סימן קכג

A. *Introduction to Stam Yeinam*

Bez"H, the next *sugya* we will cover this *zman* is יין נסך and סתם יינם – non-kosher wine. These *halachos* span *simanim* 123-138, but we will only learn the *halachos* that are most relevant today. By the end of the *limud,* you will understand the reasons behind the prohibition, which wines are included, what forms of contact prohibit the wine, whether a non-religious Jew can render wine forbidden, whether you may gift non-kosher wine or purchase sherry-cask whiskey, and much more!

Before we delve into the various *halachos*, we must first address three fundamental questions: 1) What is the difference between יין נסך and 2 ?סתם יינם) Why did Chazal forbid it? 3) When was the prohibition enacted? The answers to these questions will give us a better understanding of the *sugya* and greatly impact many of the *halachos* that follow.

I. Difference between יין נסך and סתם יינם

In 1) (ז:כה) **דברים**), the Torah commands us to destroy *avodah zarah* and prohibits deriving benefit from the gold and silver that adorn the idols. The **גמרא עבודה זרה** (כט:) 2) adds that not only is one biblically forbidden to benefit from the *avodah zarah* itself, but there is also a biblical prohibition[1] against benefiting from wine that was used as a libation for *avodah zarah.* This prohibition is known as **יין נסך** – wine used for libation. The 3) (מאכל"א פי"א-א-ב) **רמב"ם**) *passkins* that libation wine of an *avodah zarah* may not be drunk or used for any benefit, and one who drinks even a small amount receives *malkos.* This latter *halacha* is derived from the verse "ולא ידבק בידך מאומה" – "nothing [from the *avodah zarah*] shall remain in your hand," implying that even the smallest amount is forbidden. The prohibition of יין נסך applies only if it is known that the wine was actually offered for עבודה זרה.

What, then, is the *halacha* regarding wine that simply belongs to a non-Jew? The 4) (:לו) **גמרא עבודה זרה**) teaches that in order to prevent intermarriage, Chazal prohibited the consumption of non-Jewish bread, oil, and wine — even when all the

[1] Tosfos in ד"ה תנהו ע"ז נב. understands that the איסור הנאה is a הלכה למשה מסיני.

ingredients are technically kosher. Wine owned by a non-Jew is referred to as **סתם יינם** (ordinary wine), meaning it belongs to a non-Jew but was not used for idolatrous libations. It might appear from this Gemara alone that the prohibition applies only to **drinking** *stam yeinam*, while deriving **benefit** from it is permitted, similar to ***pas akum*** (non-Jewish bread), which is only forbidden to **eat**, but not to **benefit** from. However, the 5) (כט:) **משנה עבודה זרה**) *passkins* clearly that even **benefitting** from *stam yeinam* is prohibited.

Furthermore, it is evident from the נט) **גמרא עבודה זרה**:) and elsewhere that not only is wine owned by a non-Jew forbidden because of *stam yeinam,* but even wine owned by a Jew that was touched by a non-Jew becomes forbidden because of *stam yeinam.*

What emerges from these sources is that there are three categories of wine that are forbidden:

1) **יין נסך** – libation wine: It is biblically forbidden to both drink and derive benefit from even a drop of יין נסך.
2) ***Stam yeinam*** – ordinary wine of a non-Jew: Chazal forbade both drinking and benefiting from it in order to prevent intermarriage.
3) **Touched wine** – Jewish owned wine that was touched by a non-Jew: It may not be drunk or benefited from.

II. Why would Chazal forbid benefiting from *stam yeinam*?

Why would Chazal forbid benefiting from *stam yeinam*? Why is it different than *pas akum,* which was also enacted to prevent intermarriage and yet is only forbidden to consume but not to derive benefit? There is a major three-way dispute among the *Rishonim* on how to understand this additional prohibition.

