

# The Use of All Wines

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## שאלה

Can we trust the kosher and pareve status of all American wines? The problem arises in the process of clarifying, or “fining,” the wine. Because of the enormous influence of the wine lobby in Washington, there are no “truth in labeling” laws requiring a winery to label its products or to divulge anything in writing or by telephone about the ingredients or process it uses. The Bureau of Alcohol, Tobacco, and Firearms has a list of substances permitted for use as fining agents, and one must assume that the Government’s list includes precisely those substances for which wine makers have sought approval. That list includes casein, caseinates, lactose, monostearates, gelatin, isinglass (a fish glue often made from sturgeon bladders), and non-fat dry milk powder.

Although there is a negligible residue of the fining agents left in the wine after they trap the particles suspended in the wine and settle down to the bottom, if we accept the principle of *אינן מבטלים איסור לכתחילה* (there is no prior nullification of a forbidden substance), the fact that there is a residue at all raises questions. Specifically, must we not assume that without someone actually standing on the site watching the ingredients which are added to the wines, the wines are, at best, dairy and, at worst, unkosher?

## תשובה

This responsum will be divided into four parts: the ingredients and process used for making wine and their halakhic implications; the issue of *סתם יינם*; the production of wine on the Sabbath; and, finally, my recommendations for a Law Committee ruling.

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*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

## **Issues of Kashrut in the Making of Wine Clarifying the Wine**

After grapes are harvested, they are crushed and pressed in order to extract as much juice as possible. Then the juice (“must”) is partially clarified through settling, centrifugation, and/or vacuum filtration. Pectic enzymes are sometimes used in conjunction with the settling method, but they are always from a vegetable base and thus pose no kashrut problems. A juice that is too clean because of excessive pectic enzyme treatment, filtration, or centrifuging may have difficulty completing the fermentation process which follows, and so the must at this stage is often left as 0.25-1.0% solids. Then the juice is fermented, usually with the addition of yeast. After fermentation the wine is clarified, i.e., the yeast and remaining grape solids are removed from the wine. Three methods are commonly used: letting the wine settle and then “racking” it (i.e., removing the clear wine of its settled solids, or “lees,” after the period of natural settling) by siphoning it, draining it through a bung hole, or pumping it; centrifuging; or filtration through diatomaceous earth, cellulose pads, or cellulose asbestos pads.

In addition to these steps in the process of making wine, wine makers often “stabilize” their wine in order to guard against the effects of storage conditions which are either too hot or too cold. Stabilization commonly takes place after fermentation, but it can be done prior to it or as late as the last stage before bottling.<sup>1</sup> “Cold stabilization” protects the wine against excessively cold temperatures in which crystals of potassium bitartrate may form in the bottle. That is generally done by chilling the wine and then putting it through a filter to trap and remove the crystals. “Heat stabilization” or “protein stabilization” minimizes the possibility of a protein haze or cloud forming in the wine due to excessive heating of the wine in storage. To accomplish this, fining and/or filtration is used.

While both cold and heat forms of stabilization are in common use, many wine makers “feel that excess stabilizing treatments reduce the wine quality and will only stabilize a wine to the minimum level of stability they judge is needed.”<sup>2</sup> On the other hand, even when not needed to clarify the wine, fining may still be done to make the wine smoother and more harmonious by removing remaining astringency or bitterness.<sup>3</sup>

## **Fining the Wine**

The Government’s list defines what legally may be used for fining, and that list grows out of common practice. Beef blood, which has been used in Europe for fining, does not have government approval for use here. In

a telephone conversation, Dr. Cornelius Ough, Chairman of the Department of Viticulture and Enology at the University of California, Davis, told me that casein and casein salts are used in fining many white wines in America and Europe, and gelatin is often used to fine red wines. While some wineries restrict themselves to vegetable gelatin, others fine with animal gelatin. Rabbi Isaac Klein wrote a responsum permitting the consumption of animal gelatin, but there are some in our movement who do not want to take advantage of the permission therein granted. Louis R. Martini reports the increased use of egg albumin for higher quality red wines in recent years,<sup>4</sup> but probably the most commonly used fining agent is bentonite, an aluminum silicate made from clay. Clearly, neither egg albumin nor bentonite poses a problem for us.

According to the California Wine Institute, there are more than 550 wineries in California alone. I clearly could not canvass them all, but I wrote to the ten largest wineries and to ten of the more popular, quality wineries to get an idea of what is actually happening in the wine industry. I did not get answers from all of them, but I suspect that the following sampling is typical.

<b>Fining Agents Used</b>		<b>Wines Pasteurized?</b>
1. Beaulieu Vineyard Animal gelatin, egg whites, bentonite	No	
2. Chateau Montelena Animal gelatin, bentonite	No	
3. Chateau St. Jean Vineyards and Winery Bentonite, animal gelatin, isinglass	No	
4. E. and J. Gallo Winery Bentonite, animal gelatin, casein and casein compounds	No	
5. Guild Wineries and Distilleries, Cribari Winery	Only a few wines, at 190 <sup>0</sup>	Bentonite only
6. Heitz Wine Cellars Bentonite, gelatin in red wines	No	
7. Inglenook Bentonite, egg whites, gelatin (undefined)	No	
8. Charles Krug and C-K Mondavi vegetable and/or animal gelatin, isinglass	Only the 3 and 4 liter bottles, to	Bentonite, casein, 165 <sup>0</sup>
9. Paul Masson Vineyards Bentonite and vegetable gelatin	No	

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|---|-----------|
| 10. Ridge Vineyards   | No answer |
| Egg whites, bentonite, animal gelatin, isinglass            |           |
| 11. Simi Winery   | No        |
| Egg whites, isinglass, dairy products or their derivatives. |           |

These discrepancies reflect the wide variation in techniques and materials used from one winery to another.

I also checked some wineries whose wines are rabbinically certified. The makers of Manischewitz, Mogen David, Kedem, and Weinstock wines all confirmed that they use only bentonite, vegetable gelatin, or diatomaceous earth as fining agents, and the rabbi who certifies wines for the Union of Orthodox Jewish Congregations (OU) also insists on the use of fining agents whose kashrut is beyond question.

