

Holiness and Ownership - Menachot 101b

On Menachot 101b, R. Shimon ben Yehuda discusses prohibitions related to consuming mixtures of milk and meat in terms of “kedusha/holiness.” In this shiur we will examine how certain prohibitions, especially those regarding not deriving benefit - known as איסורי הנאה, shed light on the concept of kedusha.

Questions? Comments? Email dinanddaf@gmail.com

1. מנחות קא:

דַּתְנִיא, רַבִּי שְׁמַעוֹן בֶּן יְהוּדָה אוֹמֵר מִשּׁוּם רַבִּי שְׁמַעוֹן: בָּשָׂר בְּחֵלֶב אֶסוּר בְּאֲכִילָה וּמוֹתֵר בְּהִנְאָה, שְׁנֵאמַר “כִּי עִם קְדוּשָׁתָהּ לֹא יִלְהִיף לֹא תִבְשַׁל גְּדֵי בְּחֵלֶב אִמּוֹ”, וְלֵהֲלֹן הוּא אוֹמֵר “וְאֲנֹשִׁי קִדְשׁ תִּהְיוּן לִי וּבָשָׂר בְּשֻׂדָּה טְרֵפָה לֹא תֹאכְלוּ”, מָה לֵהֲלֹן אֶסוּר בְּאֲכִילָה וּמוֹתֵר בְּהִנְאָה, אִף כָּאן אֶסוּר בְּאֲכִילָה וּמוֹתֵר בְּהִנְאָה.

As it is taught in a *baraita*: Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: With regard to meat cooked in milk, eating it is prohibited and deriving benefit from it is permitted, as it is stated: “For you are a holy people to the Lord your God; you shall not cook a kid in its mother’s milk” (Deuteronomy 14:21). And elsewhere the verse states: “And you shall be holy men to Me; therefore you shall not eat any flesh that is torn by animals [*tereifa*] in the field” (Exodus 22:30). Just as there, with regard to an animal torn by animals, which is forbidden as a *tereifa*, i.e., an animal possessing a wound that will cause it to die within twelve months, eating it is prohibited but deriving benefit from it is permitted, so too here, with regard to meat cooked in milk, where being a holy people is also mentioned, eating it is forbidden but deriving benefit from it is permitted.

2. תוספתא ערלה א:

ר' שמעון בן לעזר אומר בשר בחלב מותר בהנאה...

In the teachings of R. Simeon b. Eleazar, meat and milk are allowed for deriving benefit...

3. משנה חולין ח:ד

בָּשָׂר בְּהֵמָה טְהוֹרָה בְּחֵלֶב בְּהֵמָה טְהוֹרָה, אֶסוּר לְבַשֵּׁל וְאֶסוּר בְּהִנְאָה...

It is prohibited to cook the meat of a kosher animal in the milk of any kosher animal, not merely the milk of its mother, and deriving benefit from that mixture is prohibited...

4. מכילתא דר' שמעון בר יוחאי כג:ז

...נאמר כן לא תבשל גדי ונאמר להלן (ל"ד כ"ו) לא תבשל לא תבשל אחד לאיסור אכילתו ואחד לאיסור הנאתו

ואחד לאיסור בישולו:

It is stated here “Do not cook a kid,” and it is stated there “Do not cook,” “Do not cook” - one for the prohibition of eating, one for the prohibition of deriving benefit and one for the prohibition of cooking.

Derived from אכילה

5. דברים יד:ג

לא תאכל כל-תועבה:

You shall not eat anything abhorrent.

6. דברים יד:כא

לא תאכלו כל-נבלה לגר אשר-בשעריו תתננה ואכלה או מכר לנכרי כי עם קדוש אתה לי-ה'ה א-להיך לא-תבשל גדי בחלב אמו: {פ}

You shall not eat anything that has died a natural death; give it to the stranger in your community to eat, or you may sell it to a foreigner. For you are a people consecrated to the ETERNAL your God. You shall not boil a kid in its mother's milk.

7. חולין קיד:

אמר רב אשי: מנין לבשר בחלב שאסור באכילה? שנאמר "לא תאכל כל תועבה" – כל שתעבתי לך הרי הוא בבבל תאכל.

