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Hilchos Basar B'chalav Shiur 2

Mareh Makomos for this shiur

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Basar B'chalav Mid'rabbanan

Siman 87:3 - Chicken and milk cooked together

3 The laws of basar b'chalav only apply to the basar of a b'haima tahora ¹ with the milk from a b'haima tahora. **3)** But the basar of a tahora with the milk of a t'maiah ² or the basar of a t'maiah with the milk of a tahora is **(2)** mutar b'bishul (cooking) and b'hana'ah (benefit).

4) Even basar chaya ³ [with milk] and chicken meat ⁴ [with milk] are mutar b'bishul and b'hana'ah. **(3)** **5)** Furthermore eating chaya or chicken cooked with milk is only assur mid'rabbanan. However fish and locust that are cooked with milk are not even assur mid'rabbanan.

RAMA **6)** *There is a custom to allow chicken to be placed into almond milk because it [milk and chicken] is only assur mid'rabbanan but in the case of basar b'haima [with almond milk] one should place almonds next to the almond milk because of maris ayin ⁵ (4) as was explained in Siman 66 concerning blood.*

¹ A b'haima that chews its cud and has split hooves.

² Those animals that are not tabor are called t'maiah.

³ Bahamot are large animals that tend to be raised domestically. A chaya are animals usually not domesticated for example deer.

⁴ Basar of literally means fowl meat. We will use the term chicken meat in order to make the material easier to understand.

⁵ This will be explained in the next shiur.

Mishna Chullin 113A

Basar b'haima tabora with *chalav b'haima tabora* is *assur* to cook together and is *assur b'hana'ab* (if cooked together). *Basar b'haima tabora* and *chalav b'haima tamaya* or *basar b'haima tamaya* and *chalav b'haima tabora* are *mutar* to cook together and are *mutar b'hana'ab*.

R' Akiva says that *basar chaya* and *basar of* are not *assur* [to cook together] *mid'oraisa* as it says, "Do not cook a kid in its mother's milk..."

R' Yossi Haglili says, "Do not eat any *nevaila*. ...The Talmud teaches us that when it says *chalav imo* this excludes *of* because *of* does not give milk."

There is a *machlokes Rishonim* what the *Rabbanan* (the first part of the *mishna*) hold:

Tosefos say that according to the *Rabbanan* it is *assur* to cook chicken in milk *mid'oraisa*.

The **Rosh** holds that since the *Rif* holds like R' Akiva we must say that R' Akiva is explaining the *Rabbanan*. If R' Akiva was arguing with the *Rabbanan* we would have to *paskin* like the *Rabbanan*.

Gemora Chullin 116a

The Gemora brings two possible arguments between **R' Akiva** and **R' Yossi Haglili**:

- 1) **R' Akiva** holds that *basar chaya* and milk are *assur mid'rabbanan* because the Torah is only talking about *bahamot*. **R' Yossi Haglili** holds that *basar chaya* and milk are *assur mid'oraisa* because a *chaya* gives milk.
- 2) **R' Akiva** holds that *of* and milk are *assur mid'rabbanan* and **R' Yossi Haglili** holds that *of* and milk are *mutar* even *mid'rabbanan*.

The *Gemora* then brings a story to prove the second argument. Levi came to the house of Yosef the bird trapper and was served the head of a peacock cooked in milk. Levi did not say anything. When Levi came to Rebbi (Rabbi Yehudah Hanasi) and told him the story Rebbi asked him why he did not excommunicate Yosef. Levi answered that Yosef lived in the city of Rabbi Yehudah ben B'saira and it could be that Rabbi Yehudah ben B'saira expounded like Rabbi Yossi Haglili who holds that it is permitted to eat chicken cooked in milk even *mid'rabbanan*.

The *Tur* and most *Rishonim paskin* like **R' Akiva**.

B'haima T'maiah

THE TUR SAYS

HALACHA 87:3

However, meat of a tobar animal and milk of a t'maiah animal or visa versa, and meat of a chaya and chicken even with kosher milk is only d'rabbanan and is mutar b'bishul and hanah.

