*, however, is invalid. Even if, in case of *s.y.*, we accept the lenient position in the above controversy, the *heter* only exists when the newly prohibited substance is a totally changed substance and is distinct from the original prohibited food. As we have mentioned, however, there has not been a total transformation in the shift from alcohol to vinegar. Therefore, the taste of the vinegar is considered as the actual “taste” of the originally prohibited food, and when mixed with the water, the resultant admixture would still be forbidden.

F. Scientific Definitions of Taste Are Not Congruent with the Halakhic Definition of Ta'am.

One may not argue that since scientifically alcohol possesses no taste, it can be halakhically classified as something that gives off no *ta'am*. It seems clear that, as one feels the strength of alcohol when drinking a mixture of alcohol and water, this feeling is itself the expression of *ta'am*. Notwithstanding the fact that when one tastes alcohol one's taste buds are not “stimulated” in the usual manner, this does not *ipso facto* mean that the halakhic category of *ta'am* is not applicable.

G. The Alcohol Has Not Been Spoiled Sufficiently for the Heter of Spoiled Foods to Be Operative.

In order to avoid paying the prohibitively high government taxes for liquors, the company that processed the vinegar first caused the alcohol to spoil. Can the law that food unfit for human consumption sheds its halakhic prohibition, even if it subsequently becomes fit, be applied here? Many *aharonim* accept this rule only if the food had become unfit even for a dog's consumption.¹¹ Moreover, it has not been determined to what extent the alcohol had actually deteriorated. Perhaps the alcohol was in fact still fit, not merely for animal, but even for human consumption! R. Shlomo Zalman Auerbach demonstrates from the Gemara in tractate *Bekhorot* that unfitness does not depend upon a person's subjective delicate tastes, but upon

the objective fact that the food is quite spoiled.¹² Even a limited degree of unfitness is sufficient for removal of the government taxes, and was all the company needed to do.

H. Food that is Spoiled by Introducing a Foreign Element May Not Be Equivalent to Food that Becomes Spoiled by Itself.

Furthermore, from *Havvot Da'at*¹³ one may conclude that only if food spoils by itself does the above *heter* apply. If one introduced some foreign elements to spoil the non-kosher food, however, this *heter* would not apply. Accordingly, even if the alcohol had been spoiled to the extent of rendering it unfit for animal consumption, this would not serve as grounds for a *heter*. (When Maran ha-Rav Joseph B. Soloveitchik *Shlita* gave *shiurim* on *Yoreh De'ah*, however, he found it difficult to accept this distinction between intrinsic and extrinsic causes of the food spoiling, as the resultant condition is the same.)¹⁴

I. "Kamma Kamma Batel" Cannot Be Used as a Heter.

When the alcohol was placed into the generator in order to process it into vinegar, the generator was already filled with permissible vinegar. Indeed, the ratio of permitted vinegar to prohibited vinegar was much greater than sixty to one. Can the principle of "*Kamma Kamma Batel*" (lit., the former is all the while annulled) apply in order to neutralize each successive drop of previously prohibited vinegar as it falls into the permitted vinegar?

At the time that this mixture of alcohol and vinegar occurred, no one knew yet that the alcohol had derived from *stam yeinam*. Rules of neutralization (*bittul*) can operate only if it is known that one of the elements is halakhically prohibited.¹⁵ In our case, however, it was mistakenly thought that all the alcohol was permitted. Only several months later did the facts become known.

Moreover, when the alcohol was placed in the generator, the alcohol-vinegar ratio steadily shifted. Eventually, the majority of the mixture consisted of the non-kosher alcohol. At this point, according to authorities, "*Kamma Kamma Batel*" becomes inoperative.¹⁶

J. The Mixture Was Spoiled for Too Short a Time for the Heter of Spoiled Food to Apply.

During the fermenting process, the mixture of vinegar clearly became unfit even for animal consumption. However, this state existed for such a short time that it would appear that this point is not

halakhically relevant. For this reason, our case cannot be compared to the cases mentioned in the Gemara.¹⁷

K. Excretion of Vinegar by Bacteria Cannot Be the Source of a Heter.

One may not legitimately claim that as alcohol turns into vinegar through the action of microscopic bacteria, the vinegar can be regarded as matter excreted from the bacteria and permitted. There is no general rule that excreted matter is *per se* permitted. The criterion, rather, is fitness for consumption. If the food is fit, it makes no difference whether it was excreted by another organism, and its previous prohibition remains intact. Excretion by an organism even when still being edible makes a difference exclusively with regard to matters of ritual impurity (*tum'ah*).¹⁸