Rav Ashi says: From where is it derived that meat cooked in milk is prohibited for consumption, even though the verse explicitly prohibits only cooking? It is derived from a verse, as it is stated elsewhere: "You shall not eat any abominable thing" (Deuteronomy 14:3). This verse teaches that with regard to any practice that I have made abominable, i.e., forbidden, to you, the product is prohibited for consumption.

ואין לי אלא באכילה, בהנאה מנין? כדרכי אבהו, דאמר רבי אבהו אמר רבי אלעזר: כל מקום שנאמר "לא יאכל", "לא תאכל", "לא תאכלו" – אהד איסור אכילה ואהד איסור הנאה במשמע, עד שייפרוט לך הכתוב, כדרך שפרט לך בנבלה לגר בנתינה ולגוי במכירה.

And I have derived only that meat cooked in milk is prohibited with regard to consumption; from where do I derive that it is also prohibited with regard to benefit? It is derived in accordance with the statement of Rabbi Abbahu, as Rabbi Abbahu says that Rabbi Elazar says: Wherever it is stated, "He shall not eat," or "you," in the singular, "shall not eat," or "you," in the plural, "shall not eat," both a prohibition against eating and a prohibition against deriving benefit are indicated. This is so unless the verse specifies for you that one may derive benefit, in the manner that it specified for you with regard to an animal carcass, from which the verse explicitly permits one to derive benefit, as it states: "You may sell it to a foreigner" (Deuteronomy 14:21). Accordingly, one may provide such meat to a gentile resident alien in Eretz Yisrael by giving it to him as a gift, and to any other gentile by sale.

Derived from בישול

8. חולין קטו.

אמר ריש לקיש: מנין לבשר בחלב שאסור? תלמוד לומר "אל תאכלו ממנו נא ובשל מבשל", שאין תלמוד לומר "מבשל". מה תלמוד לומר "מבשל"? לומר לך יש לך בשול אחר שהוא קזה, ואי זה – זה בשר בחלב.

Reish Lakish says: From where is it derived that meat cooked in milk is prohibited for consumption? The verse states with regard to the Paschal offering: "You shall not eat it partially roasted, nor boiled in any way" (Exodus 12:9). As there is no need for the verse to state: "Boiled

in any way,” since it could simply have stated: “Boiled.” What is the meaning when the verse states: “Boiled in any way?” It is included to tell you that there is another manner of cooking, the product of which is prohibited like this one. And which cooking is this? This is meat cooked in milk.

Derived from עם קדוש

9. דברים יד:כא

לֹא תֹאכְלוּ כֹל נֶבֶלָה לֶגֶר אֲשֶׁר-בִּשְׁעָרֶיךָ תִּתְנֶנֶה וְאָכְלָה אִוּ מִכֹּר לְנִכְרִי כִּי עִם קְדוֹשׁ אַתָּה לִי-הוּא אֶ-לֹהֶיךָ לֹא-תִבְשַׁל גְּדִי בַחֲלֵב אִמּוֹ: {פ}

You shall not eat anything that has died a natural death; give it to the stranger in your community to eat, or you may sell it to a foreigner. For you are a people consecrated to the ETERNAL your God. You shall not boil a kid in its mother's milk.

10. שמות כב:ל

וְאַנְשֵׁי-קְדֹשׁ תִּהְיוּ לִי וּבֶשֶׂר בְּשֹׁדֵה טְרֵפָה לֹא תֹאכְלוּ לְכָלֵב תִּשְׁלֹכֶנּוּ אֹתוֹ: {ס}

You shall be holy people to Me: you must not eat flesh torn by beasts in the field; you shall cast it to the dogs.

11. דברים כג:יח

לֹא-תִהְיֶה קְדֹשָׁה מִבְּנוֹת יִשְׂרָאֵל וְלֹא-יִהְיֶה קְדֹשׁ מִבְּנֵי יִשְׂרָאֵל:

No Israelite woman shall be a consecrated worker, **consecrated worker Or "retainer"; meaning of Heb. qedeshah uncertain. In contrast to others "cult prostitute."* nor shall any Israelite man be a consecrated worker. **consecrated worker Meaning of Heb. qadesh uncertain. See previous note.*

12. חולין קטו:

ורבי, בהנאה מנא ליה? נפקא ליה מהכא: נאמר כאן "כי עם קדוש אתה לה'", ונאמר להלן "ולא יהיה קדש בבני ישראל", מה להלן בהנאה, אף כאן בהנאה.

