

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

61 - SHERRY CASK WHISKY OU ISRAEL CENTER - SUMMER 2017

A] WHY AGE WHISKY IN SHERRY CASKS?

1. Sherry casks have been used to age Scotch whisky¹ for well over 200 years. But what are distillers looking for when choosing casks, and how are they able to produce specific flavours? ...

A distiller wants a cask to contribute flavour to the maturing whisky: vanilla, coconut, spice and chocolate from American oak; tannin, resin, clove and dried fruits from European oak. So, in Sherry wine production the flavours are driven by oxidation rather than by oak, while in the whisky maturation process, it is the other way around.

All of this might seem as if it is the oak which is the main driver in terms of flavour in Sherried whisky. That's not quite true either. What happens during the seasoning process is that the Sherry modifies the flavour compounds in the oak. It is estimated that there is up to 10 liters of Sherry soaked into the wood of a Sherry butt. To see whether it was oak or Sherry that gave a 'Sherried' character to a Scotch, scientists simply added Sherry to Scotch to see whether the combination was the same as maturing in a Sherry butt. It wasn't. Equally, ageing in an untreated European oak butt gave a different result.

The 'Sherried' character, therefore, is down to the Sherry itself, but also oxidation and the way in which the Sherry has interacted with and changed compounds in the oak. All of these then interact over time with the maturing spirit.

How Do Sherry Casks Flavour Whisky? 19 October 2016, scotchwhisky.com²

B] WHAT ARE THE HALACHIC ISSUES?

The issue of sherry-aged whisky is a fascinating halachic conundrum, which raises at least 10 separate major principles in hilchot kashrut! These include:

- Noten Ta'am Lifgam - good vs bad taste.
- Ben Yomo/Aino Ben Yomo - whether the vessel has been used in the last 24 hours.
- Taste after 12 months.
- Ta'am vs Reicha.
- Zeh V'zeh Gorem.
- Bitul BeShishim - nullification of non-kosher food in a large quantity
- Kavush - taste absorbed through cold contact for over 24 hours.
- Chanan - חתיכה נעשית נבילה - where kosher food absorbs non-kosher food, the entire volume of the kosher food becomes non-kosher.
- Bitul Issur Lechatchila - intentionally nullifying a prohibited food.
- Chazuta - color caused by prohibited food.

1. Scotch is spelled 'whisky'. The Irish and Americans spell it 'whiskey'.

2. Available at <https://scotchwhisky.com/magazine/ask-the-professor/11481/how-do-sherry-casks-flavour-whisky/>

C] INGREDIENTS

- Scotch whisky³ may, by law, contain just three ingredients⁴ - barley, water and yeast.⁵ None of these have any kashrut concern.⁶
- In the 1940s Rabbi Pinchas Teitz⁷ of Elizabeth, NJ, discovered that some blended whiskies contained a small percentage of added wine, which was of not kosher as *stam yeinam*. The percentage of wine was as much as 2.5%, well over 1/60 (1.67%). R' Teitz raised this question repeatedly with R' Moshe Feinstein, who concluded that the blended whiskies were kosher. This psak was recorded in three teshuvot of Rav Moshe from 1948 - Igrot Moshe Yoreh Deah 1:62, 63 & 64.

2. קבלתי מכתבו היקר בדבר היי"ש בלענדעד, שתחת השגחתו עושים בלענדעד שלא בתערובות יין וגליצערין. ואני אומר לו יישר כחו בזה! שיהיה ראוי למהדרין לזוהר מדברים שצריך הוראת חכם ... ואני אף שאני מתיר נזהר אני בעצמי מלשתות בלענדעד. רק בחבורה שלא למיחזי כיוהרא הייתי שותה משהו לברך המסובין כנהוג ולכן ודאי טוב שיהיה יי"ש בלענדעד בלא שום חשש. אבל לדינא היי"ש בלענדעד אשר יש חשש שמא מערבין בה חלק אחד מארבעים יין מותר בשתייה זהו לדינא אבל בעל נפש יש לו להחמיר על עצמו מצד כמה חששות

שו"ת אגרות משה חלק יו"ד א סימן סב

Rav Moshe ruled that blended whiskey which contains 2.5% non-kosher wine is still permitted to drink. He recommends a 'ba'al nefesh' to be machmir and applauds the production of blended whiskeys which do not have the wine additive. He notes that he himself does not drink the regular blended but states that he will drink it when given by his host, so as not to appear religiously 'superior' in any way!

- More recently, some poskim have raised the question of whisky which is aged⁸ or finished⁹ in oak casks¹⁰ which have been previously used to store sherry.¹¹ Rav Moshe's teshuva did not deal with this case and it could be that sherry casks are MORE problematic than adding actually wine.
- Rabbi Akiva Niehaus from Chicago published a comprehensive (118 page!) pamphlet on this (see Further Reading below) and concludes that whisky which was 100% aged in sherry casks should be avoided. Some whiskeys are aged in a combination of sherry casks and bourbon casks and are less problematical halachically. He concludes that blended whiskeys are halachically permitted, although the 'ba'al nefesh yachmir' of Rav Moshe would still apply.
- Why did he reach these conclusions and how are they viewed by other poskim?

