

חלב ישראל Introduction to

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Among the many positive aspects of the תורה community that Judaism creates for its people is the ability for one member of כלל ישראל to immediately recognize and understand certain basic fundamentals that are common to virtually all Orthodox Jews. A frum individual can walk into any shul in the world on a Friday night with no plans for where to eat or sleep on that שבת, and rest assured that his needs will be taken care of. His fellow Jews understand his need for a kosher שבת meal and a place to rest for the next 25 hours because this need is theirs as well. In return, the guest can trust that the standards of כשרות that the תורה demands in every Jewish home will be met in his new location as well. One of the few differences that exists between standards of כשרות that different Jewish families observe is the issue of חלב ישראל. The fact that some Jewish families only drink חלב ישראל while others do not concern themselves with it in the slightest is the source of a good deal of confusion concerning its place in normative Jewish life. What is considered חלב ישראל? Is drinking it an obligation or a מנהג? What is considered חלב ישראל? What follows is an introduction to the source and basic הלכות of חלב ישראל.

Reason for the איסור

The משנה in (לה:;) lists a number of איסורים that the חכמים created for various reasons which relate to relationships between Jews and non-Jews. The first item on the list is milk produced by a non-Jewish farmer without Jewish supervision. The משנה states that this milk is completely אסור for a Jew to consume, but is not אסור בהנאה and one may therefore conduct business etc. with such milk.

At first, the גמרא questions the need for such an איסור. If חז"ל were afraid that the גוי would completely switch milk from a טהורה בהמה in favor of that of a טמאה בהמה, there would be no reason to institute an actual תקנה. One can tell the difference between the two by merely looking at the milk itself, as the milk of a kosher animal is white, while that of a non-kosher animal has a greenish tint. The only way to hide this discoloration would be to mix a minority of חלב טמא with a majority of חלב טהור. However, even if our concern was that the גוי would mix in a minority of non-kosher milk, there would still be another mode of detection. One should take the milk and make it (or a small portion of it) into hard cheese. It is a scientific phenomenon that the milk of non-kosher animals does not coagulate into hard cheese. Thus, one could easily identify if even a minority of non-kosher milk had been mixed in. Despite this, the גמרא concludes that since even kosher milk contains a significant measure of whey that remains liquid and does not congeal, one might confuse the חלב טמא's lack of coagulation with the kosher whey and fail to identify it. Even if he was using the entire amount to make cheese (in which case he would only be eating the coagulated kosher milk), חז"ל were still afraid that some of the milk would remain in the holes of the cheese and one might accidentally eat it. They therefore prohibited all milk that was not produced under Jewish supervision. There is an additional possibility why חלב עכו"ם חז"ל prohibited חז"ל that is offered by the גילוי called תלמוד ירושלמי (ע"ג, פרק ב הלכה ג) In the time and place in which חז"ל lived, there was a fear that certain liquids which were left uncovered might be drunk by a snake and the venomous backwash would leave the resulting remainder poisonous. Thus חז"ל forbade

their people to drink any beverage that was cared for irresponsibly, and non-Jewish milk was one of those drinks. (The general application of גילוי nowadays is questionable and beyond the scope of this discussion.) Nevertheless, almost all ראשונים (except for תוספות see ד"ה ל"ה. ד"ה) accept the reason of the תלמוד בבלי that we fear that חלב טמא was mixed in.

איסור תוספות

When dealing with any איסור דרבנן, it is important to understand whether the איסור is a דבר שבמנין (a formal decree of the Rabbinic בית דין) and therefore applies in all cases, even if the reason seemingly does not pertain. In such a case, the prohibition would be binding until which time it is lifted by a similar Rabbinic authority (כל דבר שבמנין צריך מנין אחר להתירו, עיין ביצה ה:). On the other hand, there are some דינים that are not considered to be official תקנות and only depend on the relevant time or place, but if the reason for the תקנה no longer applies, one need no longer adhere to the decree. (An example of this is the aforementioned concept of גילוי. The שולחן ערוך (סימן קטז) rules that since we no longer live in areas that are commonly inhabited by poisonous snakes, we need not refrain from drinking beverages that were left uncovered. Similarly, תוספות in איסור דב"ז (ל. ד"ה תנן) writes that the prohibition to dance on שבת was based on the איסור of חז"ל. תיקון כלים of חז"ל were afraid that if one engaged in spirited dancing he would desire musical accompaniment and this would lead to the fixing and tuning of instruments. He therefore posits that since nowadays most of us cannot repair instruments to the degree that would constitute an איסור דאורייתא, one is permitted to dance. Many פוסקים dispute this analysis and argue that the איסור of dancing on שבת is a full fledged דבר שבמנין and should continue to be אסור baring a formal act of חז"ל. (For an analysis of the subject see סימן ק').

