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Hilchos Basar B'chalav

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Hilchos Basar B'chalav Shiur 1

Mareh Makomos for this shiur

Pri Megadim Psicha paragraphs עוד אדבר, ובשר בחלב, וכמה יבשל, דע דיש הבדל

Siman 87:1-2

Mechaber Rama Shach Taz

Pischai Tshuva 1, 4

Written by Harav Dan Channen
Contributing Editor Harav Chaim Smulowitz

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164 Village Path, Lakewood NJ 08701 732.370.3344
Rabbi Akiva 164, Bnei Brak, 03.616.6340

The Definition Of Cooking Basar B'chalav

*Siman 87:1-2 - The
difference between
D'oraisa and
D'rabbanan*

How to

classify a kid in its mother's milk

1 The Torah writes three times¹ “Do not cook a kid in its mother’s milk.” Once for the issur of cooking, once for the issur of eating, and once for the issur of ha’na’ah (benefit). (The Torah) meant achila (eating), but used the word bishul to teach that 1) the issur [of basar b’chalav] is mid’oraisa only in the case of derech bishul (the normal method of cooking). However, all cases (of combinations of basar b’chalav) are assur mid’rabbanan.

Rama 2) All mixtures of basar b’chalav (1) that are not assur mid’oraisa are mutar b’ba’na’ah.

2 Lav dafka (not exactly does this apply to) a kid, but this din applies to an ox, a sheep and a goat. Furthermore, it makes no difference if the milk is that of its mother or the milk of another [animal]. The pasuk only refers to the most common case.²

INTRODUCTION

¹ *Shemos* 23:19, 34:26 and *D’varim* 14:21.

² The **Chachmas Adam** (40:1) explains that it was the way of the non-Jews to cook kid in milk.

The difference between Basar B'chalav and Sha'ar Issurim :

Based on the introduction of the *Pri Megadim* to *Basar B'chalav*, there are three major differences between the *issur* of *basar b'chalav* and *sha'ar issurim* ³

- 1) Cooking milk and meat together are *assur b'ha'na'ab mid'oraisa*. Most cases of *sha'ar issurim* are *mutar b'ha'na'ab* except for *chametz* on Pesach, *orlah* ⁴, and *klai bakerem*.⁵
- 2) By *basar b'chalav*, the laws of *ch'n'n* and *efshar l'sochato* are *mid'oraisa*, and by *sha'ar issurim*, these laws are *mid'rabbanan*.⁶
- 3) *Tam k'ikar* ⁷ is *mid'oraisa* by *basar b'chalav* according to all opinions, and by *sha'ar issurim*, there are *Rishonim* who hold that it is *mid'rabbanan* (we will learn in *Ta'aruvos* that both the *Mechaber* and *Rama paskin* that *ta'am k'ikar* is *mid'oraisa*). Furthermore, by *basar b'chalav* there is *malkos* for eating a *k'zayis* of the *basar* or of the *chalav*, or a *k'zayis* of the mixture. By *sha'ar issurim*, there is no *malkos* given for eating food that absorbed the taste of *issur*, if the *issur* is not present.

The **Pischai Tshuva** (1) adds from the **Rambam** ⁸ that *basar b'chalav* is *assur* even if one eats it, or has benefit, in an unusual way. (However, *sha'ar issurim* are only *assur* if there is *ha'na'ab* while eating them.) Therefore, it is *assur* to eat *basar b'chalav* even if one made it bitter. The *Rambam* adds that we learn this from the fact that the Torah did not use the word *achila* (eating) to *osser* eating it. However, the *Achronim* ⁹ infer from the *Rambam* that, if the *Basar B'chalav* became moldy to the extent that it is no longer fit for human consumption, it is no longer *assur* to eat. Furthermore, if either the meat or milk are

³ Such as *treif* meat, pig etc.

⁴ The fruit of a tree during the first three years of its growth.

⁵ The produce of different crops which were grown together.

⁶ This is according to the *Rama*, according to the *Mechaber* there is no *din ch'n'n* by *sha'ar issurim*.

⁷ See Introduction to Issur V'heter

⁸ *Ma'achlos Asurim* 14:10-11, this is learned out of the *Gemora Pesachim* 24b - 25a.

⁹ *Yad Avraham* 84:17, *Chavas Da'as* 103:1, *Sifsai Da'as* 103:4

bitter or *l'fgam* (bad tasting), there is no *issur basar b'chalav mid'oraissa*, because it is not *derech bishul* (normal way to cook them).