L. Action of Microscopic Bacteria Is Halakhically Irrelevant.

On a more fundamental level, however, it is incorrect to use the bacteria as a source of a *heter* (even had we assumed that excretion *per se* could make previously prohibited foods permitted). Scientists tell us that we all swallow thousands upon thousands of bacteria every day. Nonetheless, no halakhist has ever advanced the proposition that we all transgress the prohibition of eating “swarming creatures.” We may define our rejection of the halakhic worth of microscopic bacteria either due to the inherently lower level of “life” that they possess, or due to the fact that, as we cannot see these tiny organisms, they must be halakhically disregarded. R. Moshe Feinstein stresses this second point.¹⁹ For the same reason, a bacterium cannot be viewed as a creature from which vinegar is “excreted,” since it cannot be seen by the naked eye.

M. Bacteria Cannot Count as One of the Two Elements of a Heter Based upon “Zeh ve-Zeh Gorem.”

The vinegar is produced as a result of the action of the “kosher” bacteria, nutrients and oxygen, and the non-kosher alcohol. One cannot, however, declare the vinegar to be the result of “*zeh ve-zeh gorem*” (a product of combined causes; some kosher and some non-kosher), and thereby declare it kosher. This principle only applies when some new food is manufactured. We then declare that this new food cannot be declared to be *yotse min ha-asur* (an extract from a prohibited substance) and prohibited, as it is also *yotse min ha-mutar* (an extract from a permitted substance). Since we have established,

however, that the vinegar excreted by the bacteria is not considered a new entity produced by the bacteria, but was deemed to be *issur she-mishtaneh* (prohibited food [s.y.], that has merely undergone a slight change of appearance), the concept of “*zeh ve-zeh gorem*” cannot be applied.²⁰

N. Vapor of Prohibited Foods Is also Prohibited.

Finally, one cannot rely upon the opinion of *Mishkenot Ya'akov*, who feels that the alcohol distilled from wine is permitted, as it lost its prohibition when in the state of vapor. This *heter* has not been accepted. Indeed, such a position would lead to the conclusion that on Pesah, one may even drink whiskey which was distilled from *hamets*. As we do not accept this position, we must reject as well its application in our case.²¹ Of course, one might distinguish between *hamets*, which is a Biblical prohibition, and *stam yeinam*, a prohibition which is of Rabbinic origin. Even though vapor distilled from *hamets* is treated as *hamets*, perhaps vapor distilled from s.y. need not be treated as s.y. This apparently was the view of those observant Jews in Europe who drank brandy and cognac without a *hekhsher*, even though these products were distilled from non-kosher wines.²² However, this was clearly not the generally accepted view, as we see from the *pesak* of Rema (who cites Rivash on this score).

O. When the Vinegar Is Mixed Directly into Other Foods Even in Small Amounts, It Causes Them to Become Prohibited.

The non-kosher vinegar was later mixed into various products in order to give them flavor. We generally assume that a non-kosher ingredient becomes neutralized (*bateil*) when mixed with sixty units of kosher food. However, in the case of salt, spices, or similar ingredients, even with sixty units of kosher food the non-kosher ingredient will continue to give taste, and the entire mixture will therefore be prohibited. *Posekim* disagree whether wine-vinegar ought to be considered the same as salt and spices.²³ Since vinegar made from pure alcohol distilled from wine is so much stronger than wine-vinegar, it appears that everyone would agree that it should be considered a *milta de-avida le-ta'ama*, equivalent to salt and spices.

This means that vinegar flavor would be treated as *milta de-avida le-ta'ama* in such items as ketchup and mayonnaise, and that they would be prohibited. However, once these ingredients were used to cook meats and other foods, although the flavor of the ketchup is discernible, the special flavor of the vinegar would most probably no longer be considered *avida le-ta'ama*. Thus, the foods cooked with

ketchup, mayonnaise, or other vinegar-containing ingredients might be permissible by using the laws of *bittul*.

