

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

SERIES 2: 65 - CHALAV YISRAEL & NON-SUPERVISED MILK AND BUTTER

OU ISRAEL CENTER - SUMMER 2023

A] THE TALMUDIC SOURCE

1. שהיוצא מן הטמא - טמא והיוצא מן הטהור - טהור.

משנה - בכורות ה:

The Mishna states a fundamental principal of kashrut - anything derived from a non-kosher animal is itself not kosher eg. milk, eggs etc.

2. מתני'. ואלו דברים של עובדי כוכבים אסורין ואין איסורן איסור הנאה: חלב שחלבו עובד כוכבים ואין ישראל רואהו

משנה - עבודה זרה לה:

Chazal therefore instituted a prohibition not to drink any milk that a non-Jew milked without Jewish supervision, in case the milk was mixed with treif milk (as was common in those days)¹. Such milk became rabbinically prohibited (even though on a Torah basis there is a majority (rov) of milk which is kosher.

3. גמ'. חלב למאי ניוחש לה? אי משום איחלופי, טהור - חיור, טמא - ירוק! ואי משום איערובי, ניקום. דאמר מר: חלב טהור עומד, חלב טמא אינו עומד! אי דקא בעי לגבינה ה"נ, הכא במאי עסקינן - דקא בעי ליה לכמכא.

עבודה זרה לה:

Chazal were not concerned at non-Jews passing off pure milk from a non-kosher animal as kosher since it looks different. Their concern was the adulteration of kosher milk. The Gemara also clarifies that there is no concern if the milk used to make cheese since only kosher milk will curdle and the non-kosher ingredient will become evident.

B] THE AUTHORITY OF RABBINIC DECREES - DAVAR SHEBEMINYAN

4. וכל דבר שבמנין צריך מנין אחר להתירו.

ביצה ה.

Rabbinic legislation made by Chazal in a 'minyan' - ie in this context a body with classical Rabbinic authority - requires an equally authoritative body to annul it. Thus we cannot cancel this din today even if we feel that it no longer applies.

5. א בית דין הגדול שדךשו באחת מן המדינות כפי מה שפראה בעיניהם שהדין כן ודנו דין. ועמד אחריהם בית דין אחר ונראה לו טעם אחר לסתור אותו. הרי זה סותר ודן כפי מה שפראה בעיניו. שנאמר (דברים י"ט) אל השפט אשר יהיה בימים ההם. אינך חב ללכת אלא אחר בית דין שבדורך.

ב בית דין שגזרו גזרה או תקנו תקנה והנהיגו מנהג ופשט הדבר בכל ישראל. ועמד אחריהם בית דין אחר ובקש לבטל דברים הראשונים ולעקר אותה התקנה ואותה הגזרה ואותו המנהג. אינו יכול עד שיהיה גדול מן הראשונים בחכמה ובמנין. היה גדול בחכמה אבל לא במנין. במנין אבל לא בחכמה. אינו יכול לבטל את דבריו. אפלו בטל הטעם שבגללו גזרו הראשונים או התקינו אין האחרונים יכולין לבטל עד שיהיו גדולים מהם

1. This is still common in third world countries - see *Handling, preservation and utilization of camel milk and camel milk products in Shinile and Jijiga Zones, Eastern Ethiopia* (<http://www.lrrd.org/lrrd19/6/seif19086.htm>) where the study quotes: a "small proportion of the respondents reported that they mix camel milk with milk of other species ... camel milk is mixed with milk of cows, goats and sheep particularly when intended to make products such as butter and cheese. This result is in line with a previous report by Yagil (1982) who reported that camel milk is often mixed with fresh or churned goat milk to make milk products."

ג בְּמֵה דְבָרִים אֲמֹרִים? בְּדָבָרִים שֶׁלֹּא אֶסְרוּ אוֹתָן כְּדֵי לַעֲשׂוֹת סִיג לַתּוֹרָה אֶלָּא כְּשֶׁאֵר דִּינֵי תּוֹרָה. אֲבָל דְבָרִים שֶׁרְאוּ בֵּית דִּין לְגַזֵּר וּלְאַסֵּר לַעֲשׂוֹת סִיג אִם פֶּשֶׁט אֶסְרוּ בְּכָל יִשְׂרָאֵל, אִין בֵּית דִּין גְּדוּל אַחַר יְכוּל לְעַקְרוּ וּלְהַתִּירוּ אֶפְלוּ הָיָה גְּדוּל מִן הָרִאשׁוֹנִים.

רמב"ם הלכות ממרים פרק ב הלכה ב,ג

The Rambam rules this as three principles: (i) any Sanhedrin could overrule a previous one on an issue of 'drash'²; (ii) with a Rabbinic decree, a Sanhedrin could only overrule a previous one if the latter was greater in 'wisdom and number'³; (iii) if the decree is a 'fence' to protect a Torah mitzva, a later Sanhedrin can never overrule a previous one⁴.