Min Hanikbarim

The **Pri Megadim**¹⁰ brings the *Mishna* in *Temurah 33b* that categorizes all *issurai ha'na'ah* into *min hanikbarim*, that means it must be buried, or *min hanisrafim*, which means it must be burned. The *Mishna* says that *basar b'chalav* (that is *assur mid'oraissa*) is *min hanikbarim*. Therefore, even if you burned the *basar b'chalav* into ashes, the ashes are *assur*. This is how the **Rambam**¹¹ *paskins*. However the **Minchas Yaakov** holds that the ashes would be *mutar* because there is no milk left in them. The **Taz** holds by the *Minchas Yaakov* opinion¹² and the **Shach** disagrees with the *Minchas Yaakov*, because both the milk and the meat become an *issur machmas atzmo* (intrinsically *assur*).¹³ The *Pri Megadim* holds by the *Shach*.

HALACHA 87:1

The Types of Cooking:

The **Pri Megadim**, in his introduction (paragraphs starting *וכמה יבשל* and *ועוד אדבר* and *והנה* and *נגע*), discusses which types of taste transfers are *assur mid'oraissa* and which are *assur mid'rabbanan*.

- 1) Food placed in a *keli rishon* is *assur mid'oraissa*. A pot on the stove or removed from the stove has the status of a *keli rishon*. We will learn in *siman 105:2* that, if the pot is on the stove and has not yet reached *yad soledes bo*,¹⁴ or has been removed from the stove and has cooled to less than *yad soledes bo*, we don't consider it cooking *mid'oraissa*.

¹⁰ In his introduction to *Basar B'chalav* starting *ובשר בחלב*.

¹¹ *Hilchos Ma'achalos Assuros* 9:1

¹² *Taz* 105:13-14, *Mishb'tzos Zahav* 105:14, *M.Z.* 92:3 towards the end.

¹³ *Shach* 105:17

¹⁴ This is the measurement of temperature that causes the hand to be withdrawn spontaneously for fear of being burnt (*Shabbos* 40B, eighth wide line, *Rashi*) and would cause the abdomen of an infant to be scalded (*Orach Chaim* 318:14). The exact temperature of *yad soledes bo* is questionable. One may assume it is between 110 F – 120 F (43 C – 49 C).

According to the **Pri Chadash**, *basar b'chalav* is not *assur mid'oraisa* unless it gets cooked *k'ma'achal ben Drosoai*¹⁵ but it is still *assur* to eat *mid'rabbanan*. However the *Pri Megadim* says that it is *assur b'ha'na'ab*, even if one removes the food from the pot immediately, implying that there is an *issur d'oraisa*, since *basar b'chalav mid'rabbanan* is permitted *b'ha'na'ab*.

- 2) *Melicha*, *kavush m'eis l'eis* (pickling for 24 hours) and *kavush* in *tzir* (salty meat juices) is *assur mid'rabbanan*.¹⁶ **R' Akiva Eiger** (3) says that to cook it afterwards would be *assur mid'oraisa*.
- 3) *Cham l'toch tzonen* (hot food falling onto cold food) is *assur k'dai klipa*, but only *mid'rabbanan*.
- 4) Food placed in a *kli shaini*¹⁷ is *assur mid'rabbanan*.
- 5) *Iru* (pouring) *mikli risbon shelo nifsak hakiluach* (that the stream from the *kli* has not been broken) is a *safeik mid'oraisa* whether it cooks *k'dai klipa* or not.
- 6) *Tzli*, (roasting milk and meat together), acc. to the **Pri Chadash**, **Pri Megadim** and **R' Akiva Eiger** is *assur mid'oraisa*, and acc. to the **Chavas Da'as** and **Aruch Hashulchan** is only *assur* to eat *mid'rabbanan* (11).
- 7) *Tigun* (frying), according to the **Pri Chadash** is *assur mid'oraisa*, and¹⁸ according to the **Minchas Yaakov** and **Aruch Hashulchan** is only *assur* to eat *mid'rabbanan* (11). The **Pri Megadim** (*Mishb'tzos Zahav* 1) relies on the *Minchas Yaakov* in a *hefsed m'rubeh*.
- 8) *Cham b'cham* (hot meat touching hot cheese without liquid) is *assur d'rabbanan* and *mutar b'ha'na'ab*.
- 9) *Meushan* (smoking) is discussed in *seif* 6 and we will discuss it in Shiur 4.

¹⁵ The Ben Drosoai were robbers that ate their food on the go before it was completely cooked. There is a *machlokes* if this is 1/2 cooked or 1/3 cooked.

