

Survey of Recent Halakhic Periodical Literature

THE WHISKEY BROUHAHA

A recent tempest in a whiskey tumbler which appropriately enough erupted shortly before Purim 1999 has served to amuse readers of the Anglo-Jewish press.¹ In point of fact, the issue involves an interesting and intricate decades-old controversy with regard to several fine points of Jewish law. The media coverage did, however, highlight an unfortunate sociological phenomenon that has become manifest in recent years. Questions involving cut and dry issues of fact and garden-variety halakhic decision-making have come to be viewed through a distorted lens of religious factionalism. Knowing, as they did, that the issue reflected a halakhic debate that took place some forty years ago, knowledgeable readers of the press reports of novel stringencies and of accompanying sociological analyses were bemused. In this country, the late 1940's were hardly an age of *humra* (religious stringency). In the intervening years, the ongoing problem regarding these alcoholic beverages as well as the conflicting views with regard to its resolution were well known in all sectors of the observant community. And, as is the case with regard to many areas of halakhic practice, each person conducted him or herself in a manner he or she deemed to be appropriate without thereby contributing to the growth of communal divisiveness.

It is hardly a secret that there are significant numbers of affluent people within the observant Jewish community. Nor is it a surprise to learn that at least some of those individuals have not only acquired a taste for fine wine and expensive whiskey but that they also insist that the liquor they imbibe be produced in accordance with the same high standards of *kashrut* to which they adhere in their cuisine. Accordingly, *kashrut* certifying organizations, true to their calling and attuned to the needs of their constituents, have responded by meticulously investigating methods of whiskey production and by making pertinent information with regard to specific brands of liquor, the vast majority of which are not produced under rabbinic supervision, available to the kosher consumer.

Publication of that information seems to have struck a raw nerve in some quarters among individuals who perceive selectivity in consumption of scotch and blended whiskeys to be a newly fabricated stringency and but another fusillade in a *humra* campaign designed to prohibit pleasures that have always been permitted. One sociologist has been quoted as ascribing to proponents of a movement to ban scotch and blended whiskey motives having nothing at all to do with *kashrut*. He regards rabbinic censure of those liquors as a means of controlling the growth of so-called "*kiddush* clubs" whose members have the temerity to seek alcoholic refreshment during services. He suggests that, for some rabbis, *kiddush* clubs may even represent a personal threat because tipping is more popular than the rabbi's sermon.²

The critics seem to be oblivious to the fact that comprehensive analyses of the *kashrut* issues and rulings both pro and con appeared in rabbinic journals some four decades ago. The sociologists seem to think that rabbinic personalities who have voiced opinions regarding this matter are unmindful of the fact that consumers of these alcoholic beverages, including members of *kiddush* clubs, can readily avail themselves of any one of the many brands pronounced by *kashrut* organizations to be kosher beyond cavil. In disseminating such information, *kashrut* organizations have not been advancing the "iron law of *humra*"³ by promoting ever more minute strictures of Jewish law. Quite to the contrary, they have made it possible for the many among their constituents who for decades have abstained from all scotch and blended whiskeys to partake of those brands that do not offend their standards.

I. NULLIFICATION OF FORBIDDEN WINE

As is well-known, wine that has been handled by a non-Jew is forbidden to a Jew. The admixture of wine or wine products in other alcoholic beverages is a centuries-old practice. The problem this poses regarding the *kashrut* of alcoholic beverages is reflected in the admonition recorded in *Shulhan Arukh, Yoreh De'ah* 114:30: "One must be careful to examine and investigate whether gentiles who make alcoholic beverages from honey put residue of wine in [those beverages]." Earlier, in the same chapter, *Yoreh De'ah* 114:4, *Shulhan Arukh* forbids the purchase of various alcoholic beverages from non-Jews when the cost of wine is less than those beverages "because we are concerned lest they mix wine [with the beverages]."