D] BLENDED DRINKS MADE BY NON-JEWS

- Wine made by non-Jews is not kosher, irrespective of the ingredients. In the case of wine used for idolatrous purposes¹², the prohibition is Min HaTorah and also includes a prohibition derive any benefit from the wine.
- In the case of regular wine made by non-Jews - 'stam yeinam' - the prohibition is Rabbinic and was introduced as a fence against socializing and ultimately intermarriage. Whether *stam yeinam* is also prohibited to benefit from is debated in the poskim.

2A. צריך לזוהר ולבדוק ולחקור בשכר ובמשקה של דבש שעושים העובדי כוכבים עכשיו אם נותנים בהם שמרים של יין. כגה: ואם דרכן ליתן צו שמרים אסור לקנות מהם אם אין צמסקה ס' מן השמרים. והוא דלא עזידי לטעמיה דלטעמיה אפילו צאלף לא בטיל (... תשובת רשב"ח)

שולחן ערוך יורה דעה סימן קיד סעיף ו

*Shulchan Aruch warns against buying drinks made by non-Jews which have wine dregs added. The Rema rules that if the wine quantity is very small - less than 1:60 - the drink is kosher. However, if the wine was specifically added for taste - *avidei l'taamei* - then the drink will not be kosher even if there is 1000 times more than the wine content!*

3. Other whiskeys, including Irish, are NOT bound by this rule and a relevant Kashrut Authority should be consulted.

4. As set out by UK Statutory Instrument 2009 No. 2890 - The Scotch Whisky Regulations 2009 Section 3 (1)(a) and 3(1)(h).

5. Caramel coloring is sometimes added. This is also not problematic for kashrut.

6. The halachic principle of *mirtat* applies. This states that the producers would be afraid to add other unlawful ingredients in case they were found out and would lose their licence.

7. See <https://www.youtube.com/watch?v=XS4efREG6fl> for a memorial video for R' Teitz.

8. For at least 3, and usually more than 8 years.

9. At the end of its maturation - for the last 6 months to 3 years.

10. Whisky makers will not use new casks because of the tannins in the wood which negatively affect the taste of the whisky.

11. Sherry casks were originally used simply because they were left around in large quantities following shipping of sherry from Spain. When Spain stopped shipping sherry in barrels in the 1970 and began bottling locally, the supply of sherry casks dried up and whisky manufacturers began to use bourbon casks from the US. The drinking public quickly noticed the change in quality of the whisky and sherry casks made a come-back in the 1980s at significant expense.

12. See previous shiurim on the status of different contemporary religions and whether they would be considered to be *avoda zara*.

rev To download more source sheets and audio shiurim visit www.rabbimanning.com

3. כל המשקים של עובדי כוכבים שדרכם לערב בהם יין או חומץ, אסורים. הגה: וכל זה צמסקים שהיין והחומץ הוא זהם לשבח או שאינו פוגם, אבל אם הוא לפגם, כגון לזב שנתנו זהם חומץ או מלח שמצשלים עוזדי כוכבים ונותנים בו יין או דם ללזנו ... מותר, דכל זה הוי לפגם

שולחן ערוך יורה דעה סימן קלד סעיף יג

The Shulchan Aruch prohibits drinks made by non-Jews which usually have added wine. The Rema permits drinks where the wine additive is 'noten ta'am lifgam' - a taste which is itself bad, but which may be added for coloring etc.

- Clearly, the wine which is added to blended whisky is not 'lifgam', but is added for positive taste.
- But what about the sherry casks in Scotch, where no wine is actually added?

E] REUSING NON-KOSHER WINE BARRELS

E1] NOTEN TA'AM LIFGAM

4. כלים האסורים מחמת יין של עובד כוכבים מותר ליתן לתוכם בין מים בין שכר בין שאר משקים ובלבד שידיח בתחלה לחלוטי היין שעל פני הכלים ...

שולחן ערוך יורה דעה סימן קלו סעיף ד

The Shulchan Aruch rules that kelim used for non-kosher wine CAN be reused for water, beer or other drinks but not for kosher wine.

5. נ"ל פשוט אפילו אם המשקין נשתהים שם מעל"ע מותר דהא הטור כתב בטעם כיון שהיין פוגם אותם

ט"ז יורה דעה סימן קלו ס"ק ז

The Taz explains that the taste of non-kosher wine is bad (pagum) for water or beer and thus is no a kashrut problem. However, it would be beneficial taste for other kosher wine.

- On that basis, sherry casks should not be a problem for whisky production.