The Gemara asks: And Rabbi Yehuda HaNasi, from where does he derive that meat cooked in milk is prohibited for benefit? The Gemara responds: He derives it from here, as it is stated here: "For you are a sacred [*kadosh*] people unto the Lord your God. You shall not cook a kid in its mother's milk" (Deuteronomy 14:21). And it is stated below: "Neither shall there be a sodomite [*kadesh*] of the sons of Israel" (Deuteronomy 23:18). The similar expressions teach that just as below, the prohibition of sodomy is a prohibition that involves enjoyment, i.e., deriving benefit, not eating, so too here, meat cooked in milk is prohibited with regard to deriving benefit.

Derived from מכירה followed by בישול

דבי רבי אליעזר תנא: "לא תאכלו כל נבלה [וגו']", אמרה תורה: כשתמכרנה – לא תבשלה ותמכרנה.

The school of Rabbi Eliezer taught: The verse states: “You shall not eat of any animal carcass; you may give it to the stranger who is within your gates, that he may eat it; or you may sell it to a foreigner; for you are a sacred people to the Lord your God; you shall not cook a kid in its mother’s milk” (Deuteronomy 14:21). The Torah stated the prohibition of meat cooked in milk after the *halakha* of an animal carcass to teach that when you sell a carcass to a gentile, you shall not cook it in milk and then sell it, i.e., meat cooked in milk is prohibited for benefit and may not be sold.

Derived from Repetition of בישול

דְּבִי רַבִּי יִשְׁמַעֵאל תֵּנָא: “לֹא תִבְשֵׁל גְּדִי בַחֲלֵב אִמּוֹ” שְׁלֹשׁ פְּעָמִים, אֶחָד לְאִסוּר אֲכִילָה, וְאֶחָד לְאִסוּר הַנָּאָה, וְאֶחָד לְאִסוּר בִּשּׁוּל.

The school of Rabbi Yishmael taught: The Torah states three times: “You shall not cook a kid in its mother’s milk” (Exodus 23:19, 34:26; Deuteronomy 14:21). One verse serves to teach the prohibition against eating meat cooked in milk, and one serves to teach the prohibition against deriving benefit from it, and one serves to teach the prohibition against cooking meat in milk.

Derived from Transgression

חולין קטז.

תֵּנִיא, אִיסִי בֶן יְהוּדָה אוֹמֵר: מִנֵּיין לְבִשָׁר בַּחֲלֵב שְׂאֵסוּר? נֹאמֵר כָּאן “כִּי עִם קְדוּשׁ אַתָּה”, וְנֹאמֵר לְהֵלֵן “וְאִנְשֵׁי קִדָּשׁ תִּהְיִין לִי וּבִשָׁר בִּשְׂדֵה טְרֵפָה לֹא תֹאכְלוּ”, מָה לְהֵלֵן אִסוּר, אִף כָּאן אִסוּר.

It is taught in a *baraita*: Isi ben Yehuda says: From where is it derived that it is prohibited to eat meat cooked in milk? It is stated here: “For you are a sacred people unto the Lord your God. You shall not cook a kid in its mother’s milk” (Deuteronomy 14:21). And it is stated below: “And you shall be sacred men unto Me; therefore you shall not eat any flesh that is torn of animals in the field [*tereifa*]; you shall cast it to the dogs” (Exodus 22:30). Just as below it is prohibited to eat a *tereifa*, so too here it is prohibited to eat meat cooked in milk.

וְאִין לִי אֵלָא בְּאֲכִילָה, בַּהֲנָאָה מִנֵּיין? אֲמַרְתָּ קַל וְחוֹמֵר: וְמָה עֵרְלָה שְׁלֹא נִעְבְּדָה בָּהּ עֲבִירָה – אִסוּרָה בַּהֲנָאָה, בִּשָׁר בַּחֲלֵב שְׁנִעְבְּדָה בּוּ עֲבִירָה – אִינוּ דִּין שְׂאֵסוּר בַּהֲנָאָה!

And from this I have derived only that it is prohibited for consumption. From where do I derive that it is prohibited for benefit as well? You can say it can be derived by an *a fortiori* inference: Just as with regard to the prohibition against eating the fruit of a tree during the first three years after its planting [*orla*], which is treated less stringently as no sin has been committed in the planting of the tree and its production of fruit, it is prohibited for benefit, is it not right that meat cooked in milk, with regard to which a sin has been committed, should be prohibited for benefit?