A modern-day manifestation of that problem was first publicized in print by the late Rabbi Pinchas Teitz. In a contribution to the Heshvan 5709 issue of *Ha-Pardes* Rabbi Teitz reported that upon investigation he had found that many blended whiskeys contain up to two and a half percent of sherry wine but, as permitted by law, the distillers fail to disclose that fact on the label. He also found that, in some instances, glycerine was used as a softening and smoothing agent. In a later article, *Ha-Pardes*, Nisan 5710, Rabbi Teitz credits the late Rabbi Eliezer Silver with having been the first to publicize the existence of the *kashrut* problem associated with blended whiskey. A quite similar problem exists with regard to scotch and Irish whiskey aged in wood casks. That problem was first reported by Rabbi Yitzchak Ya'akov Weisz in an article published in the British rabbinic journal, *Yagdil Torah*, no. 27 (*Shavu'ot*, 5716) and subsequently included in his collected responsa, *Teshuvot Minhat Yizhak*, II, no. 28. Some brands, particularly some of the more expensive ones, are aged in barrels previously used in the processing of sherry wine or, at times, of port. The Macallan, for example, boasts that the scotch they produce is aged in sherry casks exclusively, while Glenmorangie ten-year-old (but not eighteen-year-old) scotch is aged entirely in bourbon casks. Some distillers utilize only otherwise unused wooden casks, others use a medley of different casks. The problem is more serious with regard to single malt scotch than with regard to blended scotch whiskey because when whiskeys from different sources are combined there is greater likelihood that only a small portion of the blend is derived from whiskey that was aged in wine casks with the result that the "taste" (*ta'am*) of the wine that is present is nullified by virtue of adulteration.⁴

An excellent review of the details of the production of alcoholic beverages as well as references to the possible halakhic ramifications were presented by Rabbi Tzvi Rosen in "Kashrus on the Rocks," *Kashrus Kurrents*, Summer, 1998, pp. 8-18. An earlier pamphlet titled *L'Chaim! OU Beverage Guide* (New York, 1996), compiled by Rabbi Yosef Eisen and published by the Kashrut Division of the Orthodox Union, contains a survey of the halakhic issues⁵ and a detailed list of recommended and not recommended beverages. An "Alcoholic Beverage Guide" was also published in *Kashrus Kurrents* and reprinted in the December, 1998 issue of *Kashrut Magazine*.

The presence of a small quantity of wine does not necessarily render whiskey non-kosher. The generally applicable rule is that the non-kosher status of a foodstuff is nullified upon adulteration with sixty

parts of a kosher substance. However, the rule with regard to wine is somewhat different. As recorded in *Shulhan Arukh, Yoreh De'ah* 134:5, wine diluted with six parts of water is deemed to have lost its characteristic identity and hence is permissible.⁶ The rule regarding nullification of wine that has become adulterated with liquids other than water is a matter of dispute. Rema, *Shulhan Arukh, Yoreh De'ah* 114:4, followed by R. Shabbetai ha-Kohen, *Nekudat ha-Kesef*,⁷ and R. Yonatan Eybeschütz, *Matteh Yonatan*,⁸ *ad locum*, maintains that the rule is limited to adulteration of wine with water and is based upon the premise that water in that proportion completely adulterates the taste of wine leaving any residual taste unpleasing to the palette.⁹ However, other liquids, maintains Rema, do not have that effect with the consequence that non-kosher wine becomes nullified only in sixty parts of other beverages. *Taz, Yoreh De'ah* 114:4, challenges Rema's view and asserts that all beverages have an equally deleterious effect upon wine and hence wine becomes nullified by reason of adulteration when mixed with six parts of any beverage. *Taz'* view is accepted by *Magen Avraham, Orach Hayyim* 204:16; *Pri Hadash, Yoreh De'ah* 114:10; *Mahazit ha-Shekel, Orach Hayyim* 204:16; and by a host of later authorities.¹⁰