6. וצת"ה כ' ... וגבי יין אפי' היה הכלי צ"י שרי דשכר ציין נט"ל הוא כמ"ש צי"ד אבל צמי דבש לא הוי לפגם ולכן אם היה הכלי צ"י אפי' קודם פסח אסור אם לא היה ס' נגד החמץ ... ומשמע צת"ה שם שחצית של יי"ש אף על פי שאינה צ"י אסור הכל. דעיניו רואות שני"ט לשבח הוא ...

מגן אברהם סימן תנא ס"ק מ

However, the Magen Avraham (in hilchot Pesach) writes that the taste of wine and whisky together is NOT lifgam but is actually beneficial¹³ to the taste.

- Also, clearly, the whisky makers think that the sherry casks are beneficial to the taste of the whisky¹⁴.

E2] AINO BEN YOMO

- As is well known in hilchot kashrut, if kosher food is cooked in a non-kosher kli has not been used for the last 24 hours, bedieved, the food is usually kosher since any non-kosher taste in the pot is deemed to be bad - 'pagum'.
- Since the wine barrels are shipped to Scotland from Spain and other places and have not been used for sherry for months, why is there a problem putting whisky in them?

7. ואין חילוק בין צכלים האסורים משום יין נסך בין שהם צני יומן או לא (ש"ך: דאפילו אינן צ"י אסורים דלח שייך נט"פ חלח צתצשיל אבל לא צכלי היין דאדרבה כל שמתיישנים נ"ט לשבח)

רמ"א שולחן ערוך יורה דעה סימן קלו סעיף א

The Rema rules that, whilst pots used for food are 'downgraded' after 24 hours to 'noten ta'am lifgam', this does not apply to barrels of wine. On the contrary, the longer you leave them, the more improved the taste of the wine is!

13. The Nodah Beyehudah gives apparently contradictory rulings in different places as to whether whisky is ruined by the taste of wine.

14. Sherry taste often appears on the tasting notes of different whiskies.

E3] MORE THAN TWELVE MONTHS

8. כל הכלים שישנן י"ב חדש שרי שבוודאי כלה כל לחלוות יין שבהם ואפילו נתן לתוכם לו מים תוך י"ב חדש אין בכך כלום

שולחן ערוך יורה דעה סימן קלה סעיף טו

Nevertheless, if a pot has not been used for more than 12 MONTHS, many poskim rules that all taste (even wine) will be halachically neutral, certainly bedieved. This even applies if it has been used during those months for a kosher food.

- If the barrels take more than a year for the process of emptying the sherry, shipping and filling with whisky, this would be a ground to be lenient. In fact though, the shipping process normally takes less time than this so it is difficult to rely on. It could however be a weak safek to be added to the halachic mix (see more below).

E4] 'TAAM' (TASTE) OR 'REIACH' (FRAGRANCE)?

9. In a conversation with Harav Shlomo Miller shlita, he suggested that it is quite possible that the flavor contributed by the wine does indeed ruin (pogem) Scotch (just like wine ruins beer - as indicated by the Gemara's allowance to store beer in a non-kosher wine barrel). Nevertheless, it is possible that Scotch distillers specifically use wine barrels to allow the Scotch to absorb the wine's fragrance¹⁵, and according to halacha, fragrance added by a non-kosher ingredient is insignificant (reicha lav milsa - Shach 108:14). Accordingly, the non-kosher wine blios would not require nullification. ... This theory, however, appears to be at odds with numerous experts who claim that Sherry casks impart a positive taste - not just a fragrance (see next footnote). Rav Miller countered in a follow-up letter that even taste stems from fragrance; this is proved by the fact that someone with a cold and is unable to smell has difficulty tasting food. Accordingly, the experts are merely experiencing the fragrance, which is negligible in halacha.

Sherry Casks - A Halachic Perspective, Rabbi Akiva Niehaus n. 20

E5] 'ZEH V'ZEH GOREM'

10. אם העמיד גבינה בעור קיבת נבלה וטריפה ובהמה טמאה, אוסר בכל שהוא. הגב: משום דדצר האסור בעלמו ומעמיד אפילו צאלף לא צטיל ודווקא שלא היה שם מעמיד אחר, רק האסור. אבל אם היה שם ג"כ מעמיד היתר הוי זה וזה גורם ומותר אם איכא ס' נגד האסור

שולחן ערוך יורה דעה סימן פז סעיף יא

Cheese made with non-kosher rennet is not kosher. But if there is a mixture of non-kosher and kosher rennet, we say 'zeh vezeh gorem' - there are multiple causes, some kosher and some not. In that case we can be more lenient and allow the cheese if the non-kosher rennet is 'batel'.

- With sherry-aged Scotch, what is adding the taste¹⁶? The wine or the wood or both, and in what proportion?

