



HALACHA WEEKLY

Parshas Bo

January 11, 2019 Vol. I, Issue 6

THE PERMISSIBILITY OF ARTIFICIAL CHEESE IN A STEAK SANDWICH

Rabbi Yitzy Melamed

The Torah states three times, “Do not cook a calf in the milk of its mother” (Shemos 23: 19, ibid 34: 26, Devarim 14:21). The Shulchan Aruch (Yoreh Deah 87:1) cites a *beraisa* in Tractate Chulin (115b) which states that the repetition of this verse teaches us that cooking, eating or having benefit from a *basar bichalav* (meat and milk) mixture is prohibited by the Torah.

The obvious question is that if the Torah wanted to tell us that these are the three areas included in the prohibition of *basar bichalav*, why does it use the term “cooking” each time? The Gemara (ibid. 108a) explains that this is to teach us that *basar bichalav* is only prohibited by the Torah if the two were cooked together. However, the Shulchan Aruch (ibid.) rules that a *basar bichalav* mixture that was not cooked is still prohibited to consume by virtue of a rabbinic decree (*mideRabanan*).

What is considered meat? Is chicken included in this prohibition? What about wild game? Perhaps the prohibition only applies to a kid in its mother’s milk, as stated in the verse? The Mishna in Chulin (113a) states that the prohibition applies to the meat of any kosher animal cooked in the milk of any kosher animal. However, the prohibition does not include the meat or milk of a non-kosher animal. Thus, one may cook meat of a kosher animal in milk of a non-kosher animal, meat of a non-kosher animal may be cooked in milk of a kosher animal, and meat of a non-kosher animal may be cooked in the milk of a non-kosher animal. This is the opinion of the Rabanan (group of sages). Rabbi Akiva says that wild game and fowl mixed with milk are not forbidden by the Torah since the verse says not to cook a “kid¹ in its mother’s milk” in each of the three verses,

excluding wild game, fowl and non-kosher animals from the prohibition of *basar bichalav*.

Do the Rabanan agree with Rabbi Akiva? If they do, then they agree that fowl, wild game and *basar bichalav* mixtures that involve non-kosher animals are only Rabbinically forbidden. However, if they do not agree with Rabbi Akiva², their view is followed as practical halacha, for the Talmud (Eruvin 46b) states that generally, when Rabbi Akiva is in the minority, we follow the majority opinion arguing with him.

The Rif (Chulin, dapei haRif 42b) codifies the view of Rabbi Akiva. The Rosh (Chulin 8:51) infers that the Rif must understand that the Rabanan agree with Rabbi Akiva, for otherwise he would need to rule in accordance with the Rabanan. The Bais Yosef (Yoreh De’ah 87) follows this view, ruling that fowl cooked with milk is only prohibited *mideRabanan*. The Bach (ibid.) disagrees, citing the Maharshal who, based on Tosafos (Chulin 113a s.v. *basar bichalav*), says that Rabbi Akiva argues on the Rabanan. Tosafos explains that when the Rabanan state that meat from a kosher animal cooked with milk from a kosher animal is prohibited by the Torah, the same restriction applies to fowl, since Rabbi Akiva is the only one who says that fowl and milk mixtures are only prohibited *mideRabanan*. According to Tosafos, we would follow the view of the Rabanan and forbid fowl and milk on a Scriptural (*d’Oraysoh*) level. The Bach concludes that even if we do not agree with Tosafos’ interpretation of the Mishna and instead prefer the Rif’s approach, we should nevertheless treat fowl the same as we treat animal meat in deference to Tosafos’ opinion. The Shach (Yoreh De’ah 87:3) disagrees, arguing that the Bach didn’t understand the Maharshal. Furthermore,

¹ “Kid,” or “*gidi*,” refers to a young goat, sheep or cow (Chulin 113b).

² The Rabanan certainly agree that non-kosher meat and milk are not included in the prohibition, as that is their

position at the outset. The question is in regard to wild game and fowl.

says the Shach, the overwhelming consensus of halachic authorities past and present is that fowl and milk mixtures are only forbidden *mideRabanan*.