6. עוד שאלת חלב שחלבו נכרי ואין ישראל רואהו ואין במקום דבר טמא. או כגון שהיה העדר בתוך הדיר ובדק ולא היה שם דבר טמא ויצא והביא לו הנכרי חלב מאותו הדיר, אבל לא היה יכול לראותו חולב כלל. אם גזרת החלב הויה כגזרת גבינת הנכרים או לא? **תשובה** - הדבר ברור כי הגבינה נאסרה במנין אבל לא כן בחלב שחלבו גוי, שאסרו אותו משום חשש דבר טמא.

פרי חדש יורה דעה סימן קטו ס"ק ו

The Pri Chadash⁵ was very clear that, although the rabbinic enactment not to eat cheese produced by non-Jews was a 'davar shebeminyan', the requirement for supervised milk was a lower level rabbinic decree for a very specific purpose - to avoid drinking adulterated milk. As such, where there was no real risk of adulteration, such as where there were no non-kosher milking animals in the region, he understood that the decree was not relevant.

7. דחלב גזירה קדמונית היתה ואז אסרו החלב שאין ישראל רואהו. אע"ג דתחלת גזירתו הי' משום חשש עירב דבר טמא מ"מ כיון שגזרו ואסרו במנין סתם אסרו כל חלב שאין ישראל רואה החליבה או יכול לראות אפי' ליכא חשש דבר טמא.

שו"ת חתם סופר חלק ב (יורה דעה) סימן קז

The Chatam Sofer (mid 19th century) strongly disagreed with the position of the Pri Chadash and ruled that, even if there is no possibility that non-kosher milk may be mixed in, the original rabbinic legislation stands as a 'davar shebeminyan'.

8. ואין להקשות מחלב של נכרי וסתם יינס דאף דזבה"ז נתבטל הטעם דשצילו נאסרו ואפילו הכי אסורים גם השתא מדנאסר צמניין.

תפארת ישראל / וכין/ כלאים ט"ב

The Tiferet Yisrael (mid 19th century) also rules that milk today must be supervised by Jews, even though he takes the view that the original reason is no longer applicable. He compares this to wine produced today by non-Jews.

C] HOW 'TREIF' IS CHALAV AKUM?

9. חלב שחלבו עובד כוכבים ואין ישראל רואהו אסור, שמא עירב בו חלב טמא. היה חולב בביתו וישראל יושב מבחוץ, אם ידוע שאין לו דבר טמא בעדרו, מותר, אפילו אין ישראל יכול לראותו בשעה שהוא חולב. ... הגנה: ולכתחלה לריך להיות הישראל בתחלת החליבה ויראה ככלי שלא יהיה ככלי שחולצין בו דבר טמא. ונהגו להחמיר שלא יחלוץ ככלי שדרכו של עובד כוכבים לחלוץ בו, שמא נשאר בו לחוחי חלב של עובד כוכבים חלב של עובדי כוכבים אסורים כלים שנתבטלו בהם כשאר אסור, אף על פי שאינו רק ספק שמא עירב בו דבר טמא.

שולחן ערוך יורה דעה הלכות מאכלי עובדי כוכבים סימן קטו סעיף א

The Shulchan Aruch rules that chalav akum is rabbinically prohibited and pots in which it is cooked must be kashered.

• But does rabbinically prohibited food become intrinsically treif - (ie the *cheftza* of the food is treif as with food prohibited by the Torah) or did the Rabbis impose a personal obligation (ie on the *gavra*) not to eat it?

10. **ב** וכן השוחט פרה ומכרה ונודע שהיא טרפה - מה שאכלו אכלו ויחזיר להם הדמים. ומה שלא אכלו יחזיר לו הבשר והוא יחזיר לו הדמים. **ג** אבל המוכר לחבירו דבר שאיסור אכילתו מדברי סופרים, אם היו הפירות קיימים מחזיר הפירות ונוטל דמיו. ואם אכלם אכל ואין המוכר מחזיר לו כלום.

שולחן ערוך חושן משפט הלכות אונאה ומקח טעות סימן רלד סעיף ב-ג

Interestingly, the Shulchan Aruch rules that if someone mistakenly sold food that was prohibited on a Torah level, the buyer is entitled to their money back, even if they ate it. But if they were mistakenly sold food that was rabbinically prohibited and they ate them, they are NOT entitled to their money back!

2. Drash is the system of interpreting the Torah text to learn out new halachic rules;

3. 'Number' here does not mean the number of judges on the Sanhedrin since this was fixed at 71. The commentators give various explanations of what 'minyan' means in this context, such as greater support among the wider rabbinate.

4. This last point is not agreed upon by all Rishonim and it will be relevant when a new Sanhedrin is created be'H. Will that body have the authority to overrule previous decrees, such as this one regarding chalav Yisrael?

5. R. Chezkhia de Silva - 17th century Italy/Yerushalayim. This is also the position of the Radvaz (YD 2:75).

- The Netivot Hamishpat⁶ explains that a Torah prohibition renders the food itself intrinsically prohibited. But a rabbinic prohibition is on the individual not to rebel against the decree of the rabbis. As such, absent such a 'rebellion', such as if rabbinically prohibited food is eaten by mistake, the person has not actually committed a sin at all and so is not entitled to their money back⁷!

