

# CHALAV YISRAEL: IS IT REQUIRED?

*by Rabbi Doniel Neustadt*

In order to protect the inadvertent consumption of non-kosher milk, the Rabbis enacted a strict ordinance: The milking of every [kosher] animal must be supervised<sup>[1]</sup> by a Jew<sup>[2]</sup> in order for the milk to be kosher. The Rabbis' fear was not that one might mistakenly drink non-kosher milk, since horse or camel's milk look altogether different from cow's milk<sup>[3]</sup>, but rather that a non-Jew might mix a small, undetectable amount of non-kosher milk into the cow's milk, rendering it non-kosher for the unsuspecting kosher consumer. While the Rabbis realized that such an occurrence is unlikely, they were still concerned about it even as a remote possibility<sup>[4]</sup>. Thus, they prohibited drinking all unsupervised milk<sup>[5]</sup>.

The prohibition against unsupervised milk, known as chalav akum, is a rabbinic prohibition like any other. Thus:

- It is prohibited to drink chalav akum even when no other milk is available or when supervised milk is very expensive<sup>[6]</sup>.
- A utensil in which chalav akum was cooked is prohibited to use unless it undergoes a koshering process<sup>[7]</sup>.
- A utensil in which cold chalav akum is stored for twenty-four hours is prohibited to use unless it undergoes a koshering process<sup>[8]</sup>.
- Chalav akum is nullified, bateil, if it is inadvertently mixed into a permitted food or liquid whose volume is sixty times greater than it<sup>[9]</sup>.

Question: Is chalav akum ever permitted?

Discussion: Several hundred years ago, the Peri Chadash ruled that it is permitted to drink unsupervised milk if there are no non-kosher milk-producing animals in the entire vicinity. His argument was that since there is no reasonable possibility that a non-Jew could mix non-kosher milk into the kosher milk, supervision is no longer required. Several other poskim also agreed with this ruling<sup>[10]</sup>.

But almost all of the poskim who followed the Peri Chadash disagreed with his view<sup>[11]</sup>. They all reached the conclusion that the ordinance against drinking unsupervised milk is the type of a decree which can be classified as a "permanent ordinance," which, once enacted, can never be abrogated. There are two schools of thought as to why this ordinance remains in force even when there is no non-kosher milk to be had:

- Some explain that since the rabbinic decree was issued originally only because of a remote possibility - since non-kosher milk was hardly ever mixed with kosher milk - the fact that no such milk is available in the vicinity is of no consequence. Milk can be certified as completely kosher only if it is supervised[12].
- The Chasam Sofer[13] explains that the ban on unsupervised milk was pronounced regardless of the availability of non-kosher milk. Even if it could be ascertained beyond all doubt that there was no possible access to non-kosher milk, it is still prohibited to drink unsupervised milk. Only milk which comes from animals whose milking was supervised by a Jew is exempt from this ban.

Whether for the first or the second reason[14], it is agreed by almost all of the poskim[15] that the Peri Chadash's leniency cannot be relied upon. Some poskim add that even if the halachah were to be decided according to the Peri Chadash it would be of no consequence, since it has already been accepted by all Jews as binding custom - which has the force of a vow - not to drink unsupervised milk even if there are no non-kosher milk-producing animals in the entire vicinity. One must, therefore, be stringent in this matter[16].

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In more recent times, another argument for leniency was advanced by several poskim[17]. They argued that since government authorities in the United States and other developed countries closely monitor the dairy industry and strictly enforce the law against mixing other milk with cow's milk, government regulation should be tantamount to supervision [18]. According to this argument, the fear of being caught by government inspectors who are empowered to levy substantial fines serves as a sufficient deterrent and may be considered as if a Jew is "supervising" the milking. Based on this argument, several poskim allowed drinking "company milk" (chalav stam[19] ), i.e., milk produced by large companies, without supervision.

But many others oppose this position as well:

- Based on the aforementioned view of the Chasam Sofer, who maintains that the rabbinic ordinance against unsupervised milk applies even when there is no possible access to non-kosher milk, there is no room for leniency just because of government regulation. Nothing short of actual supervision by a Jew renders milk kosher [20].
- Some poskim argue that government regulation does not totally and unequivocally preclude the possibility of non-kosher milk getting mixed into cow's milk. This is because dairymen can, if they wish, cheat or bribe the government inspectors. Some may choose to risk getting caught and paying a minimal fine rather than conform to the law. While it is highly improbable that this would happen, it has already been ruled upon by all authorities, in opposition to the Peri Chadash, that the rabbinic ordinance applies even concerning remote possibilities [21].

What is the practical halachah? Years ago, when supervised milk was hardly available [or was of inferior quality] and it was truly a hardship to obtain chalav Yisrael, almost everyone relied on the leniency. Many people continue to rely on this lenient opinion even nowadays when supervised milk is readily available[22]. Indeed, many leading kashrus organizations in the United States confer kosher certification on dairy products (and milk) that contain no non-kosher additives or ingredients, but which are produced from unsupervised "company milk."