In sum, then, some substances used for fining wines are clearly kosher and pareve (e.g., bentonite, egg albumin); others are dairy (casein and its compounds); others are clearly not kosher (beef blood [in Europe]); and some (animal gelatin; isinglass made from sturgeon bladders) are considered kosher and pareve by, I suspect, most of our movement but not kosher by some.

Dr. Ough confirmed that some of the fining agents are left in the wine after settling. That is ironic because the criterion for United States government approval of clarifying agents is that none of the agent remains in the wine.<sup>5</sup> Because some people are allergic to casein, however, studies have been commissioned to determine how much casein is left in wine after settling or after bentonite or filtration is used to remove it. From 10% to 30% of the casein used remains. In the absence of a medical reason to conduct similar studies in regard to gelatin, the percentage of gelatin that remains is not known.

On the chance that the fining agents might be nullified halakhically on the grounds of **נותרן טעם לפגם** (adds an unsavory taste), I asked how bad it was for the quality of the wine. He told me that even before most of the fining agent settles to the bottom, one could taste little difference, if any, in the wine due to the presence of the fining agent.

## **Filtration of Wine**

Filtration is another way to eliminate impurities in wine. It is “all but universally used today in commercial wine making, but its common practice has come about only during the past forty years or so.”<sup>6</sup> That is because until then the materials and techniques used for filtering wine often imparted distorted flavors or odors and unwanted substances such

as metal particles. Many filtering systems also exposed the wine to too much air, leading to effects of over-oxidation such as browning of the wine's color and spoiling of the wine's flavor. These problems have now been solved, and the advantages to the winery of using filtration rather than fining are many.<sup>7</sup> Since filtration involves no chemical reaction with the wine itself, it also eliminates any kashrut problems.

In practice, however, the availability of modern filtration techniques will not solve our kashrut problems. Even the smallest of well-designed filters is expensive, and so economic motivations lead many small wineries to fine their wines. Beyond that, fining enables the wine maker to control the quality and individuality of the wine more carefully, and so most continue to use fining or a combination of fining and filtration as part of their distinctive art of wine making. Professor Ough estimates that 99.5% of the wines sold commercially in the United States (both domestic and imported) are fined in some manner.

The clarification of wine, of course, is not a new problem. The wine industry dates from at least 3500 B.C.E., and the story of Noah's drunkenness (Genesis 9:20-21) reflects an early familiarity with wine among our own ancestors. In ancient times, however,

Wines as well as beer were drunk soon after fermentation and were cloudy; consequently they were an important source of vitamins from the suspended yeast cells. Not until much later were methods developed for easy and early removal of suspended solids.<sup>8</sup>

Isaiah's words seem to indicate a preference for fat, bodied wine:

The Lord of Hosts will make on this mountain for all the peoples a banquet of fat things, a banquet of wines on the lees, of fat things full of marrow, of wines on the lees well refined.<sup>9</sup>

The ancient Greeks and Romans used lead containers to clarify and stabilize their wines, but that practice contributed to many early deaths in that era. In our own day enologists recognize that protein haze or bitartrate crystals may have no negative effect on the sensory quality of the taste or smell of wine whatsoever, and yet wine makers regularly stabilize their wines for fear of adverse consumer reaction to the sight of such colloidal suspensions.<sup>10</sup> For the same reason, to judge from the last of Isaiah's words cited above, the wine growers of ancient Israel apparently tried to clarify their wines as much as possible.

Rabbinic literature often mentions filters, constructed either as a cloth "tent" over the mouth of the vessel into which the wine was poured or as a basket made of palm branches placed over the vessel.<sup>11</sup> Filtration is one of the oldest techniques known. We find it in the First Dynasty of Egypt (c. 3500 B.C.E.), when a sack-press, made of cloth or matting, was used

to squeeze the juice out of the grapes and then to strain it. We meet it again in the Roman authors of the first century C.E. Columella says that they let the fluid “percolate through small rush baskets or sacking made from a butcher’s broom,” and the poet Martial writes, “and, that Alauda may drink his wine strained, anxiously... pass the turbid Caecuban through the bag.”<sup>12</sup> It is also possible that one rabbinic source reflects the practice of racking the wine after the lees have settled by siphoning off the clear wine with “a large and small tube” – although it may only be referring to transferring some of the wine from one vessel to another for sale.<sup>13</sup> In any case, Jews clarified wine during rabbinic times with filtration, apparently preferring the resulting effects of over-oxidation to unrefined wine.

At some point Jews learned the art of fining. In seventeenth century Christian sources we hear of the use of the white of eggs for fining, and isinglass (fish glue, the best of which is obtained from sturgeon) is also recommended.<sup>14</sup> Skim milk and beef blood were also used as proteinaceous fining agents.

Since most of the fining agent settles to the bottom, and since the remainder is undetectable by the naked eye, it is quite possible that Jews learned these techniques from their Christian neighbors and used them without fear of violating the laws of kashrut. During Prohibition my father-in-law’s father made wine for sacramental purposes using a technique he learned from a wine maker from the Zanz community of Hasidim. They curdled some wine with skimmed milk and poured the remaining wine through a funnel laced with the curdled mixture. They were confident that the wine contained no milk because they could not see any in it; they assumed that the wine would appear cloudy if it contained any milk.