D] CHALAV YISRAEL SUPERVISION IN PRACTICE

11. In order to understand what cholov yisroel supervision entails, we need to first briefly discuss cholov yisroel farms. There are two types of cholov yisroel farms, each with its own protocol:

Part-time cholov yisroel farms: These are farms that do not normally have onsite supervision for cholov yisroel; their regular milk is cholov stam. However, every so often, a cholov yisroel production is scheduled. This involves a team of mashgichim coming to the farm for a special production of cholov yisroel over the course of a day to many weeks straight. The mashgichim kasher all equipment that had hot contact with cholov stam, as well as all milk holding tanks and silos that held cholov stam for 24 hours or more straight (the axiom of kovush), and the mashgichim remain at the farm for the duration of the cholov yisroel production.

Full-time cholov yisroel farms: These farms are cholov yisroel year-round. Mashgichim live at these farms, or within a few blocks of them, as supervision is needed 24/7/365, with a mashgiach present for every single milking throughout the year. Any hot-use equipment and milk holding tanks and silos on these farms was kashered prior to starting cholov yisroel service, and the equipment retains cholov yisroel status thereafter.

It must be noted that cholov yisroel mashgichim, as well as almost all other mashgichim who work at facilities that require 24/7/365 kosher supervision, live with unimaginable mesiras nefesh. Most cholov yisroel farms and hashgocho temidis food plants are located in extremely far-flung areas, remote from Jewish communities and often from "civilization" in general. These mashgichim sacrifice the most basic of needs and comforts, as they live and work in isolation in order to provide their brethren with superior kosher food l'mehadrin.

What exactly do cholov yisroel mashgichim supervise? The short answer is that the mashgichim supervise every milking session in order to verify that only cows are used (or goat or sheep, in the case of goat and sheep farms). The mashgichim also assure that no unsupervised milk is brought in and incorporated into the farm's cholov yisroel milk. Although this may sound straightforward, there are many critical details, all of which are addressed in the primary halachic sources.

Halacha requires the mashgiach to be present for techilas ha-chalivah, the commencement of the milking session, in order to examine the milking equipment and assure that it contains no residue of other milk. The mashgiach must then be present at least on a yotzei v'nichnas (spot-checking) basis during each milking session. The mashgiach also has to be present for the completion of each milking session (sof ha-chalivah), in order to affix his special kashrus seals to the holding tank or silo where all of the milk just collected is stored, thereby assuring that no unsupervised milk is incorporated into the cholov yisroel.

Rav Chaim Yisroel Belsky told me that Rav Shimon Schwab established the cholov yisroel supervision at farms that provided milk for cheeses under the hashgocho of K'hal Adath Jeshurun (KAJ – "Breuer's") as follows: a) The mashgiach would be present at techilas ha-chalivah; b) the mashgiach would make at least one unannounced visit in the middle of each chalivah; c) the mashgiach would be present for sof ha-chalivah. This fulfills the halachic mandate for cholov yisroel supervision without question.

The truth is that since cholov yisroel farms are almost always located so remotely far from Jewish communities and from other places of interest, once the mashgiach is at the farm, it is not really possible to go elsewhere, even if the farm is a part-time cholov yisroel facility and the mashgiach does not live there year-round. Thus, the mashgiach is normally present anyway for the entire chalivah. Furthermore, it is clear as day to anyone who visits a commercial dairy farm that the only animals on-site are cows (or sheep/goat), and the Halacha is that if a farm has no non-kosher animals, the mashgiach need not witness the actual milking, as even if he is stationed outside of the milking parlor (the room where milking occurs) and verifies that no non-kosher animals enter, the milk is kosher/cholov yisroel. Nonetheless, common protocol of the kashrus agencies which certify cholov yisroel is for the mashgiach to physically be present in the milking parlor for chalivah.

Cholov Yisroel: Unraveling The Mysteries – Part I⁸

6. 234:3

7. Other implications of this distinction could include: (i) whether a person who mistakenly transgressed a rabbinic prohibition requires teshuva; (ii) whether a rabbinically prohibited food can be fed to a small child; (iii) why we are lenient in the case of a 'safek derabbanan', even if (as the Rambam rules) each breach of a rabbinic mitzva is also a Torah breach of lo tasur.

8. <https://oukosher.org/publications/cholov-yisroel-unraveling-the-mysteries-part-i/>

E] GROUNDS FOR LENIENCY: 1 - WHAT IF THERE IS NO SOURCE OF TREIF MILK?

12. **מתני'.** ואלו מותרין באכילה: חלב שחלבו עובד כוכבים וישראל רואהו. **גמ' יושב ישראל (כ"ט"י - ואפילו אין רואהו) בצד עדרו של עובד כוכבים ועובד כוכבים חולב לו ומביא לו ואינו חושש. היכי דמי? אי דליכא דבר טמא בעדרו, פשיטא!**

עבודה זרה לט:

The Gemara rules that if the Jewish supervisor is sitting nearby⁹ and the non-Jew brings over the fresh milk, this is acceptable. The Gemara then seeks to clarify the precise case and answers that if the non-Jew does not have any non-kosher animals in his flock then 'it is obviously permitted' [peshita].