NOTES

1. Yerushalmi, *Sanhedrin*. ch. 4.
2. This is also clearly the position of R. Moshe Feinstein, *zt'l*. See *Iggerot Moshe, Yoreh De'ah*, Vol. 2, no. 52. His leniency when the Gentile touched the wine after it was cooked, however, is problematic. See Rashash to *Avodah Zarah* 29b and R. Zvi Pesah Frank, *Har Tsevi, Yoreh De'ah*, no. 111.
3. See *Tuv Ta'am va-Da'at* (third rescension), vol. 2, no. 26, and *Teshuvot Maharam Schick, Yoreh De'ah*. no. 145.
4. See *Yoreh De'ah* 134:5. See also 123:9 concerning the status of *temed* with respect to *stam yeinam*.
5. See Rema, *Yoreh De'ah* 98:4.
6. *Iggerot Moshe, Yoreh De'ah*, vol. 2, no. 36. Shakh, *Yoreh De'ah* 134:21, quotes the opinion that six parts of water suffices to neutralize wine only because water is a beverage. Were wine to be mixed into a solid food, however, sixty parts of *heter* would be required to neutralize it. *Sha'arei Rahamim*, (which records the practices of R. Hayyim of Volozhin), reports (no. 49) that he maintained that whiskey should not be considered a beverage. (See also, on this score, *Am ha-Torah*, 5744, Vol. 8). According to this analysis one might maintain that we should not view alcohol as a beverage either, and it should not be neutralized by only six parts water. If so, the position that R. Moshe Feinstein takes in the above responsum (concerning blended whiskeys) should, perhaps, be reconsidered.
7. See *Iggerot Moshe, Yoreh De'ah*, Vol. 3, no. 19, and see the essay by R. Kanefsky, *zt'l*, in *Am ha-Torah*, 5744, Vol. 7, who followed and defined the nature of this principle (of neutralizing one unit of non-kosher wine mixed with six units of water) in a different way than R. Moshe Feinstein did. According to both opinions it would seem that one would require sixty parts water to neutralize non-kosher alcohol.
8. See *Pit'hei Teshuvah, Yoreh De'ah* 125:10, and *Imrei Yosher*, Vol. 2, no. 140. Cf. *Magen Avraham, Orach Hayyim* 216, and *Peri Megadim* and *Mishnah Berurah ad loc.*, who are lenient when the prohibition is only of Rabbinic origin.
9. (a) See R. Yosef Engel, *Asvan de-Oraita*, no. 4, sec. 7; *Teshuvot Maharsham*, Vol. 1, no. 15; *Minhat Yitshak*, Vol. 1, no. 128. (The responsum is by Rabbi Pinchas Zimmitbaum.) *Minhat Yitshak* records that R. Yisrael Veltz (from Budapest) retreated from his original lenient position. *Marheshet* (Vol. 1, no. 5) utilized the position of Rabbenu Jonah to permit *stam yeinam* that had turned into vinegar. *Minhat Yitshak* mentions this suggestion but rejects it as being contrary to the *pesak* of Rema.
(b) With regard to non-kosher foods which have undergone transformations, *Minhat Yitshak* (Vol. 1, no. 128) suggests a distinction between one transformation (after which the prohibition would still remain), and two transformations (after which the prohibition would be removed). One could explain this distinction according to the analysis of Maran ha-Gaon R. Hayyim Soloveitchik *zt'l*, cited in n. 11 below. (See also Rambam, *Hilkhot Ma'akhalot Asurot* 3:6; *Maggid Mishneh, ibid.*, 2:3; R. Itzele of Ponevezh, *Zekher Yitshak no. 80*; and *Helkat Yo'av*, cited below [n. 11].) He suggests that prohibited food that became spoiled and that subsequently became fit for consumption is considered an extract (*yotse*) from the prohibited food, and is itself prohibited. This prohibition, however, is not part of the original negative commandment not to eat the prohibited food, but a separate positive commandment to abstain even from its extracts. According to the Halakhah, *yotse* is prohibited only if it came from a food that entailed a negative prohibition. Hence, it is impossible to postulate a scenario of *yotse* from something which is itself only *yotse*. May one, in our case, assume that alcohol can be likened to the first derivative, which is itself prohibited but cannot generate a prohibition of the second derivative, i.e., vinegar?

We have already demonstrated that we should not call the shift from wine to alcohol a "transformation" but merely a "separation." The alcohol was there all along. Thus, alcohol is not a "derivative prohibition" (*yotse*) at all, but contains the original halakhic

prohibition of the non-kosher wine. Even the shift from alcohol to vinegar does not possess the characteristics of a total transformation that is a *sine qua non* for *heterim* based upon the principle of “transformation” to apply.

