

What is the story with Kosher cheese?

The answer to this question will take some time, as there are many misconceptions regarding Kosher and non-Kosher (or non-certified) cheese. In addition, the Kashrut industry controls both the supervision on production and the halakhic literature, thus creating an exorbitant pricing system in which what is considered a “strictly” Kosher cheese, of rather inferior quality, could cost twice or three times as much as a similar “non-supervised” cheese. This creates a considerable economic interest in preserving a state of affairs where “non-supervised” cheese is deemed non-kosher, despite the difficulties it creates for observant Jews (as I have mentioned in other articles, one cannot brush aside the cost factor, since the Talmud stresses in many places that we must not cause people to spend more than what is necessary.)

Let us start from the current situation and then go back to the origins of the Halakha:

We can distinguish between the following levels of Kashrut of cheese, which are listed here in a descending order, starting with what people believe is most Kosher:

- Cheese made of Halav Israel (aka Cholov Yisroel), that is, milk which was milked under Jewish supervision, and was also produced under supervision. As we shall later see, labeling cheese as Cholov Yisroel has an element of misinformation.
- Cheese made of “regular” milk, and supervised “only” during production.
- Cheese without supervision, with vegetable or microbial rennet – this cheese will be allowed according to some opinions.
- Cheese made with commercial or natural animal rennet – surprisingly, this cheese does not contain any non-kosher element, so its status is debatable.
- Cheese which contains pieces of meat (Yes! There is such a thing) – Definitely not kosher.

We will return to this list later, but for now let us start from the Mishna (Avodah Zara, 2:5), which is the first source to mention that one cannot eat cheese made by non-Jews:

שאל רבי ישמעאל את רבי יהושע כִּשְׁהוּ מְהֻלְכִין בְּדָרָה, אָמַר לוֹ: מִפְּנֵי מָה אֶסְרוּ גְבִינֹת הָעֶבְרִים?
 אָמַר לוֹ: מִפְּנֵי שְׂמֵעִמִּידִין אוֹתָהּ בְּקִיבָה שֶׁל גְּבִלָה.
 אָמַר לוֹ: וְהֲלֹא קִיבַת עוֹלָה חֲמוּרָה מְקִיבַת גְּבִלָה, וְאָמְרוּ כֹהֵן שְׂדֵעָתוֹ יָפָה שׁוֹרְפָה חֲזִיהָ?
 חֲזַר אָמַר לוֹ: מִפְּנֵי שְׂמֵעִמִּידִין אוֹתָהּ בְּקִיבַת עֲגָלֵי עֲבוּדָה זָרָה.
 אָמַר לוֹ: אִם כֵּן לָמָּה לֹא אֶסְרוּהָ בְּהִנְבָּאָה?
 הַשִּׂיאוּ לְדָבָר אַחֵר...

Rabbi Ishmael asked Rabbi Joshua while they were traveling: why did the rabbis forbid cheese made by non-Jews?

He answered: because they use rennet from an animal which was not slaughtered properly.

R Ishmael asked: but some priests used to slurp the rennet from the stomach of an animal destined for sacrifice [meaning that if the rennet has a status of food it would have been forbidden, and this proves that it is not food, hence cheese made with it should not be forbidden.]

He answered: Because they use rennet from calves slaughtered for pagan ritual.

R Ishmael asked: if this is the reason, the cheese should have been forbidden not only for eating but also to derive benefit from it [as an item used for idolatry.]

At that point Rabbi Joshua distracted Rabbi Ishmael by bringing up an enigmatic verse from Shir Hashirim.

The Mishna reports, indirectly, that the consumption of cheese made by non-Jews was forbidden by contemporaries of Rabbi Ishmael, who seems to disagree with the prohibition as he tries to get an explanation from Rabbi Joshua. R Joshua first says that it is because of non-Kosher rennet, but R Ishmael proves that rennet is not considered food and therefore cannot be labeled as Kosher or non-Kosher.

R Joshua then claims that it is an idolatry-related prohibition, but R Ishmael points out an obvious incongruence with the laws of forbidden idolatry.

R Joshua realizes that he has no answer and diverts the conversation to a different subject.

In his commentary on the Mishna, Maimonides makes a distinction between using the rennet, which is allowed, and using the cow's stomach itself, which is forbidden, but the Mishna's text remains unclear. It seems that a prohibition was decided on insufficient grounds, and the idea that it was a barrier against mingling with pagans, remains unproven.