Modern wine makers generally use more purified and predictable proteins, bentonite, gelatin, and casein being the most common. A solution of the protein is made up in some of the wine and then is well mixed into the rest of the wine at the rate of about one ounce per 100 gallons (7 grams/100 liters). The protein forms a coagulum which settles over a period of several days to a few weeks and leaves the remaining wine clarified. Bentonite is commonly used for clarifying wine, but it removes some of the color of the wine (especially disadvantageous in red wines)<sup>15</sup> and after precipitation it makes much more bulky lees than other finings, thus wasting wine.<sup>16</sup> Consequently wine makers often prefer to fine their wines with one of the other fining agents and then use bentonite to clear out as much as possible of the fining agent that has not settled to the bottom on its own. That way there are less impurities in the wine to which the bentonite will adhere; therefore its disadvantages of discoloration and heavy lees are minimized while wine makers can take

advantage of its greater effectiveness as a clarifying agent. This is by no means the universal practice, however. As Wagner notes,

There is no such thing as the perfect all-purpose fining material. Each has its advantages and disadvantages. Thus several may be combined in various proprietary formulations. For the same reason, experienced wine makers tend to develop their own pet procedures. By way of illustration, the Marquis d'Angerville, one of the best wine makers in Volnay and thereabouts, customarily gives his superb white burgundies two finings: first, 100 grams per *piece* of powdered skimmed milk and a few days later a dose of 60 to 100 grams of bentonite. Under his circumstances, experience has shown the combination to be ideal.<sup>17</sup>

## **The Problems**

These, then, are the realities: the fining and filtration practices of the wine industry are not uniform; even individual wine makers may alter their method of clarifying wine from one crop to another; some of the substances used in fining are unkosher or dairy; and very small amounts of the fining agents do remain in the wine. Wagner lists the amount of fining typically used for each 5 gallons of wine as follows:

Gelatin:	2 grams
Beef blood:	2 to 3 grams
White of egg:	2.5 to 4 grams
Skimmed milk:	.5 pint (10 grams)
Casein salts:	6 grams
(potassium caseinate and/or sodium caseinate)	
Bentonite:	5 to 10 grams <sup>18</sup>

## **Halakhic Principles and Precedents** **“No Prior Nullification of Remainders”**

Most of these amounts precipitate out of the wine, but even if they remained fully in the wine they would constitute less than one sixtieth of the volume of wine. There is a principle in Jewish law such that a substance is legally nullified if it constitutes one sixtieth or less of the volume of the mixture into which it falls, but that principle applies only retroactively, i.e., if the substance was added accidentally. Consequently it appears that there is no way to guarantee the kashrut or non-dairy status of wine absent the supervision and certification of a rabbi that no unkosher or dairy substances were used.

## “An Unintended Result”

The principle of no prior nullification (איך מבטלים איסור לכתחילה), however, has certain exceptions. According to many authorities, one exception is those situations in which the person adding the forbidden substance does so not to nullify it but rather for some other reason (באינו מתכוון). So, for example, if worms fall into honey, you may heat the mixture until it melts and then strain it because your intention is not to nullify the taste of the worms in the honey but rather to fix the honey.<sup>19</sup> This, in fact, is the reason that we may purge vessels (הגעלה) in order to make them fit for kosher use, even if they contain forbidden food less than a day old: when the forbidden food is extracted from the vessel and absorbed into the water, it is nullified there because the person does not intend to effect that nullification but rather to make the vessel kosher by extracting the absorbed, forbidden food.<sup>20</sup>

Those cases, though, are both situations in which the intention is to *remove* the forbidden substance in order to make something else kosher. In the manufacture of wine, however, it is the specific intent of the wine maker to *insert* the fining agent (although not that it remain in the wine).

## Permissive Precedents

There is one case in the sources in which a similar action is permitted. Specifically, one may intentionally cook a non-Jew's butter in order to eliminate the particles of milk in it (since a non-Jew's milk is forbidden), and if a little milk remains, it is null and void because the person's intention is not to nullify the little that remains but rather to remove the particles of milk.<sup>21</sup> In this case one is intentionally doing something which will leave the milk in the butter (albeit it in a different state), and yet one may eat the butter.

The strength of this line of argumentation goes even further. In what clearly became a landmark decision, Ezekiel ben Judah Landau (the Noda B'Yehudah, 1713-1793) ruled permissively in the very case before us. The way he phrases the question indicates that fining wine with an unkosher fish had been done by the Jews of Poland for twenty years and had become common practice among the Jews of Germany too by the time he wrote his responsum.

(The question revolves around) *Krok*, which some call *Heusen Bleusen*, which is the bladder of the fish called *Heusen*, which is an unkosher (טמא) fish. People dry the bladder of that fish and insert it into the drink which is called *med* in Poland, or honey juice. Its nature is to precipitate the lees and to clarify the drink. In Germany they are already used to acting like this, i.e., to put it into barrels of



wine for this reason, and it is now about twenty years that they began doing this also in Poland in the drink of honey juice called *med*. And the great scholars of the generation were aroused by this to forbid it on the grounds that it remains in the drink, and “that which is preserved is treated legally as if it were cooked” (i.e., it is as if the juice and the unkosher fish were cooked together). And if one argues that it (the unkosher fish) is nullified by being less than one part in sixty, we do not nullify a forbidden substance *ab initio*. And there are those who want to permit the practice on the grounds that it is dried out, and it is therefore like wood which has no taste whatsoever, and they see it as being analogous to the inner lining of a stomach. And there are those who want to permit the practice on the grounds that we only restrict prior nullification when it is one’s intention to nullify, but here the intention is only to clarify the wine and not to give it a taste. My honored cousin, the rabbi, the great luminary, Rabbi Joseph, the head of the court and the academy of the city Hadesch in the region Cracow, ruled to forbid the practice. But since the custom has already spread to permit the practice in the regions of Germany and Poland, I have decided to write according to my humble opinion.<sup>22</sup>

After a long responsum, he ultimately says this:

For all the reasons mentioned above, it seems that it is permitted to put *Heusen Bleusen* into the wine or the drink which they call *med* in Poland because the intention is not to nullify but only to clarify the drink and to precipitate the lees. And “it is good for Israel, for if they are not prophets, they are children of prophets.” (*Pesahim* 66a) According to my humble opinion it is completely permissible (היתר) (גמור הוא). And what seemed right to me I have written.<sup>23</sup>

In our own generation, Rabbi Moshe Feinstein has also taken this position.<sup>24</sup>

This exception to the usual rules against prior nullification thus applies fully to the case at hand. When the wine maker adds fining to the wine, he certainly does not intend that it become nullified for purposes of Jewish law. His intention is that it clarify the wine. He does not even want it to remain in the wine. Therefore some wine makers, as we have seen, add bentonite after using gelatin, casein, or some other fining in an effort to eliminate whatever is left. Most also filter the wine after fining. Consequently there are halakhic grounds to say that wine is kosher no matter what fining agent is used: it is legally nullified since the one adding the fining intends to clarify the wine and not to nullify the fining.