11. In Minchas Yitzchok Vol. II (28:5-7, written in 5716) he argues that if the taste cannot be detected and there is only some change in the flavor due to the presence of wine, then it may be permitted based on the principle *zeh v'zeh gorem* (ibid. s.k. 16-18). The rationale for this is that many factors in the production of Scotch affect the final flavor of the drink, including malted barley, water, wood flavor, peat and Sherry flavoring. Since the overall flavor is affected by many factors, the wine's particular contribution cannot be considered *avida l'ta'ama*.... It appears that most Scotch experts agree that, although the wine affects the overall flavor, the actual taste of wine cannot be detected. However, it is hard to accept the application of *zeh v'zeh gorem* in the case of Scotch. The concept of *zeh v'zeh gorem* is applicable only in cases where the resulting flavor could have been achieved with the other kosher ingredients had they been present in larger quantities, and the non-kosher ingredient is not absolutely required to achieve the desired outcome. In contrast, the distinctive flavor of Scotch matured in Sherry casks cannot be achieved without the addition of forbidden Sherry flavor. Rav Weiss himself grapples with this issue in a later volume (Vol. VII 27:4 written in Iyar 5738) and writes that *zeh v'zeh gorem* is not applicable to Sherry casks, since the distinctive Scotch flavor could not have been attained solely with the other kosher ingredients. Rav Weiss notes that this differs with the earlier *t'shuvah* and concludes that this issue is *tzarich iyun* (requires further elucidation).....
To summarize: It is unclear if Scotch makers are interested in the Sherry casks for the flavor of their wine blios (presenting a concern of *avida l'ta'ama*), or for the overall effect of the wine or wood on the Scotch. Most experts agree that the original wine flavor is not preserved and cannot be identified in the Scotch, and therefore it is subject to *bitul*. One may not invoke the principle of *zeh v'zeh gorem*.

Sherry Casks - A Halachic Perspective, Rabbi Akiva Niehaus pp35-36

15. Rav Osher Weiss makes the point that what is transferring to the whisky is not sherry 'taste' but a chemical caused by a chemical reaction between the wood and the sherry.

16. One of the purposes of the sherry casks is to add color to the whisky. It seem though that the main intention of the manufacturers is to use the taste of the sherry, or at least the effect that taste has on the wood and, through that, the whisky.

E6] 'BITUL' - 1:60 or 1:6?

- Another well-known principle in kashrut is 'bitul' - that we may disregard a very small amount of non-kosher food in a much larger quantity of permissible food.
- Normally, the ratio to allow bitul of two different tastes¹⁷ is 'Bitul BeShishim' - 1 in 60, or 1.67%.
- Is this also true of non-kosher wine? Wine (which is stam yeinam) is a rabbinic prohibition. Bitul BeShishim DOES apply to Rabbinic prohibition eg milk in chicken soup. So why could wine be different?

12. ויין נסך שנתערב במים אוסר בנותן טעם. יש מפרשים דהיינו בששים כמו בשאר איסורין. והראב"ד כתב כיון שנתערב במים עד שיש בו יותר מכדי מזיגה פוגמו ומותר אפילו בשתייה. הילכך אם יש במים ו' חלקים מן היין מותר אפילו בשתייה
טור יורה דעה הלכות יין נסך סימן קלד

There is a major debate in the Rishonim on whether non-kosher wine requires bitul in 60 like other prohibited foods (Ramban and Ritva) or whether it is nullified in 6 (Raavad and Ri).

13. כמה יהא במים ויהא בהם כדי לבטל טעם היין? ששה חלקים כנגדו. וכל שיש במים כשיעור הזה, מותר אפילו בשתייה
שולחן ערוך יורה דעה סימן קלד סעיף ה

The Shulchan Aruch rules like the lenient opinion - non-kosher wine taste is nullified 1 in 6 - ie 16.7%.¹⁸

- The reason wine is treated differently to other foods is because wine can only be halachically considered 'wine' in a certain concentration. Once it is diluted to more than 1 part wine in 6 parts water, it is no longer halachically wine but rather קיוהא - acrid taste.¹⁹
- As such, the reason for bitul here is very different to other foods. With bitul b'shishim in other foods we are saying that the non-kosher ingredient may still be there, but we can't taste it and thus the food is acceptable. With bitul beshesh in wine we are saying that the wine CAN still be tasted, but since the wine is so diluted, what we are tasting is a kosher ingredient - קיוהא - which used to be non-kosher wine.

14. כל אלו המשקים ... אסור לקנותו מהם ... שאנו חוששים שמא עירב בהן יין (עד שאין ס' לזבלו)
שולחן ערוך יורה דעה סימן קיד סעיף ד

However, elsewhere the Rema rules that, even with wine, we need 60 to achieve bitul!