The status of חלב עכו"ם in this regard is subject to a dispute among the פוסקים. The רדב"ז (שו"ת ח"ד סימן עה) writes that this איסור דרבנן is a standard איסור דרבנן that must be observed regardless of the particular circumstances. On the other hand, the רדב"ז (שו"ת ח"ד סימן עה) argues that חלב עכו"ם (גבינת עכו"ם (ע"ש) unlike חלב עכו"ם) was only prohibited because of a particular חשש, i.e. that they would mix non-kosher milk into the kosher milk. Thus if it is understood that non-kosher animals are not available to be milked, one may purchase and drink milk produced without Jewish supervision.

The סופר (שו"ת ח"ב סימן קז) agrees with the משנה סופר and advances the argument even further. He claims that once ישראל כלל accepted the איסור upon themselves it may have taken on the status of a נדר and be אסור מדאורייתא. The סופר's opposition to the רדב"ז's position is mirrored by the שולחן ערוך (קטו:ה-ו) who writes, "Although some make the mistake of ignoring this איסור because they have witnessed scholars who do not observe it. These individuals are sorely mistaken and the scholars who have done this must bear their sins, for once the שולחן ערוך, טור, and the האחרונים agree that it is prohibited, who has the gall to argue against them." He continues and tells a story of a man who assumed that non-kosher milk was not found in his area, and in the end was נכשול in the consumption of אסורות מדאורייתא.

What is considered proper supervision?

The שולחן ערוך (קטו:א) writes that in a situation where the non-Jewish farmer is milking a kosher animal, and no non-kosher animals are readily available to him, the Jew need

not watch the milking process personally. He can suffice to remain outside the area to insure that no other animals are brought into the barn with the possibility of being milked. If, however, the גוי has access to בהמות טמאות as well, the Jew must supervise more closely. However, he does not need to remain in the same room as the גוי, nor must he be able to see the milking at all times. It is enough that he peak into the window periodically so the the גוי is aware that he is being observed and that a real possibility of being caught exists if he switches to a non-kosher animal. (This is the source that משגיחים rely on in most cases, that they consistently visit kitchens and factories unannounced at varying intervals in order to confirm that everything is running properly. Obviously, each situation requires a specific level of supervision depending on the type of food being prepared.)

הלכה Practical

It would seem from the sources that one cannot purchase any milk that was produced in an unsupervised manner. However, רב משה פיינשטיין (אג"מ יו"ד ח"א סימן מז) writes that even if one agrees with the חתם סופר, there is another reason to permit חלב עכו"ם in the United States. The government regulates the production of milk in its dairy farms and requires that any products that are called milk be the milk of a cow. If the farmers substitute any other type of milk in that which is required, they can be fined and even shut down. Therefore, writes רב משה, we have the right to assume that all of the milk being produced in a government regulated dairy farm is 100 percent cow's milk. This type of assumption is referred to in הלכה as an אגן סהדי (literally, we testify) and applies to many הלכות throughout ש"ס. For example, during the גרות process, it is not necessary for בית דין to follow a גיורת and watch her טובל in a מקוה, rather they can witness her enter the area and leave the area and have the right to assume that she immersed herself, since we know this to be the case. Here as well, since it is disadvantageous for the companies to use anything by kosher milk due to government inspections, we know have an אגן סהדי that all of the milk is kosher.

In his next תשובה (סימן מח) רב משה, תשובה (סימן מח) explains that even if the government sanctions lead to insignificant punishments, and the officials are easily bribed, one can still assume that all of the milk being produced is cow's milk. Since milking horses camels or pigs, would require specialized machinery and trained farmers, it would not be at all profitable for the companies to use anything but cows. Therefore, there is certainly no reason for them to incur even the smallest fines or to bribe the government representatives. He notes that even though he holds that it is מותר to drink the milk, it is still preferable to use חלב ישראל, and he himself is מקפיד to do so.

We have seen that the חלב עכו"ם of דין is a true איסור דרבנן, and that those who refrain from its consumption are doing so as a matter of הלכה, not merely a חומרה. On the other hand, one who chooses to rely on רב משה's leniency certainly acting in accordance with הלכה as well. Hopefully, clarifying this point will help serve to help unify ישראל and help perpetuate the notion that אלו ואלו דברי אלקים חיים.