The Talmud (Avodah Zara, 35:1-2) struggles to explain the strange behavior of R Joshua, who dodges his colleague's questions. The Talmud argues that the prohibition was created in Israel and that the practice of the rabbis there was not to reveal the reason of a new decree for one year. The rationale was that once people start following the prohibition it would be more difficult to challenge it.

The Talmud¹ then suggests several reasons for the prohibition:

- For the fear that a snake bit the cheese and made it poisonous [this reason was rejected.]

- There might be some milk which has not become cheese, and one cannot consume milk which was milked by a non-Jew without supervision.
- The non-Jews use the stomach itself as rennet.
- The cheese is polished with lard.
- The cheese is made with non-Kosher vinegar.
- The cheese is made with sap from immature trees, which cannot be used until the tree's fifth year.

So many different reasons point to a lack of knowledge as to the real reason of the prohibition. An additional problem is that the Talmud calls the prohibition a decree [גזירה], when as a matter of fact it is mentioned in the Mishnah only in passing as a prohibition. The difference between the two is that a decree is harder to revoke than a prohibition.

The Yerushalmi Talmud, however, presents a much clearer explanation of the Mishnah, and states that the prohibition stems from the use of animals which were offered to idols.

This is then a clear case of a prohibition which depends on a certain condition or concern. Once this condition or concern is gone, so should the prohibition, and that brings us to the second part of the discussion:

There is [Almost] no non-Kosher cheese!

So far, we have seen that already in the time of the Talmud there was lack of clarity regarding the reason of the prohibition against cheese made by non-Jews. The consensus seems to be that the prohibition had to do with some sort of non-Kosher ingredient. That ingredient, according to some opinions, was related to idolatry. If this is the case, then cheese made without those non-Kosher ingredients should be deemed Kosher. As we shall soon see, this was indeed the opinion of leading rabbis in Medieval France, and apparently, there should be no reason not to follow their ruling today.

So what is the argument against using the ingredients of the cheese as the yardstick for its qualification as Kosher?

The answer to this question is at the core of one of the most fundamental debates in Jewish law, a debate whose roots are in the Talmud, but which has crystallized in Medieval times.

Maimonides writes that if a Rabbinic Court [בית דין] created a decree, a regulation, or a practice, and it has become widespread, a future court cannot undo their decision, even if

the reason for said decree, regulation, or practice, no longer exists, unless the later court is greater than the early one in both number of judges and wisdom.²

His harshest critic, Rabi Abraham ben David, cites a case in the Mishnah which shows that Rabban Yohanan Ben Zakkai nullified an earlier decree because the reason for that decree no longer existed, even though his court was not greater than the earlier one.³

Indeed, Maimonides' commentators cannot provide a sufficient explanation to the case Rabbi Abraham Ben David cites. It seems that this rule, as Maimonides presents it, is his own interpretation to a Talmudic rule which originally referred to two contemporary courts. In this case, it would be logical to determine the hierarchy of the courts based on number of members and their expertise. It is much more difficult to apply this rule to consecutive courts, because one would claim that the early courts were closer to the source and therefore more knowledgeable, thus paralyzing Halakha without leaving room for innovation and accommodation for changing reality.

This is, however, a matter for another discussion. What is important to our discussion of kosher cheese is that the prohibition of cheese made by non-Jews does not fall under any of the categories mentioned by Maimonides, since it is not a decree, a regulation, or a practice. It is a prohibition, based on certain conditions, and when these conditions do not exist, the cheese should be Kosher.

This brings us to a discussion by the authors of the Tossafot, the Talmud commentary written by the grandchildren of Rashi and their disciples, on the text quoted previously from tractate Avodah Zara, where the Talmud suggests six reasons for the prohibition. The Tossafot show that there is no reason to declare cheese as non-Kosher other than the presence of non-Kosher ingredients. In that discussion, we find out that there were great scholars who allowed the consumption of cheese, with vegetarian rennet, made by non-Jews.

Because of the importance of the discussion I will present it here in its entirety, with translation and explanation:

תוספות מסכת עבודה זרה, דף לה עמוד א, דיבור המתחיל "חדא קתני":

1. ואומר רבנו תם, כי עכשיו לא מצינו טעם פשוט לאיסור בגבינת העובד כוכבים, דהא טעם האיסור הוא משום ניקור כרבי יהושע בן לוי. דקיימא לן הלכה כרבי יהושע בן לוי אף לגבי ר' יוחנן וכל שכן לגבי שמואל דהא שמואל ור' יוחנן הלכה כר' יוחנן וכן פסק רבנו חננאל וכן בסדר תנאים ואמוראים פסק הלכה כרבי יהושע בן לוי.

