

## **Halachic Power of a Diyuk Rabbi Yehuda Spitz**

Many people, when learning a shtikel Torah or a geshmake sugya, will inevitably make some sort of diyuk in their learning, whether in the words of the Tannaim and Amoraim, the Rishonim, or even in the Acharonim, in order to “come out with pshat”. This is basically an inference to understand the intent of the text, based on the precise choice of words used. These diyukim are usually in the realm of pilpul or lomdus, and sometimes “pashut pshat”, but every now and then an innocuous looking line might have actual halachic ramifications.

I would like to cite two prime examples of this based this week’s parsha, Parshas Mishpatim, where we find the first time the Torah mentions the prohibition of Bassar B’Chalav - mixing milk and meat. The Torah actually mentions this three times[1], to teach us that there are three separate prohibitions[2] involved: cooking, eating, and deriving benefit from this forbidden mixture[3]. Rabbinically, even eating chicken and milk together is prohibited[4]. Due to the nature and potential for possible mix ups, Chazal made several other takkanos[5] to make sure that “ne’er the twain shall meet”, including not having people eating both meat and milk at the same time at the same table[6], the waiting period mandated after eating meat and the rinsing, washing and palate cleansing required after eating milk products[7].

The first Mishna in the Chapter in Maseches Chullin[8] dealing with the laws of Milk and Meat begins: “Kol HaBassar Assur Lvashel BeChalav...V’assur L’haalos Im HaGvina al HaShulchan”. “All meat (except for fish and grasshopper) is forbidden to cook in milk... and it’s forbidden to place (this meat together) with cheese on the table”.

The famed Rashash (Rabbi Shmuel Schtrashoun of Vilna)[9] notes that when it comes to the prohibition of cooking milk and meat, the Mishna used the same words as the Torah, meat and milk. Yet, when it came to the Rabbinical injunction of not placing them both on the same table, instead of milk, the Mishna switched to the word cheese. To explain the Mishna’s choice of words, the Rashash makes an incredible three halachic diyukim in three separate aspects of this law, just from this one line of Mishna!

The halacha mandates that one who has partaken of milk products must do a three step process: kinuach - palate cleansing by eating a hard food item (ex. cracker), rechitza - hand washing, and hadacha - rinsing out of the mouth, before being able to have a meat meal[10]. The Rashash infers from our Mishna’s switching to the word cheese that it is emphasizing that this 3-step halacha only applies to eating actual cheese, since it is likely to leave some residue in the mouth. However, drinking good ol’ fashioned plain liquid milk, which does not, would only require a mouth rinsing (hadacha). Most authorities follow the Rashash’s diyuk and rule this way as well[11].

As mentioned above, one of the steps needed after eating a milk meal before eating something meaty is rechitza - washing hands to make sure no residue remains. The Rashash is medayek again from the Mishna’s stressing of the word cheese that this hand washing is only necessary if one ate cheese - a milky food that was held in one’s hands. This would exclude actual milk,

since it cannot be held in one's hands, but rather requires a container or cup to be able to drink it. Furthermore, in view of the fact that one's hands remain clean after drinking some milk (chocolate or otherwise), he opines that rechitza is not halachically required, similar to the Pri Chadash's ruling that one who eats cheese with a fork (and thereby keeping his hands clean) does not have to wash his hands afterward. Although the basic halacha seems to follow the Rashash's diyuk on this also[12], many feel that nevertheless one should still wash his hands after drinking a milk product, as hand washing does not usually entail too much effort[13]. It is well known[14] that if two people are eating together at a table, one eating meat and the other dairy, that a hekker, or something used to show that there is something different here (i.e. separate placemats, or putting something distinctive down), is required to highlight the fact that one is eating meat and the other dairy, and in order to serve as a constant reminder not to chas v'shalom possibly eat from each other's plates and stumble in the prohibition of eating milk and meat together. The Rashash feels that the Mishna's emphasis on the word "cheese" impacts this area as well. He maintains that the requirement of a hekker is dependant on the possibility of the food getting mixed up, and the one eating cheese might end up eating meat, and vice versa. Therefore, if one is merely drinking milk from a cup, there already is a built in hekker: the cup itself! Without the aid of the cup, the milk would not even be able to be drunk, let alone be possibly mixed up with the meat on the table. Therefore, he posits, if one is drinking milk at the same table with someone eating meat, no further hekker is required. The basic halacha seems to follow the Rashash's diyuk on this as well[15], though several contemporary authorities feel that it is worthwhile to be stringent, based on people's propensity to "dunk" their biscuits into their coffee[16], and the common occurrence of an open cup of coffee spilling[17]. Another excellent example of a related diyuk which has great halachic relevance is based on the wording of the Rema. The Shulchan Aruch rules that after eating meat one must wait six hours before eating milk[18]. He then adds, based on the Rambam[19], that this waiting period even applies to one who merely chewed meat without actually swallowing it. The Rema, in his glosses to this halacha, writes with a slight variation, that it is proper to wait six hours after eating meat before cheese.