...

Minority Opinion - Its benefit is permitted

דְּתֵנִיא: רַבִּי שְׁמַעוֹן בֶּן יְהוּדָה אוֹמֵר מִשּׁוּם רַבִּי שְׁמַעוֹן: בִּשָׁר בַּחֲלֵב אִסוּר בְּאֲכִילָה וּמוֹתֵר בַּהֲנָאָה, שְׁנֹאמֵר: “כִּי עִם קְדוּשׁ אַתָּה”, וְנֹאמֵר לְהֵלֵן: “וְאִנְשֵׁי קִדָּשׁ תִּהְיִין לִי”.

(The Gemara notes: The mishna, which states that meat cooked in milk is prohibited for benefit, is not in accordance with the opinion of this *tanna*) as it is taught in a *baraita*: Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: It is prohibited to eat meat cooked in milk but it is permitted to derive benefit from it, as it is stated: “For you are a holy people to the Lord your God; you shall not cook a kid in its mother’s milk” (Deuteronomy 14:21). And the verse states elsewhere: “And you shall be holy people to Me; therefore you shall not eat any flesh that is torn by animals [*tereifa*] in the field; you shall throw it to the dogs” (Exodus 22:30).

מה להלן אסור באכילה ומוותר בהנאה, אף כאן אסור באכילה ומוותר בהנאה.

The use of the word “holy” in both verses indicates that just as there, with regard to a *tereifa*, it is prohibited to eat it but one is permitted to derive benefit from it, as one may give it to the dogs, so too here, with regard to meat cooked in milk, it is prohibited to eat it but one is permitted to derive benefit from it.

Kedusha as Issur Hana'ah

13. חולין קיד:-קטו.

אלא מעתה,

Rav Ashi stated above that the product of any practice described in the Torah as abominable is prohibited for consumption. The Gemara asks: If that is so,

מעשה שבת ליתסרו, דהא “תיעבתי לך” הוא.

then let the product of an action that desecrates Shabbat, e.g., food cooked on Shabbat, be prohibited for consumption, as desecration of Shabbat is a practice of which God states: I have made it abominable to you, in that it is prohibited to cook on Shabbat. How can this food be prohibited only to the one who cooked it as a penalty by rabbinic law, but be permitted to others (see 15a)?

אמר קרא: “כי קדש היא לכם” – היא קדש, ואין מעשיה קדש.

A product of the desecration of Shabbat is an exception to the rule, as the verse states with regard to Shabbat: “For it is sacred to you” (Exodus 31:14). One may infer: It, Shabbat itself, is sacred, but the products of actions that desecrate it are not sacred, i.e., not prohibited.

14. רש"י שם

ליתסרו - הזרעים והדישה דהא הרחקתיך מהם כל הנך דקאמר ליתסרו באכילה ובהנאה קאמר דליתסרו:

15. פסחים כא:-כב.

אמר חזקיה: מנין לחמץ בפסח שאסור בהנאה? שנאמר “לא יאכל חמץ” — לא יהא בו היתר אכילה: טעמא דכתב רחמנא “לא יאכל חמץ”, הא לא כתב “לא יאכל”, הוה אמינא: איסור אכילה — משמע, איסור הנאה — לא משמע. Hizkiya said: From where is it derived in the mishna that it is prohibited to derive benefit from leavened bread on Passover? As it is stated: “Leavened bread shall not be eaten” (Exodus 13:3). Since the verse uses the passive, it should be understood as follows: There shall be no permitted consumption of it at all, even deriving benefit, as benefit could be exchanged for

money, which could be used to buy food. The reason deriving benefit is prohibited is that the Merciful One writes in the Torah: "Leavened bread shall not be eaten." Had the Torah not written: "Shall not be eaten," and instead used the active form: You shall not eat, I would have said that the prohibition of eating is implied but that the prohibition of deriving benefit is not implied.

וּפְלִיגָא דְרַבִּי אֲבָהוּ. דָּאֲמַר רַבִּי אֲבָהוּ: כָּל מְקוֹם שֶׁנֶּאֱמַר "לֹא יֵאָכַל", "לֹא תֵאָכַל", "לֹא תֵאָכְלוּ" — אֶחָד אִיסוּר אֲכִילָה וְאֶחָד אִיסוּר הִנָּאָה (מִשְׁמַע), עַד שֶׁיִּפְרֹט לָךְ הַפְּתוּב כְּדֶרֶךְ שִׁפְרֹט לָךְ בְּנִבְיָלָה.