II. WINE USED TO IMPART FLAVOR

Nevertheless, reliance upon the position of *Taz* does not necessarily resolve the problem. The principle of nullification is based upon the premise that the taste of the non-kosher substance is no longer discernible when submerged in a massive quantity of foodstuff having a different taste. That is clearly not the case with regard to pungent substances such as spices and the like. Accordingly, Rema, *Yoreh De'ah* 98:8, records the cogent principle that items designed to contribute flavor (*leta'ama avida*) are not nullified "even in a thousand" parts. Rambam, in his *Commentary on the Mishnah, Orlah* 2:10, specifically enumerates wine, when used for flavoring, as a member of the class of foodstuffs that are not subject to nullification. The obvious implication is that, since wine is added to blended whiskey to enhance the taste rather than as an economy measure, the principle of nullification is not applicable. The same is true with regard to whiskey aged in wine casks since the purpose of using such casks is to enhance the taste of the whiskey. In the responsum referred to previously, secs. 5-9, Rabbi Yitzchak Ya'akov Weisz endorses Rabbi Teitz' view that even *Taz* concurs that, when added for flavor, wine is not nullified in six parts of another liquid.

Rabbi Teitz further notes that *Teshuvot ha-Rashba*, III, no. 214, maintains as a blanket rule that any item customarily mixed with other foodstuffs is not subject to nullification by virtue of adulteration. That ruling is codified by *Shulhan Arukh*, *Yoreh De'ah* 134:14. However, as recorded by Ran, *Avodah Zarah* 29b, both Ri mi-Gash and Rambam reject Rashba's position. It may be noted that *Noda bi-Yehudah*, *Mahadura Tinyana*, *Yoreh De'ah*, no. 56, followed by *Gilyon Maharsha*, *Yoreh De'ah* 134:13, accept the permissive view.¹¹ Nevertheless, Rabbi Teitz endeavors to show that even those authorities would concede that Rashba's position is correct with regard to nullification of forbidden wine.¹²

Responding to Rabbi Teitz' objections in a contribution to the Shevat 5710 issue of *Ha-Pardes*, Rabbi Chaim Mednick of Chicago concedes that, according to the authorities who maintain that wine is treated as all other forbidden foods insofar as nullification in liquids other than water is concerned, blended whiskey cannot be regarded as acceptable. However, argues Rabbi Mednick, the authorities who rule that wine is nullified in six part of other liquids maintain that position, not because the taste of the wine cannot be detected in such mixtures, or because wine in that proportion mars the taste of the beverage, but because, in their view, only beverages that are identifiable as wine are usable for idolatrous libations and, accordingly, mixtures that do not have that characteristic are not included in the ban. Consequently, argues Rabbi Mednick, even if the wine is utilized as a flavoring agent, the mixture is permissible. Rambam's comment asserting that wine used for flavor is never nullified is dismissed by Rabbi Mednick as limited to wine of *orlah* (the prohibited fruit produced by a tree or vine during the first three years subsequent to planting) on the contention that, since *orlah* is nullified only in a hundred parts of another substance, *orlah* remains prohibited even when it no longer has the characteristics of wine. Hence, argues Rabbi Mednick, it is reasonable to conclude that if wine of *orlah* is used to flavor another substance it is never nullified.

Rabbi Mednick bases this view upon the fact that, although wine touched by pagans was originally forbidden because of a fear that a libation may have been poured from the wine thereby rendering the wine impermissible by virtue of having been utilized as an idolatrous sacrifice, the Sages later prohibited the wine of all gentiles, even those who are not idolaters, because of a fear that fraternization and social intimacy associated with convivial consumption of wine would lead to intermarriage. Although *Tosafot*, *Avodah Zarah* 29b, regard the latter edict as a mere expansion of the older prohibition, Rabbi Mednick avers that Rashi,

Avodah Zarah 36b, regards it as an entirely independent edict. Accordingly, Rabbi Mednick develops the notion that, for Rashi, albeit not for *Tosafot*, the Sages forbade only the consumption of a beverage identifiable as wine with the result that other beverages containing an admixture of wine are permissible even if the taste of wine is recognizable.

Rabbi Teitz' rejoinder to that argument was published in the immediately following issue of *Ha-Pardes*, Adar 5710. Rabbi Teitz astutely notes that, in two separate comments, *Yoreh De'ah* 114:4 and *Yoreh De'ah* 114:16, *Taz* challenges Rema's statement requiring sixty parts of liquids other than water to nullify wine and asserts that six parts of any liquid is sufficient, but maintains silence with regard to Rema's ruling, *Yoreh De'ah* 114:6, to the effect that wine designed to enhance flavor is never nullified.