## **Possible Stringencies**

At the same time, one must realize that this is pushing matters. There are some who do not recognize such cases as exceptions to the general rule that forbidden substances cannot be intentionally nullified. Rabbi Abraham b. David of Posquieres (the Rabad, c. 1125-1198), writing about the case of nullifying drops of milk in butter made by non-Jews, attacks the principle of intentional nullification in his usual, acerbic style:

In regard to what Maimonides wrote, i.e., that the forbidden substance became smaller and was nullified, how ugly is the fact that the worry about eating forbidden foods has left them because of its nullification in the majority substance!<sup>25</sup>

Rabbi Solomon b. Abraham ibn Adret (the Rashba, 1233-1320) also takes this stance.<sup>26</sup>

Others place restrictions on the use of the exception. David ben Samuel Halevi (the Taz, 1586-1667) accepts the exception only when adding forbidden food is the only way to do what the one who adds it intends to do; if, however, there is another way to carry out his intention and he does it in a way which raises doubts about whether it is forbidden or not, then that is intentional nullification and the mixture is forbidden.<sup>27</sup> Since wine can be clarified by settling, filtration, centrifuging, or the use of kosher and pareve fining agents, the use of an unkosher fining agent would render the wine unkosher according to this line of reasoning. Others restrict use of the exception to cases in which there is a specific action intended to remove the forbidden substance afterward.<sup>28</sup> In our case, that would restrict permitted wine to the situation in which bentonite is added in an attempt to clear the wine of the fining, a common practice, but by no means a universal one. And one wonders whether even Rabbi Ezekiel Landau would have permitted the fining of wines with unkosher materials if he knew the Jewish wine industry could be saved through the use of equally effective methods of fining which did not involve halakhically questionable substances.

## **Evaluating Contemporary Wine Making in Light of the Precedents**

Consequently, while there are grounds to permit all wine, regardless of the fining used (if any), the grounds are not beyond challenge. Moreover, one can understand the rationale for forbidding wine with unkosher fining agents: the substances *are* being intentionally added to the wine, after all, and we now know beyond a doubt that some of them remain in the wine.

## **The Issue of Gentile Wine (סתם יינם)**

In addition to issues concerning the kashrut of the substances used in making wine, wine is subject to a special decree forbidding any use of the wine used by idolaters for libations (יין נסך) and the subsidiary decree against drinking wine touched by idolaters, even if they have not used it for sacramental purposes (סתם יינם).

## **Rabbi Silverman's 1964 Responsum**

In 1964 Rabbi Israel Silverman wrote a responsum in which he demonstrated that under modern conditions the reasons for the prohibitions no longer apply. He marshaled three arguments to demonstrate this:

(1) In the production of wine in modern factories, the wine is made entirely by means of machines, and consequently no human beings touch it from the time that the grape juice ferments into wine. The only exception is the occasional drawing of some wine from large containers in order to taste or examine it, but that is permitted because it is usually done with a utensil. Furthermore, even if it were done by hand, Rabbi Moses Isserles (1532-1572) has ruled "in these times, non-Jews are not considered idolaters, and all of their touchings are considered to be 'without intention.'"<sup>29</sup>

(2) All wine produced in our time is pasteurized and therefore is to be considered as "boiled wine," which the Talmud exempts from these prohibitions against wine for libations.<sup>30</sup>

(3) Non-Jews in our day – and especially Catholics – produce special wine for sacramental purposes which is not sold on the open market. Moreover, the sages long ago dropped the parallel prohibitions against non-Jewish bread and oil, which Catholics use in their worship as much as they use wine.<sup>31</sup>

## **Catholic Sacramental Wine**

I would like to note several points about the last two arguments, beginning with the last first. It is certainly true that the parallel prohibitions against non-Jewish bread and oil were dropped long ago and that Catholics use those products in their worship just as surely as they use wine, but it is not necessarily true that wine produced for Catholic sacramental purposes is necessarily used that way. The Novitiate of Los Gatos in Los Gatos, California, for instance, has produced fine altar wines since 1888,

... in strict accordance with the Canon Law of the Roman Catholic Church. Once the needs for sacramental wines is met, the remainder of the production is made available to the public through commercial channels... The Novitiate's Altar Wines are only available to the clergy. They are similar or identical to the wines marketed for the public... but are in each case labeled with a distinctive name, appropriate to the particular wine.<sup>32</sup>

It may be enough for us halakhically that the wine which finds its way to the market cannot possibly have been used for sacramental purposes because of the Catholics' own scrupulousness in that regard, but it does appear that in some instances, at least, what is offered at the market may come from the same stores and processes which produce altar wine.

### **“Cooked Wine” (יין מבושל)**

Rabbi Silverman's second argument, that most wines are pasteurized (“warm fermented”), may have been true twenty years ago, but nowadays that no longer is common practice.<sup>33</sup> Experts complain that when wine is subjected to 142-145 degree Fahrenheit temperatures for 30 minutes, as pasteurization requires, a “cooked aroma and taste” result.<sup>34</sup> Professor Ralph E. Kunkee of the Department of Viticulture and Enology of the University of California at Davis reports an experimental procedure of exposing wine to a temperature of 98 degrees Centigrade for one second followed by rapid cooling in order to inhibit malo-lactic fermentation, but he is “not in a position to comment on its effect on wine.”<sup>35</sup> Here, as in the case of fining agents, the variety of practices within the wine making industry is such that we cannot assume that all wine is “cooked” in the halakhic sense of that term. On the contrary, it appears that most wine is not “cooked,” as noted above in the list of wine makers I contacted.

This has an important consequence. It has become common practice for non-Jewish waiters and waitresses to pour wine at kosher functions. Since we can no longer rely on the assumption that wine is warm fermented, even rabbinically certified wine must be confirmed as “cooked” in order to permit this practice.