The **Bais Yosef** asks why did the Tur mention cooking *tamai* meat and milk in the same sentence with cooking *chaya* and chicken with milk? By *chaya* and chicken there is an *issur mid'rabbanan* of *basar b'chalav* to eat them with milk, however by *tamai* there is no *issur* of *basar b'chalav* even *mid'rabbanan* since it is already *assur mid'oraisa!*

The **Bach** answers that cooking *basar t'maiah* with *chalav tabor*, or the opposite *chalav t'maiah* with *basar tabor*, besides the original *issur* of being non-kosher receives an additional *issur* of *basar b'chalav*. According to this, the combination becomes a *nevaila* ⁶ even according to *Rabbainu Ephraim* who does not hold of *ch'n'n* by *sha'ar issurim*.⁷ Therefore, according to the *Bach*, if *tabor* meat was cooked with *tamai* milk and the mixture fell into a second pot of *parve* food one would need 60 ⁸ against the piece of meat and the milk in the second pot and not just the *tamai* meat or *tamai* milk.

Another difference that is brought down is that the *Bach* holds that if a piece of meat that is *chaticha bar'uya l'hischabed* ⁹ absorbs *tamai* milk the meat is not *batel* (negated) even in one thousand. We only say the *din* of *chaticha bar'uya l'hischabed* if the *issur* is intrinsically *assur* but not if it absorbed *issur*. However, *basar b'chalav* is considered an intrinsic *issur*. We will learn more about this in *Siman* 101.

The **Taz** (2) argues that the *Mechaber* holds that 60 is needed only against the *tamai* milk not including the meat. This is because we do not say *ch'n'n* where either the meat or milk were *assur* beforehand. The **Shach** in *Nekudas Hakesef* argues that if either the milk or meat are kosher then we can say *ch'n'n*. However, he agrees that we do not say *ch'n'n* in the case of *tamai* since there is no reason for the *Rabbanan* to make an *issur* of *basar b'chalav* since it is *assur* anyway, therefore there is no *ch'n'n* (according to the *Mechaber* who does not hold of *ch'n'n* by *sha'ar issurim*).

⁶ This means we treat even the *beter* as *assur*.

⁷ See Introduction to *Issur V'beter*.

⁸ When there is 60 times the *beter* against the *issur* then the *issur* is considered negated both is size and taste.

⁹ Fitting to be served to guests. In such a case one does not want the law of *bital* to apply, therefore the food is *assur md'rabbanan*.

The difference between the reasoning of the *Taz* and *Shach* would be in the case of *nevaila*¹⁰ cooked with milk. Since it is a *tabar* animal there is an *issur* of *basar b'chalav mid'oraisa*. According to the *Taz* since by *nevaila* there is a preexisting *issur*, therefore there is no *ch'n'n*. According to the *Shach* the *Mechaber* would agree that the piece becomes a *ch'n'n* since there is an *issur* of *basar b'chalav*. **R' Akiva Eiger** (101:3) holds like the *Taz*. The **Pri Megadim**¹¹ holds like the *Shach*.

Buffalo

As we have seen *mid'oraisa* the laws of *basar b'chalav* only apply to a *b'haima* and not *chaya*. According to the *Rama*¹² a buffalo is a *safeke b'haima safeke chaya* therefore to cook it with milk it is *assur* because we are *machmir* in a *safeke d'oraisa*.

Chailev and Chalav

The **Dagul Mervava** brings the *Rambam* in *Maachalos Asuros* 9:6 who explains that if you would cook *chailev* (forbidden fats) or *nevaila* with kosher milk or vice-versa, there is no *issur achila* (prohibition of eating the food) because of *Basar B'Chalav* (there is still of course the prohibition of eating non-kosher meat or milk). This is due to the fact that we hold *אין איסור חל על איסור*; one prohibition cannot be piled on top of another prohibition. I.e. this piece of meat is prohibited because it is non-kosher, therefore, another prohibition (e.g. meat cooked with milk) cannot be placed on this item. However, there will still be a prohibition to cook this non-kosher meat with milk since the above-mentioned issue does not apply (i.e. there is no pre-existing prohibition to cook non-kosher meat).

Is there an *issur ha'na'ab* (prohibition of deriving benefit) on this non-kosher meat (for example *chailev* or *nevaila*, both come from a *tabar* animal but are *assur*) cooked with milk? The *Dagul Mervava* brings the *Rambam* that there is not. The *Rambam* writes that there is a *נקודה נפלאה* (a wondrous point) that the *issur ha'na'ab* by *basar b'chalav* is an extension of the *issur achila*. Therefore, if there is no *issur achila*; there will not be an *issur ha'na'ab*. The *Dagul Mervava* says that in a case of *hefsed* (loss of money) one can rely on the *Rambam*.

¹⁰ Meat from an animal that was not slaughtered properly.

¹¹ Introduction to *Basar B'chalav* end of paragraph starting *v'da d'ta'am*.

