

HALOCHOSCOPE

This week's question:

A family used to eat dairy products that were not *cholov yisroel*, specifically produced from supervised milk. At some point, one of the parents adopted the practice of *cholov yisroel* for the entire family. One of the sons has now turned *bar-mitzvah*, and wishes to revert to his old practice. May he do so, and if so, does he need a *hataras nedarim*, annulment of vows? What about eating these products in his parents' home?

The issues:

- A) *Cholov yisroel* and *cholov akum*, supervised and unsupervised milk
 - B) *Cholov stam*, the leniency to drink unsupervised milk in the USA
 - C) Changing a *minhag*, adopted practice
 - D) Following or contradicting the views or practices of parents
- A) *Colov Yisroel* and *Cholov Akum*

[The word *akum* is an acronym for 'one who worships stars and constellations.' It is the euphemism used by Talmudists for a non-Jew, to avoid the scrutiny of censors.]

The prohibition against unsupervised milk is Rabbinical. Just as the meat of unclean animals such as camels, donkeys and pigs is forbidden, so is their milk. Food produced from something forbidden is likewise forbidden. There is concern that a gentile milking his cows might mix a little milk from an unclean animal into his cows' milk. His incentive is assumed to be financial. The 'unclean' milk is not as good, and cheaper. There is also a better market for cow's milk. To stretch his supply, the gentile might add a little unkosher milk. There is no concern that the gentile will sell unkosher milk as kosher. They do not look alike. Kosher milk is white, while unkosher milk is yellowish.

There is a way to test the milk. Non-kosher milk does not curdle into cheese or harden into butter the way kosher milk does. Even a small amount mixed in will prevent this. The Talmud asks, why not use the test? The first answer is that indeed if the milk is needed for cheese it need not be supervised. The second is that some of the kosher milk will also not curdle, making the test unreliable. In addition, while most of the whey, water content in cheese, can be filtered, some remains. A small amount of unkosher milk will simply mix with these uncurdled parts and escape detection. This applies to cheese manufacture. Not every last drop of whey is removed from cheese. The small amount in the cracks could mix with a small amount of unkosher milk.

There are two textual versions of this Talmudic passage. In one version the last part of the second answer is meant to be a revision of the first answer. In light of the information about the whey, we no longer permit unsupervised milk for cheese. The other version keeps the first answer as an alternative. Accordingly, the permissibility of unsupervised milk for cheese depends on which of the two answers is followed.

Accordingly, some poskim permit making cheese from unsupervised milk. They fol-

low the latter version, and favor the first answer. [There is an unrelated Rabbinical prohibition against buying cheese made by a gentile. Only cheese made by a Jew from *cholov akum* is permitted by these poskim. (See below.)] Most poskim do not permit cheese made from *cholov akum*. Of those who permit it, many only allow it *bide'eved*, after the fact, for example, if the owner would suffer a major loss if it were forbidden.

Different *minhagim*, local practices, are recorded regarding using butter from *cholov akum*. As mentioned, butter can only be made from kosher milk. However, traces of milk remain in butter. In addition, some maintain that the structure of the decree forbidding cheese was to forbid all milk products. The varying *minhagim* are based on differing views on whether butter is as stringent as milk or cheese. One should follow the practice of his local community. The 'community' in the US has no definitive practice. People came alone or in groups from many different communities in the world. Some tried to maintain their original customs, but have since become mixed with the others. One should seek guidance from his personal or communal Rav on this issue.

The poskim discuss using whey made from *cholov akum*. This product is used commercially in many products. Whey separates when the milk solids curdle. Since non-kosher milk will remain in liquid form when the cheese is separated, it would be mixed with the whey. However, there in two instances it could be permissible. If the gentile's cheese was made from supervised milk, the whey might not be included in the prohibition. It might, however, be forbidden due to its contact with the forbidden cheese. There is also a solid type of whey that apparently can only be made from kosher milk. There is also a product made by heating milk and skimming it, then drying the skimmed product. This is similar to milk powder. The poskim debate this. Some seem to hold that it can only be made from kosher milk. Others contend that anything evaporated can be made from any type of milk. There is also discussion on other products, such as sour cream.