2. וגם דברי רב אדא בר אבהו אינם כלום, כיון שאינו אותו רב אדא בר אבהו שהיה תלמידו של רבא שהיה בתראה, שהרי הוזכרו דבריו קודם דברי רב חסדא ורב נחמן בר יצחק, שהיו קדמונים יותר מרבא.

3. וגם דברי רב חסדא ורב נחמן בר יצחק עמדו בקושיה.

4. וליכא למיחש נמי משום עירוב חלב טמא, כדפרישית לעיל שלא כפירוש רש"י שהרי אין העובדי כוכבים שוטים לערב בו חלב טמא מאחר שאינו עומד.
5. אלא ודאי אין הטעם אלא משום נקור, ואנו שאין נחשים מצוין בינינו אין לחוש משום גלוי.
6. ואין לומר דדבר שבמנין הוא וצריך מנין אחר להתיר, כי ודאי הוא כשאסרו תחלה לא אסרו אלא במקום שהנחשים מצויין, כמו שאפרש לקמן גבי יין נסך.
7. וגם בהרבה מקומות יש שאוכלים אותם מפני שמעמידין אותם בפרחים וגם גאוני נרבונא התירו אותם במקומן מטעם שמעמידין אותם בפרחים.
8. מיהו במקומנו שמעמידין בקיבה אומר הרב ר"י בן הר"ר חיים שיש טעם קצת לאסור מפני שמולחין הקיבה בעורה ואיכא איסור, דבשר בחלב דמליח הרי הוא כרותח, ואני ראיתי מקומות שהן מעמידים בנבלת דבר אחר מליח.

1. *Rabbenu Tam says that now we have no logical reason to forbid cheese made by non-Jews, since the reason for the original prohibition was the fear of snake-bites. That reason was presented by Rabbi Yehoshua Ben Levy, and we always rule like him, even if he is challenged by Rabbi Yohanan, even more so when the challenger is Shemuel [who is lesser than Rabbi Yohanan]. Rabbenu Hananel also rules that we follow the opinion of Rabbi Yehoshua ben Levy, and so ruled the author of Seder Tanaim VaAmoraim. [The Tossafot refer to the fear of snakes biting the cheese, which was left out in molds to form, and leaving venom in it. They explain that this must be the reason since it was presented by a Talmudic scholar whose opinion is always the final word. They cite two sources from the Geonic period to support their argument.]*
2. *The opinion of Rav Ada bar Ahava [that the cheese is forbidden because it is polished with lard] does not have any weight, since he did not have the authority to challenge Rabbi Yehushua ben Levy.*
3. *The opinions of Rav Hisda and Rav Nahman bar Yitzhak [that the prohibition is because of the use of non-Kosher vinegar or sap] were also refuted.*
4. *There is no concern that non-Kosher milk was mixed into the cheese [as is the opinion of Rav Hanina] since the non-Jews are not so foolish to do so, as it is well-known that non-Kosher milk does not coagulate. [This comment by the Tossafot should serve as a sharp rebuke to the Kashrut Industry Behemoth which insists on labeling cheese as made from Cholov Yisroel. This labeling is misleading, because it does not apply to cheese. Cholov Yisroel means milk from Kosher animals, milked under Jewish supervision. Supervision was necessary to ensure that non-Kosher milk is not mixed with the Kosher milk, but as we see here, this fear does not exist regarding cheese, so even though it is technically accurate and the cheese was made from supervised milk, it has no added value in terms of Kashrut. It is equivalent to labeling water as fat-free.]*
5. *Obviously, the only reason is the fear of snake-bites, which is not applicable where we live.*
6. *One cannot argue that the original prohibition was voted upon, and therefore would require a new session and voting by a Rabbinical Court, since it is obvious*