¹² *Rama Y"D Siman* 28:4, see the *biur bagra* 7 who associates this with the *koi*. According to the *Mechaber* it would seem that a buffalo has the *din* of a *bahaima*. See also the *Tiferes Yisrael Chullin Perek 6 Mishna* 1 note 5.

However, there are those who disagree with the *Dagul Mervava*. This dispute has ramifications in the area of pet foods. Certain pet foods contain mixtures of milk and non-kosher (*nevaila*) meat. According to the *Dagul Mervava*, you can use this pet food if there is a loss of money (since it does not have an *issur hana'ab*) whereas according to the other opinions (*Pri Megadim*¹³ and *Chasam Sofer*¹⁴) this mixture is still subject to the *issur ha'na'ab* of *basar b'chalav*.

Milk and Fish:

THE MECHABER SAYS:

However fish and locust that are cooked with milk are not even assur
mid'rabbanan

Mechaber Orach
Chaim 173:2

Between meat and fish there is an obligation to wash ones hands because the combination brings about a disease [leprosy] and we are stricter by a *sakana* (danger) than by an *issur*. The **Mishna Berurah** brings down that although our custom is not to wash ones hands one should eat and drink between fish and meat in order to wash out their mouth.

We see from here that there is a danger eating fish and meat together. The *Shach* in our *Siman* (87:5) quotes the *Bais Yosef* that even eating fish and milk cooked together is a *sakana*.

However the **Shach** (5) and the **Taz** (3) say that this is a mistake in the text and they permit eating fish and milk that were cooked together.

The **Pischai Tshuva** (9) brings the *Pri Megadim* who holds that there is a *sakana* to eat fish and milk that were cooked together but not fish and butter. He brings that the *Adnai Paz* prohibits cheese and milk with fish but permits butter. The *Pischai Tshuva's* final *psak* is that he reluctantly permits fish and milk because that is the custom of the world and therefore Hashem will protect people.

Halacha l'ma'aseh:

I have asked Rabbanim about this problem and they said that it is enough to be *machmir* by fish and milk. Fish and butter or fish and cheese, like a tuna casserole for example, is permitted *l'chatchila*. However, *Sefardim* are more *machmir* since the **Kaf Hachaim** (24) only permits butter with fish and the *Yalkut Yosef* says that this is the *halacha*.

¹³ In the *Psicha* starting *ulainyan chailev*

¹⁴ *Yorab Deyab siman* 92

We will learn the *Rama* in the next shiur.

Review Questions:

1. Is there a *machlokes* between **R' Akiva** and the **Rabbanan** in the *Mishna* quoted above?
2. What is the *machlokes* between **R' Akiva** and **Rabbi Yossi Haglili**?
3. What is the *machlokes* between the *Bach* and the *Mechaber* concerning *basar b'chalav* if the *basar* or the *chalav* is *tamai*?
4. What are two *chumras* of the *Bach*?
5. Is it permitted to cook milk with buffalo meat?
6. Is it permitted to cook *nevaila* meat with milk? If they were cooked are they *mutar b'ha'na'ab*?
7. Why do we eat and drink between fish and meat?
8. Is there a danger in eating fish and milk cooked together?

Questions on Shiurim

Question:

Can I work at a McDonalds restaurant?

Answer:

No. The meat you are cooking is from a *tabar b'haima* and therefore even though it is *assur* to eat (because it wasn't *shechted*) it is *assur* to cook with milk *mid'oraisa*.

Question

What is the *din* of *basar chaya* is it compared to chicken because it is *d'rabbanan*?

Answer

The **Yad Avraham** says that since it looks more like meat we should be *machmir* and give it the *din* of meat concerning *maris ayin*.

Question

Shiur 1 – According to those that hold that when cooking something that is already *basar b'chalav* you are not liable for *bishul*, what if you cook something *milchig* or *fleishig* with an existing quantity of *basar b'chalav*?

Answer

Even those that hold *bishul achar bishul* is *mutar* may still hold that in this case since there is new meat or milk it will be *assur*. Although the **Chasam Sofer** (*shu"t siman* 82) is in doubt, from the **Chavas Da'as** and **Pri Chadash** (94:4) we see that there is an *issur bishul*. This is similar to cooking *nevaila* with milk on which there is an *issur bishul basar b'chalav*. However, whether it becomes a *ch'n'n* of *basar b'chalav* is a *machlokes* **Pri Megadim** (*Sifsai Da'as* 94:4) and **Chavas Da'as** in the understanding of the *Shach*. (See *Badai Hashulchan Biurim* page 26).