1) 6) **פסקי ריי"ד/בית יוסף**) – When Chazal forbade *stam yeinam* because it would lead to intermarriage, they formulated the decree within the existing framework of יין נסך. In other words, Chazal forbade *stam yeinam* as if it were offered as a libation. In contrast, bread and oil have no comparable biblical prohibition, so Chazal limited the prohibition to eating them alone.
2) 6) **ר"ן**) – Chazal forbade benefiting from *stam yeinam* out of concern that, if it were allowed, people might confuse it with יין נסך and erroneously assume that deriving benefit from יין נסך is also permitted, when in fact it is biblically prohibited.
3) 7) **רשב"א**) - Initially, Chazal only forbade drinking *stam yeinam* (similar to non-Jewish bread), but once they saw that people were lax even with יין נסך

(including benefiting from it), they extended the decree to forbid benefit from *stam yeinam* as well.

What emerges from all three opinions is that the *gezeirah* of *stam yeinam* was enacted to prevent intermarriage, but its formulation was also connected somewhat to יין נסך. According to the בית יוסף, Chazal gave *stam yeinam* the status of יין נסך. According to the ר״ן, *stam yeinam* was forbidden for consumption to prevent intermarriage and forbidden to derive benefit to prevent benefiting from יין נסך. The רשב״א agrees with the ר״ן, but understands that the decree occurred in two stages.

III. When was the prohibition of *stam yeinam* enacted?

There are several seemingly contradictory sources as to when the *gezeirah* of *stam yeinam* was enacted. On one hand, in 8) (מז **פרקי דרבי אליעזר**) it is related that after the episode of the Jews having illicit relations with the women of Midyan, culminating in the public cohabitation and deaths of זמרי and כזבי, Pinchas enacted a special *cheirem* forbidding wine of non-Jews because it is mainly used for idol worship and promiscuity. On the other hand, in (א:ח **דניאל**) it is related that דניאל would not drink the wine of the king, implying that it was enacted in his time. The **גמרא עבודה זרה** לו:) seems to take a third approach, as it states that there were 18 decrees decreed by the students of שמאי and הלל in the attic of חנניה בן חזקיה, and one of them was the prohibition of *stam yeinam*. If so, when was the decree actually enacted?

The 9) (ע״ז לו:) **רמב״ן**) explains that either Pinchas only forbade drinking and the students of שמאי and הלל also forbade benefiting from it, or the *gezeiros* of Pinchas and דניאל were not accepted until the students of הלל and שמאי came along.[2] The בית יוסף supports the latter answer that the *gezeirah* of Pinchas was not accepted because יהושפט drank *stam yeinam.*

To summarize:

- There is a biblical prohibition to benefit from wine used for libation of עבודה זרה, known as יין נסך, and even drinking a small amount is punishable with *malkos.*
- Chazal forbade drinking and benefiting from *stam yeinam* (wine that belongs to a non-Jew) in order to prevent intermarriage.
    - The reason the prohibition also includes benefiting:
        - **בית יוסף** – Chazal modeled their decree so that *stam yeinam* should have the status of יין נסך.

[2] The בית יוסף explains that according to the רשב״א above, the students of הלל and שמאי forbade consuming *stam yeinam,* and a later *beis din* forbade benefiting from it.

    - **ר״ן** – To prevent people from deriving benefit from יין נסך.
    - **רשב״א** – initially the *gezeirah* only included drinking, but once people were lax with יין נסך, they forbade benefiting from *stam yeinam* as well.
- Chazal also forbade Jewish-owned wine that was touched by a non-Jew.
- The decree was initially instituted by Pinchas, but was only fully accepted in the time of שמאי והלל's students.

The S"A in **סעיף א׳** *passkins* that it is forbidden to derive benefit from *stam yeinam* (i.e., wine owned by a non-Jew that we don't know whether it was used for libation), as well as wine owned by a Jew which was touched by a non-Jew. The *Rama* adds that the prohibition is due to a *gezeirah* to prevent benefiting from יין נסך, which the **ט״ז** (א) explains to mean that **drinking** *stam yeinam* was prohibited to prevent intermarriage, while **benefiting** from it was prohibited due to its connection to יין נסך (as explained above, according to the בית יוסף, ר״ן and רשב״א).

B. Benefiting Today from Stam Yeinam

We learned in the introduction above that even benefiting from *stam yeinam* is forbidden. In this section, we will elaborate on this *halacha* and discuss how it applies in practice. For example, are you allowed to gift a non-kosher wine to your non-Jewish boss? If you were gifted a non-kosher wine, may you pass it along to a non-Jewish co-worker or sell it at a profit? And much more.