The illustrious Rabbi Akiva Eiger[20], infers from the Rema's choice of words "after eating meat", that he meant to dispute the Shulchan Aruch's ruling on chewing. He maintains that the Rema's intent was to rule that after merely chewing meat, one would not have to wait the full six hours, rather the "ikar din" of only one hour before being allowed to eat milk products.

Even though many authorities do not agree with this inference, and rule that even by chewing meat one has to wait the "full count"[21], nevertheless several authorities do rule like Rabbi Akiva Eiger's understanding of the Rema's position, and allowing for leniency for one who simply chewed[22].

In conclusion, as the Chofetz Chaim was wont to stress (albeit by the issues of lashon hara), we should never underestimate the (halachic) importance of even just one word.

[1]“Lo Sevashel Gedi B’Chaleiv Imo”. Parshas Mishpatim (Shmos Ch.23, 19), Parshas Ki Sisa (Shmos Ch.34, 26), and Parshas Re’eh (Devarim Ch.14, 21).

[2]There is, however, some debate as to how many of the 613 mitzvos this prohibition counts as. The Rambam (Sefer HaMitzvos, Lo Sa’aseh 186 & 187) and the Sefer HaChinuch (Mitzva 92 & 113) count it only as two mitzvos. The Tashbatz (Zohar Rakia, Azharos HaRashbag 197 - 200), however, counts it as the full three mitzvos, while the BeHa”G (Lavin 58) counts it as only one mitzvah. See Rabbi Yitzchak Aharon Kramer’s recent Arichas HaDaas (on Hilchos Basar B’Chalav and Taaruvos, Ch. 1, footnote 4).

[3]Chullin 115b - Tanna D’bei Rabbi Yishmael - as the Biblical source for this prohibition. See Rashi’s commentary to Mishpatim ibid. (end s.v. lo sevashel) and Tur / Shulchan Aruch Y”D 87, 1. The Baal HaTurim, in his commentary to Devarim ibid (s.v. lo sevashel) brings ‘proof’ to this source, as the Gematria of the words “lo sevashel” (do not cook) equals that of the words -“Issur achila u’bishul v’hanaah” (prohibited for eating and cooking and deriving benefit) = 763.

[4]Tur / Shulchan Aruch ibid; Rambam (Hilchos Mamrim Ch.2, 9) goes as far as to say that anyone who claims that a chicken and milk mixture is Biblically prohibited violates the Biblical commandment of ‘Bal Tosif’. This is the halacha, (following the Rambam, Rifand Rosh’s understanding of the Mishna in Chullin 113a) and not like Rashal (Yam Shel Shlomo Chullin Ch. 8, 100) and Bach (ad loc 2) who hold like Tosafos’ (Chullin 113a s.v. basar) understanding of the Mishna - see Shach (ad loc 4).

[5]Gemara Chullin 114b. Rashi (ad loc s.v. aval hacha) understands this to mean that it is all considered one gezaira; however the Taz (Y”D 88, 1) seemingly understands that this case is an exception and Chazal made a gezaira l’gezaira. See Pri Megadim (ad loc M.Z. 1, based on Lechem Mishna - Hilchos Maachalos Asuros Ch. 9, 20 and Kenesses HaGedolah - Y”D 88 haghos HaTur 3), Chochmas Adam (40, 11), Yad Avraham (ad loc) and Aruch Hashulchan (ad loc 3).

[6]Tur/ Shulchan Aruch Y”D 88, 1 & 2, based on Mishna & Gemara Chullin 103b - 104a and 107b.

[7]Tur/ Shulchan Aruch Y”D 89, based on Gemara Chullin 105.

[8]Chullin 103b - 104a.

[9]In his commentary to the above-mentioned Mishna 103b.

[10]Y”D 89, 2.