The Rishonim debate what is the precise case that is 'obviously permitted' if there are no treif animals in the flock¹⁰. Is it restricted to the precise case of the Gemara - to allow milk where the supervisor was sitting nearby without full visibility? Or could it mean that if the non-Jew has no treif animals in his flock, **there is no prohibition of non-supervised milk at all?**

The Acharonim (later authorities) are divided on whether (i) or (ii) is correct. Some (such as the Pri Chadash¹¹) rule leniently but most¹² rule strictly and insist that the custom in E. Europe was to be machmir.¹³

13. הכלל העולה דבעיר שלא נמצא שם חלב טמא או שהוא יותר ביוקר מחלב טהור מותר לקנות מהעכו"ם חלב שחלבו בלא ראיית ישראל כלל. וכן מצאתי המנהג פשוט פה אמשטירדאם וכן נהגתי אני ג"כ זולת קצת יחידים הנוהרים בזה. אבל בעיר שנמצא שם חלב טמא אף שאין לאותו עכו"ם שקונה ממנו דבר טמא בעדרו, מכל מקום צריך לראות קודם החליבה בכלי אולי הניח שם חלב טמא. וגם צריך לראות כל החליבה מתחילה ועד סוף או ביוצא ונכנס או בעומד שם בצד העדר באופן שלא יוכל לילך למקום אחר להביא חלב טמא לערבו עם זה. הא לאו הכי אפילו בדיעבד אסיר.

פרי חדש יורה דעה סימן קטו ס"ק ו

The Pri Chadash rules¹⁴ that in a locale where there are no treif animals milked, there is no requirement for Jewish supervision. This was the practice of most Jews in 17th century Amsterdam.

14. והנה עכ"פ נתברר דלפי דעת כל רבותינו שהבאנו אפילו במקומות דלא שכיח כלל דבר טמא בעיר באופן שאין חשש לתערובת חלב טמא מ"מ אסור כשהישראל לא עמד עכ"פ מבחוץ בשעת החליבה או שיהא יוצא ונכנס, ודי אפילו בקטן וקטנה. ויתבאר עוד בזה מיהו עכ"פ האיסור הוא בכל אופן. ודלא כאחד מגדולי האחרונים שהאריך בזה להקל לשתות חלב שלהם במקום שאין שם דבר טמא או שהוא רחוק המציאות שיחלבו את הטמא או שחלב טמא ביוקר, והביא ראיה מאיזה גדולים שהקילו בכה"ג. ומסיבה זו יש הרבה מתפרצים באיסור זה בדורנו בעוה"ר כאשר ראינו ושמענו ותולים א"ע באיזה תלמיד חכם שעשה כן. ולא ידעו ולא יבינו שחמורים דברי סופרים מדברי תורה והתלמיד חכם שעשה כן עונו ישא. וכיון שנפסק לאיסור בטור וש"ע וכל גדולי אחרונים מי יוכל להעזי פניו ולמלא תאות נפשו! ושומר נפשו ירחק א"ע מזה!

ערוך השולחן יורה דעה סימן קטו סעיף ה

The Aruch Hashulchan (E Europe - early 20C) is very critical of those who are lenient¹⁵ and drink non-supervised milk based on what he sees as a weak heter¹⁶.

Note that this heter is MUCH less relevant in Israel where camel's milk is available and camel's milk products are sold in the Negev. Camel milk¹⁷ ice-cream has been developed by Israeli companies - called 'Gamalida'.¹⁸ There may be an argument that the leniency is applicable if the price of non-kosher milk products is much higher.

9. Even though he may not be able to see the milking from where he is sitting, he could get up and walk over at any time.

10. See Mordechai Avoda Zara 846.

11. YD 115:15. Pri Chadash (Amsterdam, 17C) is lenient in a case where non-kosher milk is more expensive than kosher and, as such, there is no incentive for the non-Jew to add non-kosher milk to the mixture.

12. In particular the Chatam Sofer - see above - who understood that the gezeira is a 'davar shebeminyan' and applies irrespective of the applicability of the reasoning or the local circumstances. According to him, those who are lenient are breaking a rabbinic law, about whom Chazal apply the verse (קהלת יח) ופכר גדר לשכנו נחש (קהלת יח)

13. As such, a farm on which there are non-kosher animals requires hashgacha (although a *yotzei venichnas* is acceptable). A farm that has only kosher animals requires a mashgiach at the entrance. Most poskim require the Jewish supervisor to also be present at the start of the actual milking. See <https://oukasher.org/blog/consumer-kosher/chalav-yisroel/>

14. This lenient position was also taken in principle by the Chazon Ish (YD 41:4), although he did not rule this way lechatchila in practice. R. Ya'akov Kanievsky (Kranza D'igrata 2:123) explained that the Chazon Ish relied on the position of the Pri Chadash as a snif lehatir, such as to permit frail individuals to drink milk during wartime when supplies were limited.