### **Gentile Wines vs. Jewish Wines**

But the issue is even harder. Jewish sources speak of two separate situations in regard to Gentiles and wine, i.e., when Jews produce wine but it is touched by Gentiles, and secondly, when Gentiles produce it. When Jews produce wine, it is “our wine” and therefore permissible. If it

is touched by Gentiles, however, Joseph Karo prohibits even doing business with such wine. Following Maimonides and Jacob ben Asher, though, he makes an exception if the Gentile is “a star worshipper who is not an idol worshipper” (e.g., a Muslim), in which case the wine is permitted for commercial benefit but forbidden for drinking. Moses Isserles permits even drinking “our wine” touched by non-Jews because “in our times” the Gentile can be assumed not to intend to touch the wine for the purposes of idolatry.<sup>36</sup> After that ruling he adds, “However it is not advisable to publicize this among the ignorant.” Even so, we might choose, as Rabbi Silverman does, to depend upon the ruling itself to permit the drinking of wine touched by non-Jews.

Quite another matter is wine produced by Gentiles. Such wine is always forbidden for drinking under the rules of **סַרְסַר יַיִן**.<sup>37</sup> Consequently wineries owned by Gentiles which want to make kosher wine (e.g. Manischewitz, now owned by a conglomerate) must arrange to have exclusively Jewish workers handle the wine from the time of the crush of the grapes until the wine is either bottled or cooked so that it is “wine made by Jews” even if the owner of the grapes and equipment is Gentile. Absent such a special arrangement, all wine produced by Gentiles is forbidden under the rules of **סַרְסַר יַיִן** even if no Gentile touched it. The fact that wine made in this country is machine made is therefore true but irrelevant if the winery is owned by a Gentile.

In the responsum which Rabbi Silverman cites, Rabbi Isserles finds reasons to permit the drinking of wine made by Gentiles, but it is not because he thinks that the practice is indeed permitted. As he says there, he was faced with the fact that the Jews of Moravia drank wine produced by Gentiles and that their rabbis permitted it. He therefore wanted to show that there was a “slight” reason to permit the wine, “even though it is not according to custom and law,” so that other Jewish communities would not classify the Moravian Jews as sinners and so that their rabbis would not be those who knowingly lead others astray (**מַחְטְאִים**) but rather those who stumble in understanding the words of the Torah. Furthermore, even then the grounds for permitting wine made by Gentiles were specifically in regard to a case when all other drinks were contaminated.

All of this seems right to me for those who are lenient in those regions where there is nothing to drink but wine. But far be it from me to say that one should depend upon my words because I have only come to “give 150 reasons to prove the worm pure” (i.e., to justify a wrong)<sup>38</sup> even though the Torah specifically says that it is impure. Similarly in this matter I say that I have only come to give a slight rationale to permit the practice but not to depend upon this at all, especially in those places where the practice is not to permit it because they have grabbed hold of

the truth that it is a proscription which it is forbidden to change. The forms of rabbinic excommunication (acronym: שׂנא, snake) will bite anyone who violates this, for anyone who violates the Rabbis' words is liable for the death penalty. Nevertheless, my reasoning has the consequence that they (those who drink Gentile wine) shall not be called suspicious (of violating all of the law) and no intentional violators but only unintentional violators because they will have some thing to rely upon in their regions which looks to them like a rationale for permissiveness.<sup>39</sup>

This is hardly a ringing declaration in favor of accepting all wine made by Gentiles!

### **יין נסך Is No Longer Relevant**

This means that we must squarely face the issue of whether we intend to be concerned any longer with what remains of the rabbinical prohibitions against drinking wine made by Gentiles. I believe that the answer should be “no.”

The reason for the Tannaitic prohibition against יין נסך was to prevent Jews' involvement in idolatry. When the Rabbis instituted the prohibition, they had in mind the Roman idol worshippers familiar to them at that time. Such people constantly thought about performing acts of idolatry – to the extent that one could assume that “the thoughts of a heathen are usually directed towards idolatry.”<sup>40</sup>

As we have noted, however, Maimonides and those who followed him excluded Muslims from the category of “idolaters” for purposes of this prohibition even if they did not openly embrace the seven Noahide laws.<sup>41</sup> Centuries later, Isserles explicitly assumes that the Christians of his time are not idolaters so that if they touch wine made by Jews, Jews may still drink it. It is interesting that Isserles never explicitly restricts his exclusion to those Christians living around him but rather says that Gentiles “in this time” are not idolaters. Although one could read that as including all of the world's non-Jews, I doubt that he was making that kind of sweeping statement – if only because he must surely have realized that he did not know much about the people of the Orient.

In any case, in the modern, largely secular world, one doubts whether the Talmud's characterization can fairly be applied to non-Jews, at least those living in the areas of Western Europe and North America from which most of our wines come. Moreover, that wine used by the Catholic Church for purposes which come closest to “idolatry” in our sense is specifically kept from the general market. There are some contemporary cults which could legitimately be classified as idolaters, but few of them produce wine. If a Jew bought only from the major wineries or from

those known not to be owned or operated by such a cult, the issue of idolatry would become moot – at least as far as the prohibition of wine is concerned.

## **The Prohibition Will Not Prevent Mixed Marriages**

The original motivation for the prohibition against using wine made or touched by non-Jews was to prevent mixed marriages – “because of their daughters,” as the Talmud phrases it.<sup>42</sup> If anything, that problem is more acute in our day than it was in Talmudic times. If I thought for one minute that prohibiting wine made by Gentiles would have the slightest effect on diminishing the number of mixed marriages, I would drop all other concerns and opt for prohibiting it on that basis alone. I frankly doubt, however, that prohibiting wine touched by non-Jews will have any effect whatsoever on eliminating or even mitigating that problem. Other spirits prepared by non-Jews were permitted long ago, and it is precisely at the cocktail party where most initial socializing takes place. Moreover, the real factors creating our high rate of intermarriage have little, if anything, to do with the laws of kashrut in general, let alone the kashrut of wine in particular. Few of those who plan to intermarry keep kosher at all, and those who do will not be prevented from marrying their intended spouses by a prohibition against drinking wine with them.