¹⁶ There is a *machlokes* how long *kavush b'tzir* takes, the opinions range between 6 and 18 minutes.

¹⁷ A *kli shaini* is the container that a *kli risbon* is poured into.

¹⁸ See Sanhedrin 4B, last *Rasbi* and *Tosefos*.

Bishul Achar Bishul

The **Pishchai Tshuva** (4) brings the **Sha'ar Ephraim** who ruled that butter cooked in a *ben yomo* meat pot¹⁹ couldn't be used for the oil to light the *Chanukah menorah*. Although, the *assur* butter should be *mutar* to use because there is no *ha'na'ah* derived from performing a *mitzvah*, however there is an overriding reason to *asser* using this oil. Since we don't consider something that is *assur b'ha'na'ah* to have a *shiur* (measurement) (*Succah* 31B) and *nair Chanukah* needs a *shiur* (a half-hour's amount).

He then brings the **Eliyahu Raba** that holds that there is an *issur* to light the wicks, since it will be cooking *basar b'chalav*. This is because he holds that there is *bishul achar bishul* (it's considered being cooked by being cooked a second time) by *basar b'chalav*. However, the **Pri Megadim** (*Aishel Avraham Orach Chaim* 673:1) says that, to take meat and milk that were already cooked separately and cook them together, is *assur mid'oraisa*, but if the meat and milk were already cooked together, it is *mutar* to cook them again. Therefore, in the case of *nair Chanukah*, there would not be an *issur* of cooking *basar b'chalav*. See also *Gilyon Maharsha* 2.

HALACHA 87:2

Other's Milk

The Torah refers to a kid in its mother's milk. The **Aruch Hashulchan** (87:1) says that we can make a *kal v'chomer* from mother's milk to other milk as follows: even though mother's milk and the kid were at one time in the same *guf* (body) they are *assur* if you cook them together, *kal v'chomer* milk from another *b'haima* is *assur* if cooked with a kid, since they were never from the same *guf*. This type of *kal v'chomer* is a *giluy milsa b'alma* (not an extrapolation, but just revealing what the Torah included in the original prohibition), otherwise it would not carry the same punishment as a kid cooked in its mother's milk.

Review Questions

1. In what ways are the laws of *basar b'chalav* stricter than those of *sha'ar issurim*?
2. What is the *din* of ashes of *Basar B'chalav*?

¹⁹ The pot was used within 24 hours of cooking meat. Therefore it gives off a good taste of meat which will go into the milk and *assur* the milk.

3. Which kinds of cooking are *assur mid'oraisa* and which kinds of cooking are *assur mid'rabbanan*?
4. Is there *bishul achar bishul* by *basar b'chalah*?
5. Can one use butter that was cooked in a meat pot as oil for the *Chanukah* candles?
6. How do we know that it is *assur* to cook meat in milk even if it is not its mothers milk?

Questions on Shiurim

Clarification:

When we say that it is *assur* to eat *basar b'chalah* that is moldy, we mean that it is still edible under duress. If it totally unfit for human consumption, the **Chavas Da'as** says there is no *issur* to eat it. However, the **Plaisi** disagrees and says that there is an *issur* to eat it.

Question:

Is *basar b'chalah assur b'hana'ah* if a non-Jew cooks it?

Answer:

The **Darchai Tshuva** (11) brings the *Yishrai Lev* who asks this question. He answers that the *Kesef Mishna* says that the reason why it is *assur* to cook *basar b'chalah* together is because we may come to eat *basar b'chalah*. Therefore, if a non-Jew cooks *basar b'chalah* together then it should be *mutar b'hana'ah* since we will not eat food cooked by a non-Jew because of the *issur* of *bishul akum*. However, the *Sdai Chemed* says that there is an *issur d'rabbanan*. The *Yalkut Yosef* also brings the *Rambam* in *Moreh Nevucham* that says that cooking *basar b'chalah* together was a form of idol worship and therefore he asks on the *Kesef Mishna* that there is no *heter hana'ah* based on whether we would eat it or not.

Question:

Can I throw milk and meat away in the same garbage can?

Answer:

It depends. If you are, for example, pouring hot meaty oil straight from a *keli rishon* onto a pizza in the garbage, then this is a problem since we are *choshesh* for the *poskim* that hold *irui* (pouring) is called cooking. Otherwise there is no reason why meat and milk cannot be thrown away in the same garbage pail.

Question:

Since we learned that liver is made out of blood and is therefore not meat, is there a *din* of *basar b'chalah* if liver is cooked with milk?