15. The Aruch Hashulchan relates a story in which a number of merchants, accustomed to drinking chalav akum while traveling, were shocked to discover that the creamy milk drink, which they purchased each morning from a non-Jewish store owner, was actually prepared with ground animal brains!

16. Many other Acharonim were strict on this, including the Cochmat Adam (67:1) and the Chatam Sofer (YD 107 and quoted in the Pitchei Teshuva YD 115:3). They note that the custom in E. Europe was to be strict. The Darchei Teshuva (115:6) writes that the custom in Eretz Yisrael was also to be strict although notes that other communities were lenient. As noted above, while it may not be a full heter, it could be introduced as a 'snif lehatir' when taken in conjunction with other reasons to be lenient. R. Dovid Zvi Hoffman (Melamed Leho'il 2:33) uses the lenient position of the Pri Chadash to permit an unsupervised milk product to a sick person where no equivalent product was available.

17. Medical research has discovered considerable health benefits to camel's milk. Although this will not have any impact on the halacha and the milk will still be prohibited min haTorah (except in a pikuach nefesh situation), in terms of the risk of adulteration, its commercial viability could raise more of a halachic concern.

18. See <http://www.haaretz.com/israel-news/culture/leisure/from-sheep-cheese-to-camel-s-milkshakes-1.45293> and

<http://www.jpost.com/Blogs/From-Dorotheas-Desktop/Drink-Camels-Milk-445979>

F] GROUNDS FOR LENIENCY: 2 - GOVERNMENT SUPERVISION

- As we saw above, one lenient (albeit much disputed) approach to this issue relied on the position of the Pri Chadash in a case where non-kosher animals were not milked in the region¹⁹.
- However, Rav Moshe Feinstein presented two new arguments to be lenient in the reality of 20th century America.

F1] MIRTAT - FEAR OF BEING REPORTED

15. לעולם דאיכא דבר טמא, וכי קאי חזי ליה וכי יתיב לא חזי ליה. מהו דתימא: כיון דיתביב לא חזי ליה נחושו דלמא מייתי ומערב ביה. קמ"ל - כיון דכי קאי חזי ליה, אירתותי מירתת ולא מיערב ביה.

עבודה זרה לט:

The Gemara concludes that, if there are treif animals nearby which could be milked, even when the Jewish supervisor is not constantly watching but could come in any time, the milk is still kosher. This is because the non-Jew will be worried that he might be supervised at any time and will therefore be afraid to mix in treif milk and get caught. This introduces a new principle - mirtat - into the halacha. If the milk producer is genuinely concerned about spot checks by a supervisor then the milk is acceptable even without constant supervision. Since this qualification was part of the original rabbinic decree it would not be considered to be annulling the decree.

16. ומש"כ כתר"ה [כבוד תורתו הרמה] לשון לאלה המזדהרים מסתם חלב הבא מנכרים תמוה! דהאלו שאין נזהרין מת"ח ויר"ש הוא רק מחלב של הקאמפאניעס מטעם גדול - שמירתת לערב אף משהו מצד השגחת דיני המדינה שעונשין ע"י. ובמירתת לא גזרו כי הא דישראל יושב בצד עדרו של עכו"ם שמותר אף דלא חזי ליה כיון שיכול לראותו כשיעמוד מירתת (בע"ז ל"ט, ועיין ברמב"ם פ"ג ממ"א ה"ז). לכן סברי דגם במירתת זה של עונש חוקי המדינה לא היה בכלל הגזרה. ולע"ד מסתבר שהדין כמותם. אבל ליקח חלב מפארמער נכרי נזהרין כל ישראל בני אשכנז דלא כרדב"י ופר"ח. ועיין בחת"ס סימן ק"ז ועובדא דכתר"ה איירי בפארמער.

שר"ת אגרות משה יורה דעה חלק א סימן מו

Rav Feinstein does NOT follow the leniency of the Pri Chadash since most poskim are strict on this issue. But he understands that case to be limited to an individual farmer who is not subject to government supervision. However, large companies are subjected to rigorous government inspections and could face very serious fines if they mix in milk from other animals. In that situation, Rav Feinstein understands that Chazal were lenient due to the factor of mirtat.

17. ולכן בחלב שאסרו רק בחלבו עכו"ם ואין ישראל רואהו יש להתיר גם בישראל יודעין ידיעה ברורה דהוי כראיה. וזה שאם יערבו יענשו ויצטרכו לסגור העסק שלהם שהוא הרוחה של כמה אלפים והממשלה משגחת אליהם הוא ודאי ידיעה ברורה שהיא כראיה שלא היה בכלל איסורם. וזה הוא גם לכו"ע דאין טעם לחלוק בזה ולכן הרוצה לסמוך ולהקל יש לו טעם גדול ורשאי וכמו שמקילין בזה הרוב בנ"א שומרי תורה וגם הרבה רבנים. וח"ו לומר שעושין שלא כדין. אבל מ"מ לבעלי נפש מן הראוי להחמיר ואין בזה משום יוהרא, וכך אני נוהג להחמיר לעצמי. אבל מי שרוצה להקל הוא עושה כדינא ואין להחשיבו כמזלזל באיסורין.