[11]Including Rav Chaim Falag’i (Yafeh Lev vol. 8), and the Darchei Teshuva (Y”D 89, 2). Although the Badei Hashulchan (Y”D 89, 43) feels that one should be stringent with this, based on the words of the Issur V’Hetter (40, 8), see the Zair Hashulchan (Y”D 89, Pnei Hashulchan

78) who refutes this. Similarly, even though the Divrei Malkiel (Shu"t vol. 5, 47) opines not to rely on this (for a different reason), Rav Ovadia Yosef (Shu"t Yabia Omer vol. 6, Y"D 7 end 1 and Shu"t Yechaveh Daas vol. 3, 58, in the footnote) disproves his reasoning and concludes that the ikar follows the Rashash on this. Rav Moshe Sternbuch (Shu"t Teshuvos V'Hanhagos vol. 2, 390) and the Yalkut Yosef (IV"H vol. 3, 89, end 46, & 56) also rule this way.

[12]Including the Pri Chadash (Y"D 89, 20), Shulchan Gavoah (ad loc, 8), Ba'er Heitiv (ad loc end 13) and Aruch Hashulchan (ad loc, 8).

[13]Including the Pri Megadim (Y"D 89 S"D 20), Chida (Shiyurei Bracha ad loc 15), Atzei Ha'Olah (Hilchos BB"C 3, 12 & Chukey Chaim 9; he maintains that a fork is actually worse than a cup, as one might use his hands to push the food onto the fork) [Darchei Teshuva (above) implies this way as well], Ben Ish Chai (Year 2, Parshas Shlach 14), and Kaf HaChaim (Y"D 89, 34).

[14]Tur/ Shulchan Aruch Y"D 88, 2; based on Gemara Chullin 104b. See earlier article "Ma'aseh Avos = Halacha L'Ma'aseh".

[15]Aruch Hashulchan (Y"D 88, 6).

[16]Shu"t Maadanei Melachim (77), explaining his reasoning why he wrote to be machmir lchatchila in Maadanei Hashulchan (88, 3). IY"H the halachic issues of "coffee-dipping" will be further explored in a future article.

[17]Rav Y.S. Elyashiv in Ha'aros B'Maseches Chullin (103b s.v. v'asur); Shaarei Shalom (on Piskei HaBen Ish Chai Y"D 88, 1, 1), based on the Maleches Shlomo (in his commentary to Mishnayos Chullin ad loc); similar to the Yad Avraham's (ad loc) shitta, that open containers of milk or meat require extra vigilance due to their propensity to spill. An interesting minority opinion on this is the Badei Hashulchan's (Y"D 88, 6 & Biurim s.v. al), who feels that one must be stringent with this, based on the opinion of the Ran, that the problem is that we are worried that one might even eat whatever is on the table, and rules that it is forbidden to have even a sealed bag of milk on a table while eating meat. However, aside for the fact that the Aruch Hashulchan ruled explicitly like the Rashash, the other machmirim did also, and only said to be stringent lchatchila based on the tendency of an open cup to spill. See also Rabbi Yaakov Scozylas's recent Ohel Yaakov (on Issur V'Hetter pg. 139, footnote 6) who cites Rav Chaim Kanievsky's ruling, that there is no halachic issue with having a meat meal with a sealed bag of milk on the table.

[18]Y"D 89, 1.

[19]Rambam (Hilchos Maachalos Asuros Ch.9, 28). This ruling is also cited by the Tur (Y"D 89, 1). See Taz (Y"D 89, 1) and Pri Megadim (ad loc, M.Z. 89, 1).

[20]Y"D 89, 2.

[21] Including the Pri Toar (Y"D 89, 3), Pri Megadim (ad loc M.Z. 1, lo plug), Pischei Teshuva (ad loc, 1), Shiyurei Bracha (ad loc, 12), Atzei Ha'Olah (Hilchos BB"C 3, 2), Zivchei Tzedek (Y"D 89, 4), Ben Ish Chai (Year 2, Parshas Shlach 19), Yalkut Me'am Loez (Parshas Mishpatim, pg. 890), Shu"t Kapei Aharon (30), Kitzur Shulchan Aruch (46, 9) and Kaf Hachaim (Y"D 89, 4).

[22] Including the Yad Yehuda (Y"D 89, Pih"a 1& Pih"k 3), Aruch Hashulchan (ad loc, 4), and Badei Hashulchan (ad loc 38). See also Maadanei Hashulchan (ad loc 4), who concludes that in a case of need, an Ashkenazi definitely has what to rely upon.

For any questions, comments or for the full Mareh Mekomos / sources, please email the author: [yspitz@ohr.edu](mailto:yspitz@ohr.edu)

Disclaimer: These are just a few basic guidelines and overview of the Halacha discussed in this article. This is by no means a complete comprehensive authoritative guide, but rather a brief summary to raise awareness of the issue. One should not compare similar cases in order to rules in any real case, but should refer his questions to a competent Halachic authority.

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L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel ben R' Yechezkel Shraga, Rav Yaakov Yeshaya ben R' Boruch Yehuda.