- The Shach²⁰ explains that there is a distinction between dilution in water - where the ratio is 1:6, and dilution in other drinks, where the wine remains potent and the ratio for bitul is 1:60. As such, the required bitul ratio for sherry taste in whisky will be 1:60.
- However the Taz (114:4) rules that water and other beverages are exactly the same and 1:6 is sufficient. The mention here of 1:60 follows the stricter view of the Ramban, which we do not follow in halacha. As such, according to the Taz, if the ratio of sherry taste to whisky is less than 1:6 (16.7%) the whisky will be kosher.
- The lenient view of the Taz is followed²¹ by most poskim²². Furthermore some poskim (including R' Moshe Feinstein) have explained that, although the Shach requires 1:60 if wine is mixed with other drinks (eg fruit juice), nevertheless EVEN the Shach would agree that wine is less potent in very sharp drinks like whisky and 1:6 is adequate.²³

E7] HOW MUCH TASTE IS THERE IN THE WALLS OF THE BARREL

- Even we follow the lenient (and normative) view that wine is nullified 1:6 in the whisky, do we actually achieve that ratio?
- This depends on how much sherry taste there is in the walls.

17. Min b'sheaino mino - as here where we are assessing the taste of wine in whisky. The rules for 'min b'mino', where both kosher and non-kosher tastes are the same - eg non-kosher wine in kosher wine - are different.

18. This is also ruled by the Rema in YD 123:8 and confirmed by the Shach in YD 123:16.

19. Rav Moshe Feinstein makes this point a number of times in YD 1:62 - see above. He even makes the point (in YD 1:63) that, since this very diluted wine taste is kosher, bitul would even apply if the producers introduced it specifically to give an improved flavor, since it is now a kosher flavor. Minchat Yitzchak disagreed and required that the specific 'wine' taste caused by the added sherry should not be discernable by the expert tasters. In practice, this may depend on whether the whisky is a first-fill sherry cask (the first time the cask is used for whisky) or a second or later fill sherry cask. The aroma of oloroso sherry is very strong and expert tasting notes for heavily sherried scotch share some of the descriptions given to pure sherry. (Although as noted above, is aroma the same as halachic 'taste'?)

20. Nekudot HaKesef on Taz YD 114:4.

21. In general, in a machloket between the Shach and the Taz the poskim rule like the Shach. For fascinating take on why this is the case see Nefesh HaRav p19 n24.

22. Including the Pri Chadash (114:10), Chochmat Adam (66:15), Magen Avraham (204:16), Minchat Yitzchak (2:28:4) and Rav Moshe Feinstein (Igrot Moshe YD 1:62).

23. Rav Moshe also understood that 'avidei l'taamei' - where something was put there specifically for taste, which we saw was not batel even in 1000, refer to the wine dregs, which are stronger. It would not apply to liquid wine or to wine taste in the barrels (which Rav Moshe rules to be a kosher taste anyway).

15. אפילו במכניסו לקיום אינו בולע יותר מכדי קליפה. לפיכך אם העביר עליהם מלקט ורהיטני או קלפם בקרדום הוכשרו

שולחן ערוך יורה דעה סימן קלה סעיף יג

The Shulchan Aruch rules that non-kosher wine stored in a barrel only penetrates the barrel itself to a 'kdei klipa' - a thin peel²⁴. As such barrels can be easily kashered by scraping off a thin layer.

16. אינו בולע יותר מכדי קליפה. נראה דהיינו מסתמא אמרינן הכי משום שאינו ידוע שנכבש היין בתוכו יום שלם חזל אם היה ידוע שיהיה יי"ג בתוכו יום שלם ה"ל כבוש וכבישה אוסר כל הכלי

ש"ך יורה דעה סימן קלה ס"ק לג

However, the Shach rules that this lenient position of the Shulchan Aruch is only applicable when it is not clear whether the non-kosher wine was stored in the barrel for a full 24 hours.

If we know that the wine was in the barrel for the full 24 hours, the Shach rules that we must assume that the taste of the wine penetrated the ENTIRE THICKNESS of the barrel wall.

- There is no clear consensus of poskim on whether we follow the lenient position that calculates the ratios based on a klipa or the stricter position of the Shach which requires the whole thickness of the barrel to be taken into account.

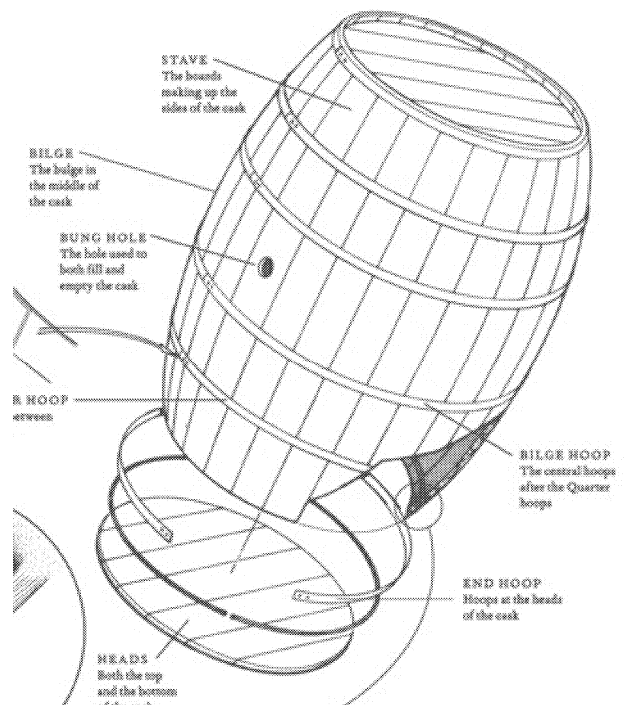
- Poskim who rule like the Shach include: Chochmat Adam (81:11), Kitzur Shulchan Aruch (48:17), Imrei Eish (YD 44).