As mentioned in the previous section, Chazal forbade <u>drinking</u> *stam yeinam* to prevent intermarriage, and three reasons were offered by the *Rishonim* as to why the *gezeirah* was extended to also forbid benefiting from the wine. We will now learn a three-way dispute among the *Rishonim* as to whether the prohibition of <u>benefiting</u>[3] from *stam yeinam* still applies today and see how this dispute is connected to the dispute above regarding the various reasons given for why Chazal forbade benefiting from the wine.

<u>I. Rashi and the גאונים</u>

[3] Everyone agrees drinking *stam yeinam* is always forbidden.

The 10) **טור**) quotes **רש״י** and the **גאונים**, who *passkin* that today, one may benefit from *stam yeinam* (i.e., wine owned by a non-Jew)[4] and from Jewish-owned wine touched by a non-Jew because nowadays, non-Jews do not perform libations.[5] Rashi[6] and the *Geonim* explain further that this *pssak* is based on the fact that Chazal never forbade benefiting from wine <u>touched</u> by a non-Jewish *tinok* (baby) or young child[7] (as is evident from the גמרא ע״ז (נז.)), since there is no concern that the child had in mind to offer it as a libation. As a result, benefit from the wine is permitted, although drinking from it is still forbidden because it may lead to intermarriage (as mentioned above, the ט״ז (א) explains that Chazal forbade **drinking** *stam yeinam* because of intermarriage and forbade **benefiting** from it because of יין נסך).[8] Similarly, today, since non-Jews do not perform libations, they have the same status as a baby in this regard. Therefore, just as Chazal never forbade <u>benefiting</u> from wine <u>touched</u> by a child, so too one may benefit from wine touched by non-Jews today. Rashi and the *Geonim* extend this leniency further, allowing benefit today even from <u>*stam yeinam*</u> (i.e., wine they own) since there is no concern for libation (and benefit was only prohibited because of the possibility of libation).[9] However, <u>drinking</u> *stam yeinam* or wine touched by a non-Jew is still forbidden (as it may lead to intermarriage).

<u>II. The ראש</u>

The 11) **ראש**) takes a more limited approach. He writes that today, we may only permit benefit from Jewish wine <u>touched</u> by a non-Jew, similar to a non-Jewish child who touches wine, which the Gemara permits, but we cannot extend the leniency to permit benefit from <u>*stam yeinam*</u> (i.e., wine owned by non-Jews). True, drinking *stam yeinam* is forbidden to prevent intermarriage and benefiting is forbidden because of יין נסך, and if the concern of יין נסך does not apply (because non-Jews do not libate), benefiting from *stam yeinam* should be permitted. Nevertheless, the ראש still prohibits benefiting from *stam yeinam* because he understands the formulation of the *gezeirah* like the בית יוסף above that when Chazal forbade *stam yeinam,* they modeled their

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[4] Although Rashi, quoted by the טור, begins by addressing specifically Jewish wine touched by a non-Jew, in the conclusion he allows collecting *stam yeinam* as payment, indicating that wine owned by non-Jews is also permitted in benefit according to this opinion.

[5] The בית יוסף explains that Christians do not libate their wine; rather, they ultimately drink it. Therefore, it is not considered ניסוך.

[6] Rashi was a vintner by profession.

[7] See Tosfos ד״ה לאפוקי (נז:) ע״ז, who teaches that any young child who does not know how to worship is included in *"tinok."*

[8] Although the baby is not of marriageable age, we apply *lo plug* and any wine touched by a non-Jew is forbidden because of intermarriage.

[9] We will see below that the ראש explains that extending the leniency to allow benefit from *stam yeinam* only works if one explains like the רשב״א, that the *gezeirah* was enacted in two stages; see below.

gezeirah to give *stam yeinam* the status of יין נסך. Therefore, even if the concern of יין נסך does not apply to *stam yeinam* today (because non-Jews do not libate), it is still forbidden to benefit from the wine because the concern of intermarriage applies, which includes also the prohibition of benefiting from it. The only scenario where we will allow benefit from wine is when a non-Jew touches Jewish-owned wine. In that situation, Chazal explicitly did not include non-Jewish children in the *gezeirah* (because they do not know how to libate) and today, all non-Jews, even adults, have the status of non-Jewish children of the past, because they do not know how to libate.