Moreover, as Rabbi Silverman points out, the prohibitions originally instituted against the bread, oil, and cooked foods prepared by non-Jews have been abrogated long ago. If one were keeping these strict measures in order to prevent social intercourse between Jews and Gentiles, then the policy would at least be consistent. Such a policy would be ineffective, however, because Jews in their modern business and social contacts will not, and often cannot, observe such rules. We have enough difficulty convincing them to observe the laws of kashrut! Even if a return to all of the former prohibitions could be effectuated, it would not be desirable. In keeping with our acceptance of the conditions of modernity, we in the Conservative movement would undoubtedly hold that, short of mixed marriage, Jews *should* have social and business contact with non-Jews.

In any case, all of the other prohibitions designed to inhibit social intercourse between Jews and Gentiles have been dropped in the course of history. Maintaining the prohibitions against wine alone will not prevent mixed marriages in the modern context of constant interactions between Jews and non-Jews. One doubts whether standing alone it is even a significant factor.

## **Legal Fictions**

In modern conditions of wine making, what originally began as Jewish companies are continually subject to corporate takeovers by conglomerates. This requires those who still want to produce kosher wine for the Jewish trade to invent legal fictions in order to make the wine “Jewish wine,” despite the fact that everything from the grapes to the bottles is owned by non-Jews. Legal fictions have their place, but it seems senseless to multiply them when they do not serve the initial goal anyway.

## **Common Practice**

One must also recognize that many Jews who otherwise observe the laws of kashrut drink rabbinically uncertified wine. In other words, whatever one may think of the halakhic status of the prohibition based on the sources, the fact is that for many the prohibition has fallen into disuse. In the operation of any legal system, Jewish law included, when that happens those in charge of the law must decide whether to lament and combat the widespread transgression or to accept it, recognizing that a specific law has fallen into disuse and that there is no strong reason to fight for it. Even if we decided that we wanted to maintain **ינם סתם** as part of the law, I doubt that it would be very high on our list of educational and halakhic priorities. We are better off acknowledging the fact that this prohibition has fallen into disuse and letting it be.

## **Letting ינם סתם Fall Into Disuse**

In sum, then, both because of the shift in the beliefs and practices of non-Jews in the modern, Western world and because the prohibition against wine alone will not accomplish the rabbis’ goal of preventing mixed marriages in contemporary society, we should extend the approach suggested already four centuries ago by Rabbi Isserles. Specifically, while he reluctantly found reason to maintain the validity of Jewish witnesses who drink Gentile wine, we should openly assert that, unless we have specific evidence to the contrary, we can presume that the Gentiles who produce and serve wine in the Western world are not “idolaters” in the halakhic sense of that term. Moreover, since the prohibition against the use of wine made by Gentiles is no longer an effective means for preventing intermarriage, which was its specific, original goal, we shall let the prohibition fall into disuse without protest.

The most trenchant issues about the permissibility of Gentile wine in our time therefore center around the materials used in producing it (i.e., its kashrut), not the gentile identity of its producers (i.e., the issues of **ינם סתם**).



## **Producing Wine on the Sabbath**

One side issue. It is clear that some uncertified wine will be produced on the Sabbath, but that in and of itself does not make the wine unkosher. For, first of all, we must assume that the vast majority of wine makers and their helpers are non-Jews making wine according to their own, chosen timetable. They are not making the wine primarily for Jews, and they certainly are not timing their activities to take place on the Sabbath for the benefit of Jews. Even if the wine maker and all his helpers are Jewish (an unlikely assumption), the wine itself would become kosher for a Jew to drink as soon as enough time had elapsed after the Sabbath to do whatever the Jews had done in violation of Jewish law on the Sabbath.<sup>43</sup> Since shipping time is much longer than that (to say nothing of the time that wineries generally store wine after processing for additional fermentation and settling), the possibility that wine will be produced on the Sabbath is true but not relevant to its kashrut status.

## **CONCLUSION**

The life situations in which this question arises are three: (1) the individual Jew who keeps kosher and wants to know whether drinking uncertified wine is permissible when eating at home, in a restaurant, or at someone else's home; (2) Conservative synagogues; and (3) other Jewish institutions which observe the laws of kashrut.

## **The Individual**

Unkosher or dairy fining agents are used in the production of some wines. Since fining leaves the wine clear and not cloudy, our ancestors may well have assumed that all fining agents precipitate out of the wine. Moreover, since the intent of the wine maker in adding unkosher or dairy substances is not to augment the taste of the wine but rather to clarify it, many rabbis permitted the use of unkosher or dairy fining agents. Through chemical analysis, however, we now know that some fining remains in the wine even if it is invisible. Furthermore, in modern times it is possible to clarify wine in a variety of effective ways which do not involve dairy or unkosher materials – specifically, filtration, centrifuging, and fining with kosher, parve substances. It is therefore certainly preferable to use wines which have been fined without the use of substances which would call the kashrut of the wine into question.

While some of the rabbis and rabbinic agencies whom I contacted did not answer my questions concerning the fining process of the wines that they certify (e.g., Carmel) and others would not answer in writing (e.g.,

the Union of Orthodox Jewish Congregations), I did not find even one rabbi or agency that certifies the kosher status of wine that takes advantage of the leniency in the law. Therefore there are grounds to assume that rabbinically certified wines are not made with problematic substances, and for that reason they are preferable to those without such certification.

Of course, if someone has a favorite, uncertified wine, one could easily contact the winery to determine the substances in its manufacture. While there is no legal requirement that the winery answer consumers' questions, I found a large percentage of the wine makers I contacted to be prompt and forthright in their answers, even when they had grounds to suspect that their answers would mean that their wines would not be permitted. Moreover, as the list of California wineries at the beginning of this responsum indicates, there are some wineries that do not use problematic substances.