Rabbi Teitz further cites the ruling codified by *Shulhan Arukh*, *Yoreh De'ah* 123:15, to the effect that bread in which the residue of prohibited wine has been used as a leavening agent is forbidden. That ruling, which is accepted by all authorities, reflects a notion similar to the rationale underlying the ruling that ingredients designed for flavoring are not subject to nullification. Such ingredients are not nullified because their flavor is not overpowered even by copious quantities of other foodstuffs and hence the flavor of the forbidden ingredient is always perceived; similarly, a leavening agent, no matter how minute, is always deemed to be present in the bread. The prohibition regarding bread baked in this manner, despite the fact that the wine derivative represents only a tiny fraction of the total volume of the bread, is evidence refuting Rabbi Mednick's contention that the authorities who assert that forbidden wine is always nullified in six parts maintain that position even when the wine is used as a flavoring agent.

Continuing the debate,¹³ Rabbi Mednick responded to that argument in the Sivan 5710 issue of *Ha-Pardes* by citing a comment of Rabbenu Shimshon in the latter's commentary on *Tevul Yom* 3:4. According to biblical law, *terumah* that is mixed with a similar species of ordinary food is nullified in instances in which the *terumah* represents less than fifty percent of the resultant mixture. Nevertheless, in elucidating the statement of the Mishnah declaring that when sourdough of *terumah* is used to leaven bread the bread must be treated as *terumah*, Rabbenu Shimshon comments that, despite the fact that the quantity of *terumah* relative to the total mixture is minuscule, the rule recorded in the Mishnah does not constitute a rabbinic stringency negating the principle of nullification but is biblical in nature. Rabbi Mednick attempts to

explain the nonapplicability of the principle of nullification by asserting that the rule with regard to sourdough reflects a unique concept. Bread made from dough that does not rise is not bread in the conventional sense of the term. Hence, when a person is confronted by bread he clearly perceives that a leavening agent must be present. A prohibited substance that is recognizable is never subject to nullification. Consequently, the sourdough, regardless of its quantity or the proportion in which it is present, is deemed to have infused the entire dough. Since the sourdough is regarded as extant and identifiable in every particle of dough, the entire bread is treated as *terumah*. Similarly, argues Rabbi Mednick, when used as a leavening agent, wine detritus renders the bread impermissible because the wine residue is deemed to be recognizable and hence not subject to nullification by virtue of adulteration.

Rabbi Mednick's point is contradicted by at least one authority. *Hokhmat Adam* 80:2 follows *Taz* in ruling that wine is nullified when mixed with six parts of any liquid. Nevertheless, *Hokhmat Adam* 75:6 records that, when used for flavoring, wine can never be nullified. *Hokhmat Adam* certainly did not accept the notion that, according to the authorities who maintain that wine is nullified by six parts of any liquid, it is nullified even when utilized for its flavor.

Rabbi Teitz apparently communicated his views to R. Moshe Feinstein some time before their publication in *Ha-Pardes*. In a response to Rabbi Teitz dated *erev Rosh Hodesh Adar II*, 5708 and later published in *Iggerot Mosheh, Yoreh De'ah*, I, no. 62, Rabbi Feinstein reports that, in general, he abstains from drinking blended whiskey and commends Rabbi Teitz for having arranged for *kashrut* supervision on behalf of one distillery thereby assuring that alcoholic beverages produced by that firm have no admixture either of wine or of glycerine. Nevertheless, Rabbi Feinstein declares that, as a matter of normative law, blended whiskey is permissible. He relies primarily upon the view that non-kosher wine is nullified by adulteration in six parts of any permissible beverage. Rabbi Feinstein further adds that *Shakh, Yoreh De'ah* 114:21, rules that since, in contemporary times, the prohibition against wine handled by a non-Jew is rabbinic in nature, if it is known that at least one of the beverage purveyors does not adulterate his wares with wine, the beverages of all purveyors are permitted, provided that there is no information indicating that the seller does introduce wine into his product. Accordingly, argues *Iggerot Mosheh*, since there are at least some manufacturers of blended whiskey who do not use wine in their formulae, all blended whiskey is permissible unless it is known that a

particular brand contains wine. In point of fact, such information is readily available from all major distillers and has been compiled by various *kashrut* supervisory organizations. As a result, in many cases, whether or not a particular brand of whiskey is free of wine can be determined with little difficulty.