The ראי״ש acknowledges that if the *gezeirah* of *stam yeinam* was instituted in two stages (like the רשב״א's understanding), first prohibiting drinking (because of intermarriage), then later adding benefit (because of יין נסך), it would make sense that today, when there is no concern of יין נסך, the *gezeirah* returns to its original form (similar to a non-Jewish child touching wine) and it is only forbidden to drink in order to prevent intermarriage, but benefiting from *stam yeinam* is permitted. Nevertheless, he concludes that this argument is not compelling enough to permit benefiting from *stam yeinam*.[10] At the same time, those who are lenient to derive benefit from *stam yeinam* should not be protested, because it is preferable that they transgress the rabbinic decree unwittingly rather than do so intentionally.

III. The רמב״ם

The 12) **רמב״ם**), as understood by the בית יוסף, *passkins* that even today, when wine is no longer used for idolatrous libations, it is still forbidden to benefit both from *stam yeinam* and from Jewish wine touched by a non-Jew. According to this approach, the Gemara's leniency to benefit from wine touched by a non-Jewish child is a specific exception that cannot be extended to adults, even if the adults do not know how to libate. This opinion fits well with the understanding of the בית יוסף, that when Chazal forbade *stam yeinam* to prevent intermarriage, they applied the stringencies of יין נסך (even when the wine was only touched by a non-Jew). Therefore, even though non-Jews do not perform libations today, concern for intermarriage remains, and the original *gezeirah* to prevent intermarriage also included the prohibition of benefit and remains in force.[11]

To summarize:

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[10] Presumably, the reason is that there are other ways to explain the formulation of the *gezeirah* (i.e., the בית יוסף).

[11] It should be noted that the בית יוסף quotes the רשב״א, who *passkins* like the רמב״ם, even though the רשב״א understood that the *gezeirah* took place in two stages, first forbidding drinking *stam yeinam* (to prevent intermarriage) and then later forbidding benefiting from *stam yeinam* (because of יין נסך), and the רשב״א should permit benefit today, since there is no concern of libation. However, the רשב״א still forbids because "all countries already have the custom to forbid."

- Everyone agrees that even today, you are not allowed to <u>drink</u> *stam yeinam* or Jewish-owned wine touched by a non-Jew.
- Regarding <u>benefiting</u> today from *stam yeinam* and Jewish wine touched by a non-Jew:
    - **Rashi and *Geonim*** – permit both.
    - **ראי"ש** – Only benefit from Jewish-owned wine touched by a non-Jew is permitted, but *stam yeinam* is still forbidden.
    - **רמב"ם** – Benefit from either is forbidden.

How do we *passkin*? The S"A in **סעיף א'** *passkins* like the רמב"ם that benefiting from *stam yeinam* or wine touched by a non-Jew is forbidden. The *Rama,* however, quotes the גאונים, who permit benefiting today from both wine touched by a non-Jew and even *stam yeinam.* Nevertheless, he writes that one should only rely on this *bedieved* or in a case of financial loss, such as if one is paid back an outstanding loan with *stam yeinam* or one accidentally purchased it. He adds that although some permit buying and selling *stam yeinam* for profit (because they hold like Rashi and the *Geonim* that benefiting today is permitted), it is best to be *machmir.*

Practical Applications

<u>Profiting from non-Kosher wine sales</u>

According to the S"A, one may certainly not own a wine store that profits from buying and selling non-kosher wine. Even the *Rama,* who we saw above quotes some that are lenient, agrees that one should be stringent and not establish a business based on *stam yeinam*. Therefore, one who is involved in buying and selling commodities should be careful not to deal in non-kosher wine. The ב) **פת"ש**) quotes the לבושי שרד, who was "מלמד זכות" on those who profit from *stam yeinam,*[12] though, according to the *Rama* and the other *acharonim* quoted in the פת"ש, it is strongly advisable to avoid this.

<u>Gifting a non-Jew non-kosher wine</u>

The *Rama passkins* that if you accidentally bought or sold a non-kosher bottle of wine, you may benefit from it. Similarly, it would seem that even if you received one as a gift, you may accept it and sell it or give it away to a friend (even though you are saving money; see שו"ת ושב ורפא below). However, the S"A would be stringent even in these cases.