Answer:

The **Mishb'tzos Zahav** (1) quoted in *Pischei Tshuva* (5) brings that the **Maharam Shif** says that, since liver is made out of blood, you can use this as a point to be lenient if it was fried with butter. However, the *Pri Megadim* says that this *heter* can only be used with a *tziruf* (combination) of other *betairim*. (Like in this case, being that *tigun* is a *machlokes* if it is *mid'oraisa* of *mid'rabbanan*.)

The *Mechaber* says (in the name of the *Rambam*) that cooking blood and milk is not called cooking *basar b'chalah*. If liver was truly not a problem, then the *Mechaber* should have said the bigger *chidush*; that cooking liver with milk is not called cooking *basar b'chalah*.

Furthermore, the *Tur* and *Shulchan Aruch* never mentioned it. Therefore, we can assume that liver has the *din* of *basar*. (*Yalkut Yosef*)

Question:

Concerning the *nair Chanukah*: doesn't using the *assur* butter save me money, and therefore, giving me *hana'ab*?

Answer:

In **Chazon Ovadiah** (*Chanukah* – שמנים ופתילות הכשרים לחנוכה אות ב') he brings a *machlokes* about this. The **Shev Yaakov** (50) says that saving money is only a *grama*, as one is not getting *hana'ab* directly from the object. Therefore, it is not really *halachikally* called *hana'ab*. We see that this is also how the *Sha'ar Efraim* holds. However, *Chazon Ovadiah* brings others that say that saving money is called *ha'na'ab*, and this is how he *paskins*.

Question:

If I cook meat in a *ben yoma* milk pot, is the meat *assur mid'oraisa*, or because there was no milk in the pot, but only the taste of milk, perhaps the food is *mutar mid'oraisa*?

Answer:

The food is *assur mid'oraisa*. Even though there is no milk that went into the meat, it is enough that the taste of milk goes into the meat because of the law of *tam k'ikar*.

Question:

The *Pischai Tshuva* said that butter cooked in a *ben yomo* meat pot shouldn't be used for *nair Chanukah* since, as an *issur*, it doesn't have a *shiur* while *nair Chanukah* requires a *shiur*. However this is a time *shiur*, not a physical *shiur* (e.g. *k'zayis*) so would his logic still hold?

Answer:

Very good question. There is an opinion like that brought in the **Darchai Tshuva** (89:10). We can answer that the *Sha'ar Efraim* holds that if we say there is no *shiur*, not even a tiny bit of ash, then technically there is no fuel. Since *hadlaka* is the *mitzva* nothing is being lit if there is no *shiur*.

Furthermore, this would be only according to the *Minchas Yaakov* who says that the ashes are *mutar*. This is because you have some fuel, even the smallest amount. If the ashes are *assur*, then *halachikely*, they have the *din* of being non-existent. Consequently, even though it will burn for the proper amount of time, we say that the oil is *min hanikbarim*, meaning it must be buried. We are in essence saying there is no oil there, not even a tiny drop, since it is all *assur*.

Question:

Regarding *Bishul Achar Bishul* for *Basar B'Chalav*, on page 4, it says: "However there is an overriding reason to *osser* using this oil because that which is *assur b'ha'na'ab* is considered as not having a *shiur* (Succah 31 B) and *nair Chanukah* needs a *shiur*. Artscroll Succah 31

B, footnote "The pulverized measurement" says: "this dictum applies only to the articles that must be burned, rather than those that must be buried or simply not used." Being that the *mishna* in *Temurah* 33 B lists *Basar B'Chalav* as *min hanikbarin*, does *Basar B'Chalav* retain its *shiur* (as noted by Artscroll) or is it "pulverized", as indicated in the notes to shiur 1?

Answer:

Excellent question. The *Bais Ephraim* himself asks this and says that, although *basar b'chalav* is *min hanikbarim*, if it is burned, we say it has no *shiur* as soon as it is lit.

Question

We learned that anything that is *assur d'rabbanan* is only *assur b'achila*, but is *mutar* to cook (if there is no *maris ayin*) and *mutar b'ha'na'ab*. Why didn't the *Rabbanan* make a *gezaira* on *bishul* and *ha'na'ab* just like they did on *achila*?

Answer

The **Badai Hashulchan** (page 6) *biurim d"b kol* asks this question and says that, by *ha'na'ab*, the *Rabbanan* did not want to cause a loss of money. And there is no *d'rabbanan* by *bishul*, since there is not strong desire to cook, the *Rabbanan* were not *gozer*.