The argument that, when utilized for the purpose of imparting flavor to another food or beverage, wine does not become nullified is refuted by *Iggerot Mosheh, Yoreh De'ah*, I, no. 63, on the basis of the discussion of the Gemara, *Bava Batra* 97a. The Gemara describes a process of soaking pressed grapes in water as a result of which the quantity of grape-flavored liquid recovered at the end of the process is somewhat greater than the quantity of water poured over the grape residue at the outset. That phenomenon is clearly attributable to the fact that residual liquid naturally present in the grapes is leached out of the pulp by the water that is added. Since this occurs by design, the process is obviously undertaken in order to extract the remaining juice from the grape dregs in order to “flavor” the water which is then fermented in order to produce a type of wine. The Gemara explains that, for purposes of tithing and pronouncement of the appropriate blessing, the liquid is not deemed to be wine despite the fact that the taste of grapes is clearly perceived by the palate. The Gemara explains the underlying principle in declaring, “Do you think it is wine? It is mere acid (*kiyuba*).”¹⁴ *Tosafot, ad locum*, describe the grape detritus from which the wine is produced as “mere soil.”

Although, as noted earlier, Rambam’s opinion as expressed in his *Commentary on the Mishnah* is that wine used as flavoring is never subject to nullification, *Iggerot Mosheh*, opines that the word “wine” crept into the published version as a result of scribal error. In support of that conclusion *Iggerot Mosheh* points to the verbatim quotation of Rambam’s comment in his *Commentary on the Mishnah* as it appears in *Pri Hadash*’s gloss to *Yoreh De'ah* 98:8. In his citation *Pri Hadash* omits reference to wine as a “spice” to which the usual rules of nullification do not apply. Moreover, argues *Iggerot Mosheh*, even if the published version of Rambam’s *Commentary on the Mishnah* is accepted as accurate, the reference should be understood as limited to wine from which no benefit at all may be derived as distinct from wine which one may not drink but from which other forms of benefit may be derived. Wine subject to that stringent restriction is prohibited even in a mixture in which the taste is “mere acid” since quite obviously some benefit is derived from the wine despite its debased state.

Iggerot Mosheh offers another, but rather strained, interpretation of the published text of Rambam's comment that renders it inapplicable to the matter at hand. Citing a comment of *Taz*, *Yoreh De'ah* 98:1, regarding another foodstuff, *Iggerot Mosheh* offers the suggestion that Rambam's intent was to categorize wine as a member of the class of "sharp" substances, which are also not subject to nullification, rather than as a "spice." If classified in that manner, argues *Iggerot Mosheh*, wine is nullified if mixed with a substance that is "sharper" than the wine. Whiskey is certainly such a substance.

Iggerot Mosheh dismisses the contention that Rema, *Yoreh De'ah* 114:6, prohibits beer that has been brewed with the residue of pressed grapes because the wine reabsorbed by the grapes is designed to "flavor" the beer. Pointing to the comments of *Shakh*, *Yoreh De'ah* 123:28, *Iggerot Mosheh* asserts that it is the grape dregs themselves, rather than the wine reabsorbed by the dregs, that serve as a leavening and brewing agent. *Iggerot Mosheh* develops the novel thesis that the dregs of forbidden wine are prohibited, even though the grapes themselves are entirely permissible, on the tentative grounds that the residue is treated as wine because, so long as it remains moist, it might be mixed with the wine itself and consumed as wine. Hence, asserts *Iggerot Mosheh*, although, as he maintains, adulterated wine can never be deemed a flavoring agent, Rema prohibits beer produced with grape residue because it is the prohibited dregs that are used as a flavoring agent.