10. *Orah Hayyim* 216.
- 10a. See *Yoreh De'ah* 103 and *Peri Megadim ad loc.*
11. They disagree with the author of *Havvot Da'at*, no. 103. Cf. *Teshuvot Helkat Yo'av*, *Yoreh De'ah*, no. 11 (who utilizes the Gemara in *Temurah* 31a), and the (stencil) notes of R. Hayyim Soloveitchik *zt'l* (written by his students) to *Nazir* 50a. See as well R. Hayyim Ozer Grodziensky, *Ahiezer*, *Yoreh De'ah*, no. 11, and Vol. 3, no. 31, and Hazon Ish, *Orah Hayyim*, no. 116, sec. 2.
12. See *Minhat Shelomo*, no. 17.
13. *Op. cit.* n. 11.
14. One may, however, distinguish between artificial spoilage as opposed to natural spoilage, based upon a different consideration: the rule that one may not purposefully neutralize substances (*Beitsah* 4b). That rule, according to many authorities, extends beyond the technical category of “neutralization” (*bittul*). See *Yad Efrayim* to *Yoreh De'ah* 99:5; Shakh, *Yoreh De'ah* 95:3 (concerning a “taste derived from a taste”). Hatam Sofer writes that the law which prohibits one from purposefully neutralizing substances is part of a broader injunction against employing crafty schemes (*ha'arama*) in order to circumvent halakhic rules. If this is the case, it is clear that one may not intentionally introduce another substance into a food in order to spoil it and remove its prohibition. See R. Joseph Engel, *Ben Porat*, Vol 2, no. 3 (p. 7b), who quotes Hatam Sofer.
See Hazon Ish, *Orah Hayyim* 116:7–8, who maintains that if a foreign bitter element is introduced into a food and we are subsequently unable to extract it, if the food is unfit for a dog it is permitted. This dovetails with the position of the Rav outlined above. From R. Hayyim's remarks (*op. cit.* n. 11), however, one receives the clear impression that he agrees with *Havvot Da'at* and holds that only a *treif* food which spoiled naturally would become kosher based upon the principle of unfitness.
15. See Shakh, *Yoreh De'ah* 99:21. This idea, which is stated in a Tosefta to tractate *Terumot*, (quoted in *Biur ha-Gra*, *Yoreh De'ah* 94:8), has the force of a Biblical concept.
16. See *Peri Megadim* to Shakh, *Yoreh De'ah* 99:21. The Rav, in his *shiurim* on *Yoreh De'ah*, suggested that with less than a majority of the permitted substance, the mixture may not even be halakhically defined as such. For neutralization to occur, the first condition needed is that the prohibited food be in a state of “mixture,” which it is not.
17. The case of spoiled food cited in *Temurah* concerns the egg laid by a *terefah*. Our case, on the other hand, is similar to the process involved in making cheese. Even though the substance is spoiled for a short while, it makes no halakhic difference.
18. The classic case of excreted food is discussed in the first chapter of *Bekhorot*, and deals with urine of a donkey. See Tosafot *Menahot* 69a. s.v. *de-bala*; Hazon Ish, *Orah Hayyim* 116:2, and *Shulhan Arukh*, *Orah Hayyim* 467 (end), and *Biur ha-Gra ad loc.*
19. *Iggerot Moshe*, *Yoreh De'ah*, Vol. 2, no. 146. Both in that responsum and in *Dovev Meisharim* (vol. 1, no. 1) of the Tchebiner Rov, this principle is assumed to apply universally. It is not limited to the issue of eating “swarming creatures.”
20. *Posekim* utilize *zeh ve-zeh gorem* with *stam yeinam* only when the category of *ma'amid* (that which “supports” and binds the admixture together) is applicable. See *Teshuvot Maharsham*, Vol. 3, no. 234, and see R. Elhanan Wasserman, *Kovetz Shiurim (Pesahim)*, no. 119.
21. See *Pit'hei Teshuvah*, *Yoreh De'ah* 123:17, who quotes the *Mishkenot Ya'akov* (*Yoreh De'ah* no. 34). Concerning whiskey on Pesah, see *Devar Avraham*, Vol. 3, no. 13.
22. See *Ahiezer* cited above (n. 11).
23. *Pit'het Teshuvah*, *Yoreh De'ah* 98:9.