Gentile's cheese was forbidden due to non-kosher animal enzymes used in its production. Rabbinical decrees generally do not allow for circumstantial exceptions. However, some poskim allow cottage, ricotta and similar cheeses that are never made using enzymes of animal origin. They treat these cheeses like butter. Thus the rule regarding customary practices applies here too. [See Avoda Zara 29b, 35a-b, Poskim. Tur Sh. Ar. YD 115, commentaries (Darkei Teshuva). Chazon Ish YD 41. Hakashrus 8.]

B) Cholov Stam

The *mishna* explicitly permits milk milked by a gentile when a Jew was sitting at the side of the field. In the process of explaining the need to say this, the Talmud assumes that if the gentile has no unclean animals in his flock, there is no cause for concern.

The simple explanation of this passage is that the Jew might not be able to see everything from a sitting position, but that this is not necessary. Normally Rabbinical decree applies universally, even where the reasons do not apply. The requirement of *yisroel ro'aihu*, that a Jew must see the gentile milking, is always necessary. It is just easier to satisfy when there are no unclean animals around. However, there is an opinion that the Rabbis never forbade unsupervised milk of a gentile who possesses no unclean animals. This opinion gained popularity. It was followed by many communities in countries where unclean animals were not raised or herded by farmers who herded kosher animals.

The next line in that Talmud passage says that where the gentile possesses unclean

animals, it is still not required that a Jew see the whole milking. The Jew is always able to look over, so the gentile will never try anything underhanded. Therefore, the Jew may sit at the side of the field. Though he cannot see sitting down, he can always stand up. This is the source for the variations in policies and standards of different supervisions.

Based on this, some propose another leniency. In some countries, the government regulates the milk industry. In others there laws penalize vendors who make false statements about a product. The producer is presumed to be as concerned about getting caught by the government as by a Jewish supervisor. His milk would be *cholov stam*, unqualified milk – neither *cholov yisroel* nor *cholov akum*. These poskim, however, encourage a *baal nefesh*, one who aspires to higher standards, to refrain from relying on *cholov stam*.

Others maintain that the government is not as rigid in enforcing its standards as is a Jewish supervisor. The gentile is not afraid of getting caught. He is not to be trusted as much as when a Jew sits at the side of his field, and he can get caught in the act! Besides, the Rabbinical institution stands even where there is reason to believe it unnecessary.

Some poskim validate the leniency for some products, such as milk powder. Some add that it may be relied on for invalids and babies (formula usually contains casein, a milk product that might be included in the cheese decree), but not for the healthy.

Thus there are two ways to view the stringent practice of *cholov yisroel* in the US. It could be viewed as a *chumra*, self-imposed piety. This is advised by the lenient poskim. This would have the status of a personal vow or ban on *cholov stam*. Or one practicing stringency could be following the other view, considering it *cholov akum*. It is a full Rabbinical prohibition. He does not deny the validity of the other view, but follows his own Rav or the practice of his community. [See Avoda Zara 39b, Sh. Ar. YD 115, Pri Chadash. Igros Moshe YD I:47-49. Chazon Ish YD 41:4. Hakashrus 8:13 14 23.]

C) Changing a Minhag

A *minhag* involves two *halachos*. One is bound by the *minhag* of his community. These are rulings by the Rabbinat and their disciples as they see fit. Breaking with the local rules, to be stringent or lenient, involves *lo sigsodedu*. This Scriptural *mitzvah* forbids making small broken up groups. It applies to all rulings, including Rabbinical. *Minhag* also involves a *neder*, vow or ban. A personal practice, adopted voluntarily, constitutes a *neder*. It must be adhered to, Scripturally, unless absolved or annulled. Generally, a *chumra* is a *neder*, and requires annulment. Though a community must uphold a *minhag* practiced by their forebears, a parent's *neder* is not binding on his children. In our case, the parents' practice is a *chumra*. It is not communal *minhag*, because there are other *minhagim* in the same community. This is like two Rabbinical courts in the same city.