There is no guarantee, though, that uncertified wineries will continue to use tomorrow the processes and substances that they attest today; only rabbinic certification provides a measure of *continued* assurance that such substances are not used. Even though I cannot confirm that all certifying rabbis and agencies insist upon that, there seems to be a consistent practice among certifying rabbis not to permit problematic substances; and even though those who take the more stringent stand today might presumably decide to take advantage of the leniency in the law tomorrow, there is little chance of that since there would be clear, religious implications in such a decision for significant segments of the observant Jewish community, implications which the certifying rabbis would probably not want to risk. Uncertified wineries, on the other hand, would not even be aware of such concerns, let alone swayed by them, if there were economic or aesthetic reasons to change their mode of manufacture.

Under these circumstances, it is preferable that Conservative Jews who observe the laws of kashrut use only rabbinically certified wines in their homes. Since many of the modern processes of wine production are clearly within the bounds of kashrut while others are questionable, a Jew serious about kashrut has no need to compromise on this issue in those circumstances where he or she controls what will be served. The increased quality of rabbinically certified wines in recent years makes such a compromise even less justifiable.

At the same time, there is a strong basis in Jewish law permitting the nullification of forbidden foods *ab initio* when that is not the intention, including responsa addressed to the specific issue of clarifying wine. Whatever is used to fine the wine would, on that view, be nullified. Consequently, one cannot say that wine fined with unkosher or dairy

substances is unkosher or dairy, no matter what is used to fine the wine. Therefore those individuals who find themselves in business or social situations where drinking wine is an accepted part of protocol may drink whatever wine is served them in good conscience. This is especially true when one is served wine in another person's home, where one must be concerned not to embarrass the host. It would be wrong of others to think or say that those who drink uncertified wine in such circumstances are thereby abandoning the laws of kashrut since there is ample basis in Jewish law to support the kashrut of such wine. Similarly, even though restricting one's own home use to rabbinically certified wines is preferable, those who use uncertified wines in their homes should not thereby be considered Jews who do not keep kosher just as those who take the more stringent stand should not be branded as fanatics.

In light of the questions raised about uncertified wine, however, it certainly should be a standard for our movement that only certified wines be used for sacramental purposes – *kiddush*, the *seder*, etc. – at home as well as in the synagogue. One should fulfill a mitzvah as elegantly as possible, and there is no reason to use wine about which there is some question. The Conservative movement is the only religious movement which has always been Zionistic and has never had an anti-Zionist wing. It is therefore fitting that this Conservative responsum indicate that Israeli wines are especially appropriate for sacramental use, both to support Israeli industry and to reap the emotional and Jewish benefits of calling to mind our ties to Israel on such occasions.

In any case, I have not investigated the special issues involved in using uncertified wine for Passover, and this responsum should therefore not be seen as permission for such use.

## **Conservative Synagogues**

The use of rabbinically uncertified wine in Conservative synagogues is complicated by several factors. Despite my own position on the subject of **יין סתם** expressed above, there undoubtedly are segments of the Conservative community which want to maintain the traditional strictures against wine produced by non-Jews. More importantly, in my view, there are grounds for insisting upon rabbinically certified wines for reasons of kashrut, as explained above. Part of our ideology as a Conservative movement provides that maintaining the tradition is always a valid position when there is no moral or social imperative for changing it. Even though some would like to avail themselves of the good taste of many uncertified wines, that hardly constitutes a moral or social imperative. Therefore synagogues may well want to insist upon

rabbinically certified wines for both ritual and social occasions, and I would frankly prefer that.

At the same time, several congregational rabbis have indicated to me that drinking rabbinically uncertified wine has become the accepted practice in their synagogues with few, if any, who even think of it as an issue. Those few who do not drink uncertified wine can simply refrain from drinking the wine and still trust the kashrut of the synagogue since wine is usually served in glassware which is made kosher again upon washing. While these rabbis would be prepared to educate their constituency to the necessity to change accepted practice if there were serious halakhic objections to it, the use of rabbinically uncertified wines is not clearly forbidden. They therefore wonder whether it would be a productive use of their time to take a stand on this issue when there are so many other, more central religious and educational goals to attain.

Other congregational rabbis have mentioned that insisting upon rabbinically certified wine would be just another obstacle to overcome in convincing people to schedule their social events in the synagogue, including especially their bar/bat mitzvah and wedding parties. Restriction to kosher food and other Shabbat limitations on music and photography that the rabbi may impose are already significant deterrents for some people, and this would be just another barrier. The issue for these people is not so much the quality of the wine, for many rabbinically certified wines of high quality are now available; the issue is more the variety of wines which are open to the celebrant to choose. We clearly are more interested in encouraging Jews to have kosher events and to schedule their life cycle celebrations in the synagogue than we are on insisting on rabbinically certified wine, for the latter is only a higher degree of observance, while the former goes to the heart of what we want in Jewish practice.

On the other hand, a number of congregational rabbis have indicated to me that in their synagogues insistence on rabbinically certified wine is already the practice or would be easy to implement.

I would say, then, that it would be preferable to insist on rabbinically certified wine in the synagogue for the reasons of kashrut and community indicated above, but an individual rabbi who knows that this would simply be unacceptable to his or her congregation or that it would seriously deter significant numbers of families from scheduling their celebrations in the synagogue may rest assured that the kashrut of his or her synagogue is not impugned by permitting rabbinically uncertified wine. Such rabbis may want to insist upon attestation by the winery that problematic substances were not used in the wine's manufacture, but they need not do so. Even if they do insist upon that, they would still be providing a much wider choice of wines from which

celebrants could choose. In line with what was said above in regard to individuals, even rabbis who permit the use of uncertified wine for social purposes should insist on rabbinically certified wine for ritual purposes, with Israeli wines being preferable.

## **Communal Institutions**

Those communal institutions that observe the laws of kashrut and that are designed for the entire Jewish community are generally under the supervision of Orthodox rabbis who insist on rabbinically certified wine. Because of the communal nature of those institutions and the legitimacy of the questions of the kashrut of uncertified wine, we should support that requirement.