שר"ת אגרות משה יורה דעה חלק א סימן מז

Here, Rav Feinstein presents a second argument²⁰ - that if we have clear knowledge of something, this is equivalent in halacha to witness supervision. Nevertheless, he permitted and encouraged certain people²¹ to be strict and drink only supervised milk in deference to those opinions which are machmir. But he was insistent that one should never look negatively at those who are lenient.

18. ולכן אף שודאי גזרו זה במנין כיון שמדינא היה מותר אין להוכיח מזה שאסרו אף כשאין שום חשש עירוב. כיון שעל אלו שיש בהם חשש עירוב הוצרכו לגזור, וגם אין שייך לא פלוג מאחר שבפירושו היתה הגזירה רק מצד חשש עירוב דהא אסרו רק באין ישראל רואהו ונפלגו אלו שאין בהם חשש עירוב בהכרח.

שר"ת אגרות משה יורה דעה חלק א סימן מט

Rav Feinstein also understood that the original rabbinic decree was to address a very specific issue - the possibility of adulterated milk.

19. R. Chaim Jachter reports that he heard from Rav Melech Schachter that all halachically knowledgeable American Jews who drank the local unsupervised milk assumed that they were relying on the heter of the Pri Chadash. See R. Jachter's excellent series of articles on Chalav Yisrael, and particularly Rav Soloveitchik's approach, at <https://www.koltorah.org/halachah/chalav-yisrael-part-i-rav-soloveitchiks-view-by-rabbi-chaim-jachter>

20. This is based on Shevuot 34a.

21. Rav Feinstein makes clear that taking on such a chumra is NOT considered to be arrogance - yehura, clearly implying that this should be a consideration when deciding whether to take on chumrot. He also encourages a 'ba'al nefesh' (someone who is very meticulous in their observance) to be machmir, again implicitly raising the question of who should consider themselves a ba'al nefesh. In another teshuva (Igrot Moshe YD 2:35), Rav Feinstein encouraging a chinuch institution to make a special effort to provide yeshiva students with Chalav Yisrael, even though it was more expensive than regular milk and even if the students were not strict to eat Chalav Yisrael in their homes. In addition to the factors discussed above, Rav Feinstein emphasized the 'chinuch' element of this situation and the need to educate children about the prohibition of chalav nochri so that they should not think 'all milk is kosher', even if they were travelling.

- As noted above, Rav Feinstein ruled that fear²² of non-Jewish governmental supervision and strict enforcement with hefty fines, together with clear knowledge on our part that non-kosher milk was not going to be allowed into the production system, is enough to satisfy this halacha and render the milk acceptable as falling outside the Rabbinic prohibition entirely. He felt this was true even according to the strict position of the Chatam Sofer.²³
- However, this would not apply in situations where there was no such strict supervision, such as Asia, Africa, South America, Eastern Europe and possibly some other European countries, or where the milk was taken straight from the farm for sale.
- Many poskim reject Rav Feinstein's argument entirely. They rule that government supervision cannot be compared to the case of the Gemara since no Jewish supervision is involved at all! Prominent poskim who considered non-supervised milk to be totally prohibited include: Rav Yitzchok Weiss²⁴, Rav Yaacok Breish²⁵, Rav Eliyashiv, Rav Shmuel Wosner²⁶, Rav Ovadia Yosef and Rav Mordechai Eliyahu²⁷.
- The official position of the Israeli Rabbanut is to insist on Chalav Yisrael and not to rely on Rav Feinstein's lenient psak²⁸.

G] GROUNDS FOR LENIENCY: 3 - AUTOMATED MILKING

Rav Soloveitchik saw a further ground for leniency in that the original rabbinic decree applied to a non-Jew who personally milked the animal without supervision. However, today milking is done by machines. Does this fall within the prohibition?

19. 'כח כחור' ככחו דמי. ואם הוא 'כח כח כחור', כגון קורת הגת שגלגלה עובד כוכבים, שיש שם ג' כחות - הדפין והגלגל והקורה - בדיעבד מותר אפילו בשתייה.

שולחן ערוך יורה דעה סימן קכה סעיף ב

Support for this could be seen from the fact that the Shulchan Aruch, when dealing with the prohibition of non-supervised wine, prohibits even indirect manufacture. There is however no such discussion in the parallel discussion of non-supervised milk.

- In conclusion, there are three main halachic positions:-
 - (i) Most Israeli poskim and many others are strict and insist on Chalav Yisrael min hadin. Chabad are also strict on this.
 - (ii) Many American poskim follow Rav Feinstein who ruled that 'Chalav Stam', ie modern US milk production²⁹ without Jewish supervision, is halachically kosher but it is preferable where possible to have Chalav Yisrael. The OU follows this position.
 - (iii) Rav Soloveitchik ruled that Chalav Stam is acceptable lechatchila and he drank it.
- Note that this discussion relates to a potential rabbinic prohibition since, on a Torah level, any admixture of non-kosher milk would be nullified. Nevertheless, the issue of Chalav Yisrael seems to have taken on a 'triggering' nature in terms of hashkafic association, with some people unfortunately using it to label others as less 'frum', despite the legitimacy of the lenient halachic approaches³⁰.