The 13) (ח"ב-לב) **שו"ת ושב ורפא**) quotes **Rav Halberstam**, who *passkins* based on the *Rama* that regifting non-kosher wine to a non-Jewish secretary or cleaner is

[12] The ג) דרכי תשובה) implies that even according to the S"A, there is room to be מלמד זכות.

permitted, but only "if it is given as an incentive" for them to work better. The reason for the added condition is that aside from the issue of *stam yeinam,* there is a separate prohibition of "לא תחנם" – the prohibition of giving gifts to a non-Jew.[13] However, if the gift benefits the Jew, such as where it motivates the worker to do a better job, it is permitted. It should also be pointed out that when gifting a non-Jew (when there is no prohibition of לא תחנם), the S"A in קמח-ה *passkins* that you are not allowed to send Christians a gift on their religious holiday, such as x-mas.[14] Even when gifting on a different day, you should not say that "this is an x-mas gift." Rather, you should say, "this is an extra bonus/gift for all your hard work in the past 12 months." The **מהר"ם שי"ק** 14) (יו"ד-קנ)) argues that even according to the *Rama,* a G-d fearing individual who receives an inexpensive non-kosher bottle of wine as a gift should throw it out.

Regarding chipping in to buy an expensive bottle of wine for a non-Jewish boss, according to the S"A, it would be prohibited because it involves benefiting from *stam yeinam.*[15] But the *Rama* may be lenient if not doing so might cause a financial or professional loss, similar to being repaid for an outstanding loan with *stam yeinam* or selling a bottle of *stam yeinam* purchased accidentally, which is permitted to avoid a loss.

<u>Keeping *stam yeinam* in the house</u>

The 15) (קכג-א **דרכי תשובה**) writes that according to *Sephardim,* who prohibit benefiting from *stam yeinam,* if you were gifted a non-kosher bottle of wine, you must immediately dispose of it and may not store it in your house. However, *Ashkenazim,* who permit benefiting from *stam yeinam* in *bedieved* situations, may keep the wine in their house even with intent to age it so that the value rises in your possession. However, according to the מהר"ם שי"ק quoted above, even *Ashkenazim* should dispose of it immediately.

<u>*Schlepping* non-kosher wine for payment</u>

Are you allowed to work as a *schlepper* for a non-kosher wine store to transport boxes of wine? Alternatively, if you own a rental car company or lease storage space, are you allowed to rent out a car or lease space to a non-Jewish winery, which will use your car/space to transport/store the wine?

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[13] See כ) גמרא ע"ז) and S"A in קנא.

[14] This is based on S"A סימו קמז-ב that one should not refer to non-Jewish *avodah zarah* holidays in a respectful manner.

[15] However, if multiple gifts are given, you may stipulate that you are contributing towards the other gifts.

One might think that since you are not directly benefiting from the wine, it is permitted even according to the S"A. However, the S"A in **סימן קלג-א** *passkins* that all the above cases are forbidden. Even if you already took the job and were paid cash, you are obligated to destroy the payment. The **ש"ך** (א) there explains, based on the גמרא ע"ז סב).), that there is an extra קנס – fine, prohibiting even indirect benefit from *stam yeinam.*[16] The *Rama,* however, references our *siman* where he *passkins* that today, some allow benefiting directly from *stam yeinam.* According to those opinions, explains the *Rama,* the above scenarios of indirectly benefiting would certainly be permitted. One only needs to be *machmir* not to benefit from the payment for, or indirect benefit of, actual יין נסך, not *stam yeinam*. The **ש"ך** (ד) disagrees with the *Rama* and *passkins* that *le'chatchilla* a person should not provide services (i.e., *schlepping*) or rent out equipment (such as his car/space) to be used for *stam yeinam.* The אהל יעקב (קכג-ו) *passkins* like this *le'chatchilla,* and *passkins* like the *Rama* only *b'dieved* if the job was already completed.

[16] See סימן מט (יו"ד ויאמר יצחק) who *passkins* that *Sephardim* should be *machmir,* as the S"A writes in קלג-א.