In addition, the Conservative movement has its own institutions and national and regional bodies. The legitimacy of the halakhic concerns delineated above and the communal nature of our national and regional institutions and groups demand that they serve only rabbinically certified wine. This would include social events, fund raising events, and all other occasions in which wine is served in such institutions and groups in addition to specifically sacramental uses. While a rabbi of an individual synagogue may know his/ her congregants sufficiently well to find reason to permit the use of uncertified wine, no national or regional leader can presume that knowledge for the entirety of the Movement, especially since there clearly are Conservative synagogues, rabbis, and lay people who will drink certified wine exclusively. The permission to use uncertified wine, to the extent that it has been provided above, is, after all, at most permission and not an obligation, and our national bodies should serve *all* of the members of the movement.

## **NOTES**

\* I would like to thank Prof. Cornelius Ough, Mr. Robert Geskin, and Prof. Eliezer Slomovic for their help, with the usual proviso that mistakes and conclusions herein are solely the responsibility of the author.

1. Zelma R. Long, "White Table Wine Production in California's North Coast Region," in Maynard A. Amerine, ed., *Wine Production Technology in the United States* (Washington, D.C.: American Chemical Society, 1981), pp. 41, 51.

2. *Ibid.*, p. 46.

3. Louis P. Martini, "Red Wine Production in the Coastal Counties of California 1960-1980," in *Ibid.*, p. 78.
4. *Ibid.*
5. George Thoukis, "Chemistry of Wine Stabilization: A Review," in A. Dinsmoor Webb, ed., *Chemistry of Winemaking* (Washington, D.C.: American Chemical Society, 1974), p. 122; U.S. Internal Revenue Service, "Wine," 1961, p. 146.
6. Philip M. Wagner, *Grapes into Wine* (New York: Alfred A. Knopf, 1976), p. 189.
7. *Ibid.*, p. 190.
8. M.A. Amerine and V.L. Singleton, *Wine: An Introduction*, (Berkeley and Los Angeles: University of California Press, 1977), p. 14.
9. Isaiah 25:6.
10. Long, "White Table Wine," p. 46.
11. *Shabbat* 20:2; cf. also *Shabbat* 20:1; *Kelim* 28:9; P.T. *Terumah* 8:5, 45d; B.T. *Avodah Zarah* 56b.
12. Columella, XII, 17, 2; Martial, XII, 60; cited in William Younger, *Gods, Men, and Wine* (London: The Wine and Food Society, 1966), p. 291.
13. *Avodah Zarah* 72b.
14. Younger, *Gods, Men, and Wine*, p. 312.
15. Martini, "Red Wine Production," in Amerine, *Wine Production Technology*, p. 78.
16. Wagner, *Grapes into Wine*, p. 189.
17. Wagner, *Grapes into Wine*, p. 189; cf. also pp. 183-189 and Amerine and Singleton, *Wine*, pp. 110-111.
18. *Ibid.*, pp. 185-189.
19. S.A., Y.D. 84:13 and *Taz* and *Shaḥ* there. And cf. *Resp. Rashba*, Vol. I, no. 463 and *Pri Ḥadash*, Y.D., end of par. 64, who bring support for this from Mishnah *Terumah*, end of Ch. 5 and P.T. there.
20. *Ran*, A.Z., Ch. 2. On all of these, cf. *Encyclopedia Talmudit*, Vol. I, p. 298.
21. Maimonides and the *Maggid Mishneh* and the *Kesef Mishneh* on M.T. *Ma'akhalot Assurot* 3:16. Cf. also *Beit Yosef*, Y.D. 115:3 and *Rama* and *Shakh* there.
22. *Noda Biyehudah* Y.D. 26.
23. *Ibid.*
24. *Iggerot Moshe*, Vol. 2 (1973), Y.D. 24 and 36.
25. Cited in the *Maggid Mishneh's* comment on M.T. *Hilkhot Ma'akhalot Assurot* 3:16; cf. also the *Kesef Mishneh* and the *Leḥem Mishneh* there.
26. *Ibid.*
27. *Taz*, Y.D. 137, comment #4.

28. Resp. Rabbi Akiba Eger, par, 77. Cf. also *Shakh*, Y.D. 201, comment #46 for another example of requiring a contrary action.

29. *Rema*, Y.D. 124:24.

30. *Avodah Zarah* 30a.

31. Israel Nissan Silverman, “*B’Inyan Setam Yeinam Shel Goyyim*,” *Conservative Judaism*, 18:2 (Winter, 1964), pp, 1-5; translated as “Are All Wines Kosher?” in Seymour Siegel, *Conservative Judaism and Jewish Law*, (New York: Rabbinical Assembly, 1977), pp. 308-316.

32. John Melville, *Guide to California Wines*, fourth edition revised by Jefferson Morgan (San Carlos, California: Nourse Publishing Co., 1972), pp. 124-125.

33. Long, “White Table Wine Production,” p.47.

34. A. Dinsmoor Webb, “The Chemistry of Home Winemaking,” in Webb, *Chemistry of Winemaking*, p. 297; Ralph E. Kunkee, “Malo-Lactic Fermentation and Winemaking,” in *Ibid.*, p. 157.

35. *Ibid.*

36. M.T., *Hilkhhot Ma’akhalot Assurot* 11:7, 13:11; Tur, *Yoreh De’ah* 124; S.A., *Yoreh De’ah*, 124:6-7, 24 and gloss there.

37. M.T., *Ibid.*, 11:8; S.A., *Ibid.*, 123:1; 124:6-7.

38. *Eruvin* 13b.

39. Resp. Rema 124 in the first, Cracow edition of 1640 but omitted in many subsequent editions, probably because later editors were anxious about its permissiveness. Cf. Hayyim Hillel Ben-Sasson, *Hagut V’Hanhagah* (Jerusalem: Bialik Institute, 1959), pp. 22-25.

40. *Hullin* 2:7 (38b). I would like to thank Rabbi Ben Zion Bergman for pointing this out to me.

41. Cf. note 36 above, and cf. the commentaries of the Beit Yosef on the Tur and the Taz on the S.A. cited there for a discussion of why formal acceptance of the Noahide laws was not required for this purpose.

42. *Avodah Zarah* 36b.

43. *Shabbat* 18b; M.T. *Shabbat* 3:9, 12, 18; S.A., *Ora Hayyim* 254: 8, 9.

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