Iggerot Mosheh's view regarding the nature of the prohibition of grape detritus is at variance with that of R. Shalom Mordecai Schwadron, *Teshuvot Maharsham*, III, no. 234, s.v. *ve-benah*. Maharsham states that the "pits" of pressed grapes are not intrinsically forbidden but are prohibited solely because of the presence of wine reabsorbed in them. In support of that observation he cites the ruling of *Shulhan Arukh*, *Yoreh De'ah* 123:16, to the effect that wine residue that adheres to the wall of the barrel is permissible after twelve months have elapsed from the time the barrel has been emptied. Maharsham understands that ruling to be predicated upon the consideration that the detritus is prohibited only because of the wine it has absorbed and, accordingly, since, as recorded by *Shulhan Arukh*, any remaining moisture evaporates within a period of twelve months, there is no reason to prohibit the residue after that period of time has elapsed. It follows that, according to Maharsham, beer brewed with the residue of pressed grapes is prohibited, even though the residue contains only a small quantity of wine, because wine is not nullified when it is used as a flavoring agent. *Iggerot Mosheh* would

presumably counter that the detritus is permitted after twelve months have elapsed because, as *Shulhan Arukh* notes, at that point it is “mere earth.” *Iggerot Mosheh* would presumably explain *Shulhan Arukh*’s reference to the evaporation of the absorbed wine as simply an explanation of why the detritus turn into “mere earth.”

Iggerot Mosheh also demonstrates that, as a matter of normative law, the principle of nullification by virtue of adulteration applies even with regard to products that are customarily mixed with other foodstuffs. It is evident from the ruling of Rema, *Yoreh De’ah* 114:6, and the comments of *Taz*, *Yoreh De’ah* 114:6, that this is true with regard to prohibited wine as well.

III. TASTE ATTRIBUTABLE TO DUAL SOURCES

Rabbi Weisz reports that one of his colleagues contended that the wine added to blended whiskey cannot be designed to flavor the whiskey for, were the taste of wine actually detectable in the whiskey, observant Jews would long have been aware of the problem¹⁵ and would have refrained from drinking such whiskey.¹⁶ Rabbi Weisz asserts that the principle of *le-ta’ama avida*, i.e., that nullification does not occur when the prohibited foodstuff is designed to impart taste, is not limited to situations in which the taste of the prohibited foodstuff is identifiable as that of the prohibited foodstuff. Rather, it also includes situations in which the forbidden foodstuff merely modifies and enhances the flavor of the mixture. Thus, the principle of nullification applies only when the taste of the forbidden foodstuff is entirely submerged with the result that the taste of the dominant ingredient or ingredients is no different from the taste of the same food product absent the admixture of the small quantity of the forbidden substance. The taste of wine *per se* may not be detectable in scotch whiskey but, contends Rabbi Weisz, the taste of scotch aged in wine casks is different from that of scotch not aged in wine casks. Since the flavor of scotch aged in wine casks is transformed and beneficially enhanced as a result of the process the taste of the prohibited wine can not be deemed to have been nullified.

Nevertheless, in sec. 16 of his responsum, Rabbi Weisz finds grounds to permit such whiskey precisely because the resultant “taste” attributable to the wine is not a wine flavor but an entirely new taste. His argument is technical and complex but warrants thoughtful consideration.

As demonstrated by *Minhat Yizhak* in secs. 11-12 of his responsum, Ra'avad, cited by Ran, *Avodah Zarah* 29b, agrees with the earlier cited view of Rashba to the effect that products that are customarily adulterated with forbidden foodstuff are forbidden even if the forbidden substance is present only in a minute quantity. Ra'avad explains that the prohibition was enacted in order to prevent impermissible forms of nullification.

Rashba himself is understood by *Mahazit ha-Shekel*, *Orah Hayyim* 447:45, as advancing an entirely different rationale for this prohibition. The principle of nullification by virtue of adulteration does not apply to a *davar ha-ma'amid*, i.e., a forbidden substance that serves as a "support" for the food product to which it is added. Jelling and solidifying agents are of that category. Emulsifiers and enzymes such as rennet used in production of cheese may be the best commonplace examples of a *davar ha-ma'amid*. *Mahazit ha-Shekel* understands Rashba as advancing the view that if a small quantity of a substance whose taste cannot be perceived in the resultant mixture is customarily added to a food product it must be because, although the ingredient is not itself perceivable, it must serve to modify the taste of the dominant ingredients. Such a substance, asserts *Mahazit ha-Shekel*, was regarded by Rashba as a *davar ha-ma'amid*.