- Poskim who rule like the lenient view include: Chacham Tzvi (75), Machane Efrayim (Ma'alchalot Assurot 11:15), Chazon Ish (YD 55:6).

- If we follow the lenient view on this then the taste of sherry in the klipa²⁵ is DEFINITELY nullified 1:6. Possibly also 1:60.

- If we follow the stricter view - is there more than 6 times whisky to the full volume of the walls of the cask?

- Rabbi Niehaus obtained a barrel from a Spanish barrel supplier and had it measured. The internal dimensions held 511.5 liters and the external dimensions 647.4 liters. The difference between them - 135.9 liters - is 26.6% . This is well over 1:6 (16.7%)!!²⁶



E8] CHANAN - CHATICHA NA'ASEIT NEVEILAH

- If we take the view that the whisky should be avoided due to sherry taste, would this still apply to subsequent fills? I.e. once the whisky is removed from the barrel after maturation it will be many years since sherry was in the cask. Given that any non-kosher taste is certainly 'pagum' after 12 months, why should there be any problem with subsequent fills?

- Also, many whiskies are matured using a combination of sherry and bourbon casks. Would this not 'dilute' the problem of sherry taste?

- The problem is 'chanan'. Once we say the the first fill whisky is not-kosher, ALL of that whisky becomes a prohibited taste which enters the walls of the barrel. This will affect the subsequent fills. It will also mean that bourbon casks become 'treif' from whisky poured into them after being in a sherry cask.

- However, there are a number of reasons to be lenient:

(i) It is not clear whether Chanan applies only in meat and milk, or with other foods too. The Shulchan Aruch (YD 92:4) rules that it only applies to meat and milk. The Rema extends it to other foods but the Shach (92:12) understand that to be Rabbinic. As such, since the prohibition of the food is itself only rabbinic there are grounds for leniency.

24. There is a halachic discussion as to how thick a 'klipa' is - see Chazon Ish YD 55:6.

25. Some poskim have pointed out that if you break open the barrel and examine the walls you can see that the wine staining from the sherry has penetrated deep into the wood and not just a klipa! (See also Meiri Avoda Zara 33a s.v. Hashevi'i). On the other hand, it could be that the staining is halachically irrelevant and only the wine within the klipa goes out into the whisky.

26. See also <http://www.mevaseret.org/mmy/journal/5772/087-100-Rosie%20Weinstein.pdf>. In that article Rosie Weinstein presents more accurate measurements for various barrels. She writes: Given height h, bilge diameter D, and head diameter d, the formula for volume V of a barrel is $V = (1/60)\pi h [8D^2 + 4Dd + 3d^2]$. Using this formula on both the interior (without the wood) and exterior (with the wood) dimensions of various casks (bourbon, Bordeaux, Burgundy, hogshead, Cognac, puncheons, Madeira, sherry butt, port pipe) produces ratios in the range of around **3.8-5.2 to 1**. The most common wine cask used for aging scotch, the sherry butt, produces a ratio of around **4.3** using Spanish wood and **5.0** using American wood. ... So for all casks in question, the 6:1 ratio is not attained, even allowing for a significant margin of error.

- (ii) The Rema cites an opinion that Chanan applies only to solids not liquids and the Taz rules that one can rely on this, even when there is no financial loss.
- (iii) Some poskim²⁷ rule that Chanan does not apply at all to Rabbinic prohibitions. Although most disagree with this, it is yet another reason to take into account when considering leniency. It would mean that all subsequent fills had no halachic problem at all.
- (iv) Some poskim²⁸ rule that Chanan only applies to cooking and not to soaking for 24 hours or more - kavush. Again, many poskim disagree, but it is another reason for possible leniency.
 - Given that there are significant grounds to allow subsequently fills and there is often no way to be sure that the whisky in question is from the first or subsequent fills, this is a safek which gives grounds for leniency.
 - On the other hand, it is not so difficult to get information these days. Labelling is more accurate and distilleries are often happy to respond to email queries. A halachic safek which could be easily resolved cannot be used as a 'snif lehatir' - another ground for leniency.