The Bais Yosef (ibid.) cites a responsa of the Rashba (3:257) that says that meat mixed with human milk should be prohibited *mideRabanan*. Even though human milk is not considered dairy, onlookers may mistake it for real milk. This prohibition is called *maras ayin*, or “what appears to the eye.” The Rema in Darkei Moshe argues on this. How can one say that such a mixture is forbidden to avoid *maras ayin*, if we do not find such a concern with non-kosher meat or milk, which can certainly be mistaken for their kosher counterparts?

The Rema continues and cites an earlier ruling of his (Darkei Moshe Yoreh De’ah 76:9) that is consistent with this approach: The Tur (Yoreh De’ah 76:9) states that the blood of a fish is permitted for consumption since it is not included in the prohibition against consuming blood. However, if the blood is in a cup and looks like regular blood, one should leave fish scales in the cup so that people recognize that it isn’t forbidden blood, thereby avoiding *maras ayin*. This method of making things clear for an onlooker is known as a *heker*, or recognition. Based on this, the Maharshal rules that one should not eat chicken cooked in milk made from almonds unless almonds are placed nearby, in order to avoid *maras ayin*. The Darkei Moshe rejects this position, pointing out that fish blood is not comparable to almond milk in regards to *maras ayin*, since fish blood can be mistaken for something that is strictly forbidden by the Torah, namely, animal blood. This is not so by chicken and almond milk mixtures, which can only be mistaken for a Rabbinic prohibition, and we should therefore not be concerned of *maras ayin*.

In accordance with his opinion in Darkei Moshe, the Rema rules (Shulchan Aruch Yoreh De’ah 87:3) that if one were to have a mixture of chicken and almond milk, there is no need to leave almonds nearby, since we are not concerned with *maras ayin*. However, if the almond milk is mixed with animal meat, one should place almonds nearby as a *heker*. Such a case is comparable to the case of fish blood, since it can be mistaken for a Scripturally prohibited mixture.

Earlier we discussed the conflicting understanding of the Shach and Bach in regards to the opinion of the Maharshal as to whether or not fowl and milk mixtures are forbidden by the Torah. The Shach understood the Maharshal as forbidding fowl only on a *deRabanan* level. That being the case, how can the Maharshal (as quoted by the Darkei Moshe above) be concerned of *maras ayin* by an almond milk and meat mixture, which could only be confused with a *deRabanan*?! The Shach (ibid.:6) therefore concludes that the Maharshal’s opinion is predicated upon the fact that we are concerned with *maras ayin* even in a circumstance that can be confused only with a Rabbinic prohibition.

We thus have a major disagreement among the Acharonim (post-medieval Torah authorities) regarding whether there is a *maris ayin* issue for a Rabbinic prohibition. However, all agree that a *heker* would be required to avoid the appearance of a *diOraysah* prohibition. That being the case, what would be the halacha for a steak sandwich that includes fake cheese? Seemingly, since it contains animal meat, which is Scripturally forbidden with milk, it ought to require a *heker* of some sort according to all opinions.

Rabbi Yonasan Eybeschutz in Kraisi Uplaisi (Yoreh De’ah 87:8) defines *maris ayin* as a situation where onlookers could potential make a mistake and think one is doing something forbidden. However, in a circumstance where onlookers will be doubtful that there is any real issue, it does not constitute *maris ayin*. Rabbi Chanoch Dov Padua (Cheishev Ha’efod 20) rules (perhaps based on the aforementioned Kraisi Uplaisi) in regard to margarine mixed with meat that *maris ayin* was only prohibited when someone will really think that something wrong is being done. However, we are not concerned with *maris ayin* once a food item such as margarine is so common that onlookers will realize that there is a good chance that the item mixed with the meat is non-dairy margarine and not butter. Based on this ruling, fake cheese in a steak sandwich would depend upon whether the fake cheese is common enough to be placed in the same category as margarine. Similarly, any other “fake” food item that is meat or dairy would be subject to similar criteria if it is being used in a mixture that would appear to be *basar bichalav*. A competent halachic authority would need to be consulted on a case-by-case basis.