When in another community temporarily, one must follow local *minhag*. A child in his parents home must keep their *minhag*. One opinion bases *lo sigsodedu* on avoiding discord. If a parent invites the child to follow his own *minhag* there is no discord. If the parent objects, the child might also be in violation of the dictum requiring one to follow instructions of the host. This does not exempt one of keeping his *chumros*, but in our case, the child wants to drop the *chumra*. [See Psachim 50a-51a, 86b, Yevamos 13b-14a, Derech Eretz Raba 6. Sh. Ar. OC 170:5, YD 112:13 15, 214:2, commentaries.]

D) Following or contradicting parents' minhag

Part of *mora av va'eim*, reverence for parents, is not to contradict them. This in-

cludes not challenging their rulings, nor deciding in favor of their opponents, or even in their favor. By insinuating that the parent needs approval, it shows disrespect. However, the poskim show that on numerous occasions Talmudic and later sages disagree with the views of their fathers. Therefore, they conclude that when the parent is not present one may disagree. One is also not bound to follow parents' instructions when they themselves contradict *halacha*. Everyone, including the parents, are commanded to revere Hashem. This applies to Scriptural and Rabbinical *mitzvos* and, according to some poskim, things universally accepted as *minhag yisroel* or even midas *chasidus*, extra piety.

One may not practice a *chumra* in the presence of a teacher who does not practice it, if the accepted view is that it is not a *halachic* requirement. A disciple who claims conclusive proof may merely engage the teacher in debate. In their presence, Talmudic sages did not contradict a colleague if it pertained to *halachic* practice in his home town. While they might not have conformed to the local scholar's practices, they never openly challenged them. A son practicing differently from his parents poses an open challenge. This would be doubly problematic in cases such as ours, where the parents practice stringency.

A community must uphold old *minhagim*, but parents' *nedarim* or *minhagim* are not binding on their children. If they are also *minhag makom* they are binding on the children in merit of the community, but not the parents. In our case, both *minhagim* have adherents in the community. Thus, when his parents are not present, the son may practice leniency, provided he is convinced of the validity of the lenient view. Depending on how he feels the practice was initially adopted, he might require a *hataras nedarim*. If, from age twelve (when *nedarim* begin to count for many boys) the son questioned the practice, and only followed it *bli neder*, he need not gain a *hatatra*. Furthermore, if he did not understand why he was bound to keep the *minhag* until now, he might not even need a *hatarata*. [See Brochos 10b-11a, Shabbos 46a 130a, Eruvin 62b 94a, Kidushin 31b-32a, Chulin 53b 111a, Poskim. Tur Sh. Ar. YD 240:2 15, 242:1-3, etc., commentaries. Yam Shel Shlomo B.K. 7:41. Chazon Ish YD 150. Igros Moshe OC I:158.]

On the Parsha ... And you shall love Hashem .. And you shall know this day that it is not with your children who did not know and did not see [the wonders of Hashem in Egypt and in the wilderness] .. For your own eyes see the great deeds of Hashem .. So that you are strong and able to inherit the Land .. and you have long days on the Land ... [11:1-9] The main inhabitants of the Land in future, which is the intent of the 'length of days', would be their children. What was the point of telling this generation all this? Why would the later generations still not be able to claim that they did not know first hand about the wonders? Perhaps the point is that it would be specifically this generation who saw the wonders that would lay claim to the Land. If they would implement the lessons they learned from this, they would set the tone in Eretz Yisroel for the later generations. Having won the Land with their strength, they would tell later generations that no-one may change the tone in **'their'** Land. This would be considered practicing differently in parents' homes.

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