The Gemara comments: And this conclusion disagrees with the opinion of Rabbi Abbahu, as Rabbi Abbahu said that wherever it is stated: "It shall not be eaten," "You, singular, shall not eat," or "You, plural, shall not eat," both a prohibition of eating and a prohibition of deriving benefit are implied, unless the verse specifies that one may benefit, in the manner that it specified with regard to an unslaughtered animal carcass.

16. פסחים כ"ד.

See Pesachim 23b-24a where issur hana'ah generally is derived from examples of items that must be burned in relationship to the mikdash (e.g., hulin slaughtered in the azarah, notar korban meat, etc.). But the Gemara is clear that issurei hana'ah need not be burned generally - only those in the mikdash.

אִי, מָה כָּאן בְּשָׂרִיפָה — אִף כָּל אִיסוּרֵינָּה שֶׁבִּתְוֹרָה בְּשָׂרִיפָה! אָמַר קָרָא "בִּקְדֹשׁ ... בְּאֵשׁ תִּשְׂרֹף", בִּקְדֹשׁ — בְּשָׂרִיפָה, וְאִין כָּל אִיסוּרֵינָּה שֶׁבִּתְוֹרָה בְּשָׂרִיפָה.

The Gemara continues: Lest one say that the verse indicates that just as here, the sin-offering is disposed of with burning, so too, all the prohibited items in the Torah must be disposed of with burning, therefore the verse said: "In the sacred place...shall be burnt with fire" (Leviticus 6:23). This indicates that only that which is disqualified in the sacred place is disposed of with burning, but all other prohibited items in the Torah need not be disposed of with burning

Ownership over that which you may not benefit from

17. ירושלמי סוכה ג:א

אָמַר רַבִּי יוֹסֵה. בְּלוּלָב כְּתוּב וּלְקַחְתֶּם לָכֶם. מִשְׁלָכְכֶם. לֹא מִשְׁלַאֲיִסוּרֵי הַנְּיָיָה.

Rebbi Yose said, about a *lulav* it is written: *You shall take for yourselves*, from what is your own. Not from what is forbidden for usufruct.

18. שולחן ערוך אורח חיים תרמט:ב

וְכַן שְׂאוּל בְּיוֹם רֵאשׁוֹן מִשּׁוּם דְּבַעֲיֵין לַכֶּם: הִגָּה וְהַמּוֹדֵר הִנָּא מְלוּלוֹ שֶׁל חֲבִירוֹ אוּ מְלוּלוֹ שֶׁל עֲצֻמוֹ אִינוּ יוֹצֵא בּוֹ בְּיוֹם א' דְּלֹא הוּי שְׁלָכֶם (תְּשׁוּבַת רִשְׁב"א סִימָן תִּשְׁמ"ו וְתִשְׁמ"ז):

The same applies to a borrowed [*lulav*] on the first day, when we need it to be "yours." Rema: One who takes a vow not to benefit from his *lulav* or from another's *lulav* cannot fulfill his obligation with it on the first day, because it is not "theirs" (responsa of Rashb"a 746 and 747).

19. פסחים ו:

דילמא משכחת ליה לבתר איסורא, ולא ברשותיה קיימא, ולא מצי מבטיל. דאמר רבי אלעזר: שני דברים אינן ברשותו של אדם, ועשאן הכתוב כאילו ברשותו, ואלו הן: בור ברשות הרבים, וחמץ משש שעות ולמעלה.

The Gemara rejects this suggestion. Perhaps he will find it only after it is already forbidden, and at that time it is no longer in his possession and he is therefore unable to nullify leaven when it is already Passover, as Rabbi Elazar said: Two items are not in a person's possession in terms of legal ownership, and yet the Torah rendered him responsible for them as though they were in his property. And these are they: An open pit in the public domain, for which the one who excavated it is liable to pay any damages it causes even though it does not belong to him; and leaven in one's house from the sixth hour on the fourteenth of Nisan and onward. As this leaven has no monetary value, since it is prohibited to eat or to derive benefit from it, it is not his property, and nevertheless he violates a prohibition if it remains in his domain.

20. רש"י שם

דלאו ברשותיה הוא - אינו שלו:

It is not in their domain: i.e., it is not theirs