Adopting that rationale, *Minhat Yizhak* argues that a *davar ha-ma'amid* that is itself composed of two separate ingredients, one kosher and one forbidden by virtue of rabbinic edict, does not render the product in which it is employed non-kosher, provided that the mixture is of a quantity sufficient to nullify the non-kosher ingredient. In such cases the *davar ha-ma'amid* is itself a *zeh va-zeh gorem*, i.e., the effect of the *ma'amid* stems from dual sources, one permissible and one impermissible. The applicable rule is that a *zeh va-zeh gorem* in which the forbidden substance is rabbinically prohibited, as distinct from a substance prohibited by biblical law, is entirely permissible.

Since the wine in question is prohibited only by virtue of rabbinic edict and since the taste of the wine itself is not discernible by the palate, the taste that it does impart, argues *Minhat Yizhak*, must, according to Rashba, be forbidden only as a *davar ha-ma'amid*. However, the novel taste imparted to the whiskey is not the product of the wine alone; the taste that is generated, argues *Minhat Yizhak*, is the product of multiple ingredients, including the wood of the cask itself (which is often oak), no single one of which is itself discernible. Accordingly, concludes *Minhat Yizhak*, the resultant flavor has the status of a permissible *zeh va-zeh gorem*.¹⁷

Minhat Yizhak's argument is less than compelling for a number of reasons. *Helkat Mehokek's* interpretation of Rashba is certainly debatable. Rashba's phraseology is far from unequivocal and *Helkat Mehokek's* explanation is not at all self-evident. It should also be noted that, as opposed to *Helkat Mehokek, Noda bi-Yehuda*, regards the views of Ra'avad and Rashba as identical. Moreover, the authorities who disagree with Rashba's position, or with his explanation of that position, may well do so precisely because they adopt the view that the taste of a forbidden substance retains its prohibited status unless it is completely eradicated and entirely undetectable with the result that a modified or even novel taste remains intrinsically forbidden.

IV. NULLIFICATION ON BEHALF OF JEWISH PURCHASERS

In his initial treatment of this topic published in *Ha-Pardes*, Heshvan 5709, Rabbi Teitz argued that, even if the wine in blended whiskey is present in quantities sufficiently minute to be nullified by virtue of adulteration, it is nevertheless forbidden for a Jew to purchase the adulterated product. Halakhah forbids the intentional adulteration of a forbidden substance in order to render it permissible (*ein mevatin issur lekhatilah*).¹⁸ Moreover, although the mixture is regarded as kosher once it is adulterated, nevertheless, the person who intentionally adulterates a forbidden substance in order to nullify it may not consume the mixture *post factum*. Similarly, if an individual intentionally adulterates a forbidden substance for the benefit of another person, that person is also forbidden to consume the resultant mixture. R. Akiva Eger, in a gloss to *Yoreh De'ah* 99:5, cites *Teshuvot Rivash*, no. 498, who rules that a person who engages in such a practice on a commercial basis does so on behalf of all potential customers. Accordingly, even though the potential customers are both undetermined and anonymous, they are nevertheless the intended beneficiaries and hence are prohibited from eating the resultant mixture.

To be sure, as evidenced in a different context by the discussion of the Gemara, *Eiruvin* 40a, if the adulteration were to be undertaken for the benefit of non-Jewish customers, Jews would not be forbidden to benefit from such nullification. Since the vast majority of consumers are non-Jews, it might be contended that the distillers blend the whiskey for the intended benefit of non-Jews and hence the consideration voiced by R. Akiva Eger is not applicable. Rabbi Teitz counters that

argument by pointing to the comment of *Magen Avraham, Orach Hayyim* 515:22, regarding food that has been brought from beyond the permitted walking distance (*huz le-tehum*) on *Yom Tov*. Such foodstuffs are forbidden to the person on whose behalf they have been transported even if they have been transported by a non-Jew but are nevertheless permitted to others. Thus, if such foodstuffs are transported for the benefit of non-Jews they may be consumed by Jews. However, if the food is transported primarily for sale to non-Jewish customers but additional quantities of the same foods are simultaneously transported because of a potential Jewish clientele, the transportation is deemed to have been carried out for the benefit of Jews and, accordingly, Jewish consumers are forbidden to benefit therefrom.