E9] BITUL ISSUR LECHATCHILA

- Although non-kosher food will often be nullified if dropped into kosher food, the halacha clearly states that this may not be done lechatchila and, if done, the food is prohibited to the person for whom it was made. Is the use of sherry casks considered to be a problem of 'bitul issue lechatchila'?
- Most poskim rule that this is not a problem since non-Jewish producers are making the whisky for a primarily non-Jewish market. They are not specifically focusing on the Jewish drinkers.²⁹
- There are also grounds to be lenient based on the minority opinions that *bitul issur lechatchila* does not apply to a Rabbinic prohibition which is not directly related to a Torah prohibition.³⁰

E10] CHAZUTA - COLOR

- The Rema (YD 102:1) rules that, where a prohibited ingredient changes the color of the food, it cannot be nullified since it is visible. Since the sherry residue changes the color of the whisky is this a problem?
- No - because the problem of chazuta does not apply to rabbinic prohibitions. Also the color change is clearly also due to the wood and here we would say *zeh v'zeh gorem*.

F] THE STORY SO FAR - REASONS TO BE STRICT

- When dealing with whisky which is 100% made in sherry casks, we have seen so far a number of reasons to be strict:
 - (i) The sherry taste cannot be considered to be 'pagum' as it does contribute positively to the whisky. As such, it will only be permitted if it is batel.
 - (ii) Although Rav Moshe ruled that bitul was 1:6, he recommended that a 'ba'al nefesh' should be machmir for the Shach and require 1:60. This is certainly not achieved regarding the thickness of the walls, and possibly not even for a klipa.
 - (iii) Even if you follow the psak of 1:6, this ratio is STILL not achieved regarding the thickness of the walls.
 - (iv) Even if you follow the psak of 1:6 AND use the klipa, in which case there is bitul, Rav Moshe still recommended a ba'al nefesh to be machmir for those opinions³¹ that if wine is normally added to a beverage it is not subject to bitul, even in a miniscule amount.
- When dealing with whisky which is partly made in sherry casks (and partly in bourbon or other casks), there is room to be more lenient as there will almost certainly be bitul. Nevertheless there will still be the 'ba'al nefesh yachmir' of Rav Moshe where applicable.

27. Pri Chadash (YD 92:17) and Aruch HaShulchan (YD 92:25).

28. Pri Chadash ibid.

29. Although see <http://www.scotsman.com/lifestyle/scotch-whisky-distillers-look-for-kosher-status-1-3149000>, which indicates that the picture may be changing. Once it becomes clear that the whisky is directly marketed to Jews, the halachic issues become more difficult. Ironically, this is another reason why sherry-cask Scotch cannot be made under hashgacha. The presence of a hechsher would make it clear that the product was being made for Jews, which would thus make it less likely to be kosher!

30. Stam Yeinam is prohibited because of intermarriage. It is not a fence on some Torah prohibition with the wine itself. Other views in the Rishonim (Rishonim) rule that *bitul issur lechatchila* does not apply at all to Rabbinic prohibition. Although the halacha does not follow that view, this can be another ground for leniency.

31. Shu't Rashba (3:214).

G] GROUNDS FOR LENIENCY

G1] SAFEK DERABBANAN

- ספק זרבנן לקולא - With a Rabbinic prohibition the general meta-halachic principle is, in the event of an unresolved halachic debate or a doubt in the facts, we follow the more lenient opinion, unless there is good reason not to.
- As such, although the Shach's stringency to require bitul of the entire thickness of the wall is generally accepted as the psak, given the significant weight of opinion in the other direction - that bitul against the klipa is sufficient - one can rely on this, especially given the other reasons for leniency.

G2] SHIPPING TIME?

- Shipping the empty barrels could take more than 12 months (although this is unlikely)³².

G3] EMPIRICAL EVIDENCE

- Dovid Lichtenstein (see Further Reading below) sent 5 bottles of single malt for testing to see how much sherry content they contained. The results were:

- Glenmorangie 12 (Sherry): 0.06%
- The Balvenie 17 (Sherry): Less than 0.01%
- Auchentoshan (Sherry): 0.13%
- Macallan 18 (Sherry): 0.05%
- Glenfiddich 14 (No Sherry): 0.01%
- The highest of these ratios is 1:769, WAY below the level which is halachically relevant!
- But can we use lab results to decide halacha?

17. איסור שנתערב בהיתר מין בשאינו מינו כגון חלב שנתערב בבשר, יטעמנו נכרי. אם אומר שאין בו טעם חלב או שאומר שיש בו טעם אלא שהוא פגום, מותר. ... ואם אין שם עובד כוכבים לטועמו משערין בו. ואין נוהגים עכשיו לסמוך על עו"ג ומשערין בכל צם!

שולחן ערוך יורה דעה סימן צח סעיף א

The Shulchan Aruch rules that when non-kosher food becomes mixed with kosher, we ideally ask a non-Jew to taste it and tell us if the non-kosher taste is present. The Rema rules that we cannot rely these days on a non-Jewish taster³³ and must calculate the ratio to see if there is 1:60.