Many other people, however, no longer rely on this leniency, since conditions have radically changed and chalav Yisrael is so readily available. It is important to note that while Rav M. Feinstein agreed in principle with the lenient ruling and permitted drinking "company milk" according to the basic halachah, he himself would not rely on the leniency and advised scrupulous individuals, ba'alei nefesh, and bnei Torah[23] to refrain from drinking unsupervised milk. He recommended that schools strain their budgets in order to purchase chalav Yisrael. The following letter[24] gives us an idea of how he felt on this issue (free translation):

"Regarding the milk of government-regulated dairies in our countries, there are definitely grounds for permissibility to say that they are not included in Chazal's prohibition, as we see that many are lenient in this due to dochak (extending circumstances) in many places. However, in a place that chalav Yisrael is obtainable, even though it requires a bit more effort or is a bit more expensive, it is not proper to be lenient in this. One should purchase chalav Yisrael."

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In recent years, a question has arisen concerning the kashrus of some milk-producing cows due to surgical procedures performed on their stomachs for various reasons. According to the available information, many chalav Yisrael companies are now using only cows which do not undergo this procedure.

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1. "Supervised" means either watching the actual milking or standing guard outside the milking area to make sure that no other milk is brought in from the outside; Y.D. 115:1.
  2. Even a minor over the age of nine may supervise; Aruch ha-Shulchan 115:8. [Nowadays, when the chance of mixing non-kosher milk into cow's milk is remote, even a non-believing Jew may be trusted with the supervision since only non-Jews were included in the original decree; Igros Moshe, Y.D. 1:46; 2:47.]
  3. Cow's milk is pure white, while non-kosher milk is greenish; Avodah Zarah 35b. Some hold that they taste different as well (Rav Akiva Eiger on Shach, Y.D. 118:8), while others hold that they taste the same (Beis Meir, ibid.)
  4. As explained by Chochmas Adam 67:1.

5. Powdered milk, too, was included in this ordinance; Chazon Ish, Y.D. 41:4; Teshuvos Rav Yonasan Shteif 159. See, however, Har Tzvi, Y.D. 103-104 who is lenient, and his ruling is followed by the Israeli Chief Rabbinate which certifies unsupervised powdered milk as chalav Yisrael (Daf ha-Kashrus, December 1997).
6. Darchei Teshuvah 115:
7. Rama, Y.D. 115:1.
8. Taz, Y.D. 115:7.
9. Shach, Y.D. 115:17; Chochmas Adam 67:5.
10. See Teshuvos Radvaz 4:74 and Peri Toar 115:2.
11. See Pischei Teshuvah 115:3, Aruch ha-Shulchan 115:5 and Darchei Teshuvah 115:6.
12. Beis Meir, 1; Chochmas Adam 67:1; Avnei Nezer 103; Igros Moshe, Y.D. 1:49.
13. Teshuvos Chasam Sofer, Y.D. 107, quoted by Pischei Teshuvah 115:3.
14. Some additional arguments against this leniency are: 1) There are hardly any locales, especially in rural areas, where such animals do not exist; Beis Meir, Y.D. 115:2) Chazal did not always divulge all of their reasons for any particular edict; sometimes even when the obvious reason does not apply there are other, concealed, reasons which may apply; Aruch ha-Shulchan 115:6.
15. The view of the Chazon Ish 41:4 is somewhat unclear on this.
16. Chochmas Adam 67:1; Chasam Sofer, Y.D. 107; Birkei Yosef, Y.D. 115; Igros Moshe Y.D. 1:46.
17. Chazon Ish 41:4; Kisvei Rav Y.E. Henkin 2:57; Igros Moshe, Y.D. 1:47, 48, 49.
18. As mentioned earlier, "supervision" also includes standing guard outside the milking area so that no non-kosher milk is being brought in from the outside.
19. This became known colloquially as chalav stam ("plain milk"), which refers to its status as being neither expressly prohibited chalav akum nor expressly permitted chalav Yisrael. Note that only large milk companies are included in this leniency; there is no leniency for milk that comes from small farms, etc.
20. Zekan Aharon 2:44; Minchas Elazer 4:25; Har Tzvi 103; Minchas Yitzchak 10:31-15; Kinyan Torah 1:38, quoting Rav Y.Y. Kanievsky.
21. Chelkas Yaakov 2:37-38.
22. Even today there are situations where chalav Yisrael is not available, e.g., for business travelers or hospital patients. Under extending circumstances they may rely on the lenient opinion; Rav Y.

Kamenetsky (Emes l'Yaakov, Y.D. 115:1).

23. Igros Moshe, Y.D. 2:35.

24. Dated 5716 and printed in Pischei Halachah (Kashruth), pg. 107. For unspecified reasons, this responsum was not published in Igros Moshe.

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