H] INTERACTIONS BETWEEN THE STRICT AND LENIENT OPINIONS

20. מי שנוהג באיזה דבר איסור מנח שסובר שדינא הוא הכי, או מנח חומרא שהחמיר על עצמו, מותר לאכול עם אחרים שנוהגין בן בית, דודאי לא יאכילוהו דבר שהוא נובג בו איסור.

רמ"א שולחן ערוך יורה דעה סימן קיט סעיף ז

The Rema rules that someone who is strict about a kashrut issue may eat with an observant person who is lenient on that issue and can trusts the host to respect his chumrot. The host person must of course be careful only to serve food to the guest which complies with their kashrut standards.

22. Ironically, some commentators raise the question of whether the heter of mirtat will apply in the same way to a Jewish-owned dairy.

23. Others who agreed with this position in principle included Rav Ya'akov Kaminetsky (Emet LeYa'akov on Shulchan Aruch p308), Rav Yosef Ber Soloveitchik. The Chazon Ish (YD 41:4) also agreed in principle with this approach, but see above concerning his ruling in practice.

24. Minchat Yitzchak 9:81.

25. Chelkat Ya'akov 3:37-38.

26. Shevet Halevi 4:87.

27. Rav Eliyahu ruled that those people who eat standard Rabbanut (ie not mehadrin) should be careful only to have supervised milk products. Rav Eliyashiv did however allow Jewish supervision by video camera.

28. However, the Israeli Rabbanut will give permission for the import of products containing chalav stam milk powder - see below. In practice, this covers most OU-D products.

29. Rav Feinstein's position was less accepted in Europe due to his greater personal influence in the US. As such, a smaller proportion of the observant community in London relies on his psak than in the US. Some have alleged that this is because the standards of milk supervision are lower in the UK than the US. I discussed the matter with the London Beit Din who insisted that supervision in the UK was just as good as in the US and the reason for the difference in approach was Rav Feinstein's influence as a posek.

30. An interesting example of hashkafic 'investment' in Chalav Yisrael is a Star-K article entitled: 'Cholov Yisrael: Does a Neshama Good'.

21. חלב הדבוק לכרס שתחת הפריסה אסור. הגב: וכן המנהג בכל מקום מלבד בני ריינוס שנוהגין במקלתי היתר. ואין מוחין בידם שכבר הורה להם זקן. אין אוסרין כלים של בני ריינוס הואיל ונוהגין בו היתר.

שולחן ערוך יורה דעה סימן סד סעיף ט

The Rema rules in a different context³¹ that someone who is strict on a kashrut issue may eat from the plates of someone who is lenient, as long as they are relying on a legitimate leniency. Rav Ya'akov Kaminetsky applied this to Chalav Yisrael. As such, a person who is strict may also give non-supervised milk products to someone else who relies on that leniency. There is no 'lifnei iver' since they are relying on a legitimate heter.

I] CAN SOMEONE SWITCH TO THE LENIENT VIEW?

22. ובאם אחד נהג להחמיר - אם נאסר מדין מנהג ג' פעמים תליא אם היתה כוונתו להחמיר אף אם הדין הוא להתיר. וכ"ש בידע בעצמו שיש להתיר ומ"מ נהג איסור יש עליו איסור נדר דנהג ג"פ. אבל אם החמיר משום שהיה סבור שאסור מדינא או אף רק שאסור מספק וחשב על המקילין שאולי טועין בדין, או שאולי הם מזלזלין באיסורין, אין עליו דין נדר מצד מנהגו וא"צ היתר.

שו"ת אגרות משה יורה דעה חלק א סימן מז

According to Rav Feinstein, if a person understood that non-supervised milk was treif and that there was no legitimate heter, then they were simply mistaken and do not need hatarat nedarim - annulment of vows - to rectify that mistake and drink chalav stam. However, if they knew about the leniency, but had decided consciously to follow the stricter view, they DO require hatarat nedarim to change to the lenient view.

J] BUTTER

23. החמאה של עכו"ם - מקצת הגאוניים התירוה שהרי לא גזרו על החמאה וחלב הטמאה אינו עומד. ומקצת הגאוניים אסרוה מפני צחצוחי חלב שישאר בה, שהרי הקום שבחמאה אינו מעורב עם החמאה כדי שיבטל במיעוטו, וכל חלב שלהן חוששין לו שמא עירבו בו חלב בהמה טמאה.

רמב"ם הלכות מאכלות אסורות פרק ג הלכה טו

The Gemara does not deal explicitly with the issue of butter. The Rambam brings two views:

- the lenient view - that butter produced by non-Jews using non-supervised milk is kosher for two reasons: (i) Chazal never included butter in their decree, only milk; and (ii) non-kosher milk does not curdle to form butter³².
- the stricter view - that butter produced by non-Jews using non-supervised milk is prohibited since drops of non-kosher milk may be left in the butter and do not mix sufficiently to become 'batel' - nullified.