- On that basis, can Ashkenazim rely on lab results to establish halacha?
- Most poskim think that they can³⁴. Two reasons are given for the Rema's stricture not to rely on a non-Jewish taster: (i) in case the non-Jew is antagonistic (Shach 98:5) and (ii) in case the non-Jew does not care enough to be careful in his assessment (R. Akiva Eiger). Neither of these reasons apply in the case of lab results.
- There is also a view that the Rema would allow reliance on a non-Jew when dealing with a Rabbinic prohibition.
- In fact, a number of poskim have relied on lab results in the past.³⁵
- However in this case there is a complicating factor that much of the non-kosher sherry taste is alcohol and not grape product. This would not show up on the lab tests.

32. See R' Niehaus' and Rosie Weinstein's articles op cit. which bring evidence from manufacturers about how the sherry casks are shipped and treated before use for whisky. In some cases shipping time can be a matter of weeks. Some shippers actually put a little 'transport sherry' into the barrels during shipping to keep them 'fresh' - called 'one for the road'.

33. Sefardim may thus rely on a non-Jew but Ashkenazim may only rely on a Jew. This means that the Sefardi can ask a non-Jew to taste food. If the food is fine, the Sefardi can then taste it for the Ashkenazi! Another application is that an Ashkenazi who has made a personal neder not to eat a certain kosher food, can ask another Jews to taste the food to see if that taste is present.

34. A broader but critical questions is whether our halachic system of kashrut is based on independent halachic rules or reflects the physical reality. If a meaty pot were sent to a lab soon after use, would it have chemical traces of meat inside it? Does that matter?

35. Such as in the 19C episode where there was a scare of pig fat in oil. Rav Moshe Sternbuch (Teshuvot Ve-Hanhagot 1 YD 423) rules that one can rely on a non-Jewish lab test as long as you tell them that the sample is being given to two other experts for testing.

H] CONCLUSIONS

- There are a many poskim who would suggest stringency on the issue of 100% Sherry Cask Whisky.³⁶ Nevertheless, there are many grounds for leniency and significant poskim who permit it.³⁷
- The OU and KLBD give hechsherim to a number of single malt whiskies. Both organizations raise halachic concerns about sherry cask whisky.
- cRc describes sherry cask whiskies as 'Not Recommended'.
- Star-K also approves only non-sherry whiskies.

18. Because of all of these concerns, the OU does not permit "sherry cask" whiskeys to be served by their caterers or at their restaurants. However, unflavored whiskey that is not labeled sherry cask and there is no reason to assume it was kavush in a sherry cask is permitted The same rationale can be applied to a blend of many whiskeys. Since each individual whiskey might not have been stored in a sherry cask, the blend is permitted as well.

שולחן ערוך יורה דעה סימן

- Future solutions could include kashering casks and using casks from kosher sherry.

I] FURTHER READING

- Is Sherry Cask Whiskey Kosher, Dovid Lichtenstein, Headlines 2 p 439
- Sherry Casks - A Halachic Perspective, Rabbi Akiva Niehaus³⁸.
- OU Daf HaKashrut - Purim 5774.³⁹
- The Whisky Brouhaha, Rabbi J David Bleich, Contemporary Halakhic Problems Vol 5, p221

36. Rav Herschel Schechter rules that the sherry-cask whisky should not be drunk by any ba'al nefesh. Even though people rely on the heterim of the Minchat Yitzchak and Rav Moshe Feinstein, Rav Schechter is concerned for a number of halachic issues, including; (i) that the sherry barrels were used there specifically for a positive taste, which is therefore not batel in any amount; (ii) since this is a drink that wine taste is normally mixed into, it will not be batel; and (iii) the whisky is made for Jews too so there is problem of *bitul issur lechatchilla*. However, according to Rav Dovid Miller of Gruss, Rav Schechter later spoke to a chemist at the whisky producers who told him that they are not interested in the taste of the sherry but the taste of the WOOD! As such Rav Schechter is said to have retracted his psak. See <http://www.yutorah.org/sidebar/lecture.cfm/866491/rabbi-yonatan-shai-freedman/the-halakhic-status-of-scotch-aged-in-sherry-casks/> for more details.

37. Including Rav Osher Weiss - see Michat Asher Vol 1:44. Rav Weiss rules that 'avidei l'taamei' means that regular people can dedect that taste in the food, which is not the case here. Rabbi J David Bleich also writes that, although be strict in this case is a proper chumrah, those who wish to drink sherry-cask whisky have ample permissive ruling on which to rely.

38. Available for download at <http://www.crcweb.org/Sherry%20Casks%202.pdf>

39. Available at <https://oukosher.org/content/uploads/2014/03/daf-hakashrus-purim74.pdf>