Rabbi Teitz notes that the number of Jewish consumers, although relatively modest in terms of the total market, is nevertheless numerically sufficient to assure that additional quantities of whiskey must be produced in order to satisfy their needs. Moreover, argues Rabbi Teitz, the ubiquity of liquor advertisements inserted in Anglo-Jewish newspapers indicates that distillers are well aware of the existence of a Jewish market and fully intend to blend whiskey on behalf of their Jewish clientele.

However, the basic view adopted by R. Akiva Eger is disputed by numerous authorities including *Taz, Yoreh De'ah* 99:10. Following R. Shlomoh Luria, *Yam shel Shlomoh, Hullin* 7:59, *Taz* declared that the rule providing that an adulterated product may not be consumed by a person for whose benefit the forbidden foodstuff was adulterated is limited to situations in which the individual had prior knowledge that the adulteration was to be carried out on his behalf. According to *Taz*, it follows that, when such products are acquired on the open market, they are permitted to a Jewish purchaser. In light of the controversy concerning this point, Rabbi Teitz did not take a definitive stand on the basis of that consideration.

Minhat Yizhak, in his previously cited responsum, sec. 20, cites another consideration in vitiation of the problem posed by intentional nullification for the benefit of Jewish consumers. *Teshuvot Maharsham*, III, no. 234, s.v. *ve-nish'ar*, apparently assumes that the prohibition against intentional adulteration of a forbidden foodstuff is designed to prevent transgression that might arise if the forbidden item is insufficiently adulterated. Consequently, Maharsham permits intentional nullification of a small quantity of a forbidden substance in situations in which a higher concentration would spoil the food to which it is added. If so, argues *Minhat Yizhak*, it would be permissible for a Jew inten-

tionally to add a small quantity of wine to whiskey. *Minhat Yizhak* reasons that, although a small quantity of wine enhances the whiskey, a larger quantity would ruin its taste. Thus, there are no grounds to fear that permitting adulteration through the addition of a small quantity of wine would lead distributors to add a quantity sufficiently large to render the whiskey impermissible. Maharsham's position, however, is accepted by other authorities.

Iggerot Mosheh, Yoreh De'ah, I, no. 63, argues that the ban against benefiting from intended nullification of a forbidden substance is not applicable because of four considerations:

1. Provisions applicable with regard to items transported on *Yom Tov* are not germane with regard to nullification by means of adulteration. The ban against benefiting from nullification is designed as a penalty for violation of the prohibition against intentional adulteration. There is, however, no prohibition against adulterating a forbidden foodstuff on behalf of a non-Jew. Hence a Jewish purchaser can legitimately claim that the food product he has bought came from the major portion of the product offered for sale, i.e., from the quantity designed for sale to non-Jews and hence not subject to the ban against adulteration. However, since non-Jews are permitted to transport merchandise on *Yom Tov* with impunity, the ban against benefiting from foodstuff transported from beyond the permitted distance on *Yom Tov* cannot be in the nature of a penalty. Rather, it is rooted in a prohibition against deriving benefit from *Yom Tov* activity. Hence, concludes *Iggerot Mosheh*, since a single *Yom Tov* act is involved, the prohibition is triggered if any portion of the produce is transported on behalf of a Jew.

Iggerot Mosheh's argument may, however, represent a distinction without a difference. It may be correct to say that in transporting items from beyond the permitted area the non-Jew commits no impropriety, and hence there is no basis to penalize the act, but that a Jew may nevertheless be forbidden to derive benefit from an act performed on *Yom Tov* on his behalf. However, since the items transported are fungible, it is entirely possible that, when items are transported primarily for non-Jews but an additional quantity is added for the benefit of a Jew, the items ultimately delivered to the Jew are not those added on his behalf and hence, in actuality, the Jew has not benefited from a prohibited act performed on *Yom Tov* on his behalf. If so, the fact that a Jew dare not benefit from any of the items transported when even some of those items have been added for the bene-