This issue is not resolved in the Shulchan Aruch and different customs survive to this day. In Israel, the regular Rabbanut hechsher permits butter made from unsupervised milk (as long as it has no treif ingredients). Rabbanut Mehadrin insists on butter made from Chalav Yisrael.

K] POWDERED MILK

(a) Rav Tzvi Pesach Frank (Chief Rabbi of Jerusalem in the mid 20th century) allowed chalav stam powdered milk - ie without Jewish supervision - **from the US** (in 1944) on the following basis:-

- The Ritva (Avoda Zara 35b) points out that is POSSIBLE to make butter from treif milk, but the yield is far lower and it is much less profitable. As such, Chazal allowed butter, not because it was impossible that it came from treif milk, but rather because it was UNLIKELY to come from such a source, and in these situations they did not make a gezeira.³³
- Similarly, although it is possible to powder non-kosher milk, it is rare. Given this, and also since powdered milk did not exist at the time of Chazal, and it is arguable that it is not included in the original decree, he was lenient.

31. The context here is permitted and prohibited animal fats which is a question of karet!

32. The milk of non-kosher species is low in casein which is needed to cause curdling. It is also low in milkfat which makes it less profitable to make into butter. However, it is now easy to find both horse cheese and camels cheese on line!

33. One of the principles of Rabbinic Law is that Chazal do not normally make rabbinic fences to deal with unlikely or unusual circumstances.

(b) 1944 was a time of great food shortage and hardship, although Rav Frank did not explicitly say that his heter was only for times of need. Others, notably the Chazon Ish³⁴, strongly opposed the lenient approach at the time³⁵.

(c) Today, the Israeli Rabbanut still follows this lenient approach and allows imported products which contain powdered chalah starch. However, they do not permit this for mehadrin products. Some are trying to reverse the position of the Rabbanut on the basis that supervised powdered milk products are now more readily available.

- Rav Frank was **not** relying on the leniencies of Rav Feinstein or the Pri Chadash (above); in fact, he took the strict position of the Chatam Sofer on the applicability of the gezeira today. His heter relates to the general issue of the status of dried foods - are they a new entity or just dry versions of the old one. This is also relevant in other areas, eg the debate about the use of reconstituted grape juice for kiddush and the beracha on Pringles.

L] CHEESE

- Chazal actually give 7 reasons why cheese made by non-Jews is not kosher³⁶-

- Because they use the stomach of a non-kosher slaughtered calf to curdle the milk.
- Because they sometimes use the stomach of a calf that had been offered for idol worship.
- The milk may have been left unguarded in a place where snakes could poison it with their venom.
- The milk may have been adulterated with milk of a non-kosher species (see above).
- The surface of the cheese may be coated with lard.
- Non-kosher wine vinegar could have been used to set the cheese.
- Juice of an *orlah* fruit may have been used to set the cheese.

24. [יד] גבינה שמעמידין אותה הנכרים וכו'. דעת הגאונים ז"ל הוא דעת נכון כיון שהגבינה נאכרת צמנין. אף על פי שבטל טעם לא בטלה גזירה שכל דבר שנאכר צמנין לריך מנין אחר להתירו כדאיתא פ"ק דיו"ט. וכ"כ האחרונים ז"ל שאפי' במקומות שידוע שמאוס להם חלב טמא ולא יערצוהו, וידוע שאין מחליקין פניה בשומן חזיר לפי שאוכלין אותם צימים שבבשר אסור להם, וידוע שמעמידין אותה בצייזי הפרחים, אעפ"כ גבינה שלהם אסורה מפני דבר שנאכר צמנין.

מגיד משנה הלכות מאכלות אסורות פרק ג הלכה יד

Aside from the debate regarding supervised milk, the Talmud prohibits cheese made by non-Jews due to the addition of animal rennet in the manufacturing process. The early poskim included ALL cheese in this decree, even if made with vegetarian rennet. As such, cheese may only be bought with a reliable hechsher. Some poskim are more lenient with cottage cheese, but the custom in many communities is to be strict on this too.

Whey and whey-products, although a by-product of cheese-making, are treated by Rav Feinstein like milk and not like cheese. Yogurt is also treated by Rav Feinstein like milk. Others, particularly Chabad, are strict and treat it like cheese which absolutely requires Jewish supervision.

M] IS ANY MILK KOSHER TODAY?

- We looked in the previous shiur at the broader question of whether ALL milk is treif today!

N] MILKING ON SHABBAT?

- A separate concern, which is specific to Israel, is the possibility of milk being included in the general production which was milked by Jews on Shabbat. Since a very small proportion of milk is actually produced by Jews on Shabbat³⁷, it will be halachically nullified and the general milk production is therefore kosher. Nevertheless, the mehadrin hechsherim in Israel guarantee that no milk produced on Shabbat is included in the product.

34. YD 41:4.

35. He understood that the heter for butter was that it was inherently not made from non-kosher milk, which is not the case for powdered milk which could be made from non-kosher milk. It is now easy to find powdered horse's and camel's milk on line.

36. This will iy'H be the subject of a separate shiur.

37. Milking on Shabbat in Israel is usually done by machines.