- that the original prohibition was limited only to cases where the fear of snake-bites exists, as I will explain further when dealing with the issue of wine [We will also deal with that issue, in due time.]*
7. *Also, in many places people eat [cheese made by non-Jews] because they use rennet made from flowers. The great scholars of Narbonne [Provence, France] ruled that the cheese is kosher for the same reason.*
 8. *In our place [possibly Northern France or Germany], however, Rabbi Y. son of Rabbenu Hayyim says that there is a reason, albeit a weak one, to forbid the cheese, since it is processed with [calves'] stomachs, and this could be a problem of meat and dairy [even though they are both cold, and the prohibition only applies to cooking] because heavy salting is like cooking. I have seen places where they use salted pigs' stomachs.*

There are two conclusions to be drawn from this amazing discussion in the Tossafot, which is in plain sight for all Talmud scholars, Yeshiva students, and Kashrut organizations to see:

- 1) The only serious reason to consider cheese made by non-Jews as non-Kosher is that they used to be exposed during the process and thus susceptible to contamination by snakes;
- 2) If we accept the other opinions in the Talmud, that the prohibition is because of non-Kosher ingredients, once we ascertain that all ingredients are Kosher so is the cheese, and so was the practice in many Jewish communities.

Since the main argument in this discussion is made by Rabbenu Tam, one cannot help but wonder why so many orthodox leaders, who constantly preach to their followers that one cannot “pick and choose” between rabbis or practices, and must adhere to one rabbi on all issues, do not follow their own advice when it comes to this renowned and venerated scholar, Rabbenu Tam.

They wait one extra hour to end the Shabbat, in accordance with Rabbenu Tam, and they encourage people to wear two pairs of Tefillin, to satisfy the demand of Rabbenu Tam, but they would not agree with the same Rabbenu Tam that there “is no logical reason now to forbid cheese made by non-Jews.”

I do hope that the reason they abandoned Rabbenu Tam here is the religious fear of sin and the desire to be strict, rather than financial consideration [try and compare prices, per ounce, of “non-certified”, kosher, and Cholov Yisroel cheese, and you will understand why there might be such a consideration in the 2B\$ Kosher market.] But even if it is this religious fear, it is about time to take care of people’s needs and to have the courage to acknowledge the truth.

Conclusion:

We have seen that the Mishna mentions a prohibition against cheese made by non-Jews, and that the Talmud struggles to find a reason for the prohibition. There is an opinion that the prohibition should be upheld, because Maimonides says that a later court does not have the authority to change the decree of a previous one, even though the reason for the decree is no longer relevant.

To that argument, we answer that:

- This opinion of Maimonides is challenged by the Raavad, Rabbi Abraham ben David.
- Maimonides's statement refers to three specific types of Rabbinical decision, and the prohibition of cheese does not fall under any of them.
- The wide common practice in Medieval France and Germany was to judge Kashrut of cheese by the ingredients. The fact that it was made by non-Jews had no weight, and there was no hesitation to over-rule the ancient prohibition.

One can choose to be "strict" and to avoid "non-supervised" cheese, or one could choose to rely on the Raavad, Rabbenu Tam, and the Great Scholars of Narbonne, as well as common sense, and determine the Kashrut of cheese by its ingredients [with more caution when dealing with artisanal cheese and small dairy farms].

According to the second approach, all cheeses made with vegetarian rennet are kosher. Animal based rennet which underwent the standard industrial process has lost its status as food and cheese made with it is also kosher, as we have seen in Maimonides' commentary on the Mishna.

One is also allowed to purchase cheese marked as Kosher, or Cholov Yisroel, although the labeling, as previously explained, is somewhat misleading.

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¹ תלמוד בבלי, מסכת עבודה זרה, לה:א-ב: רבי שמעון בן פזי אמר רבי יהושע בן לוי: משום ניקור. ולימא ליה: משום ניקור! כדעולא, דאמר עולא: כי גזרי גזירתא במערבא, לא מגלו טעמא עד תריסר ירחי שתא, דלמא איכא איניש דלא סבירא ליה ואתי לזלזולי בה... א"ר חנינא: לפי שאי אפשר לה בלא צחצוחי חלב, ושמואל אמר: מפני שמעמידין אותה בעור קיבת נבילה... רב מלכיא משמיה דרב אדא בר אהבה אמר: מפני שמחליקין פניה בשומן חזיר. רב חסדא אמר: מפני שמעמידין אותה בחומץ. רב נחמן בר יצחק אמר: מפני שמעמידין אותה בשרף הערלה.

רמב"ם, הלכות ממרים, פרק ב, הלכה ב: בית דין שגזרו גזרה או תקנו תקנה והנהיגו מנהג, ופשט הדבר בכל ישראל, ועמד² אחריהם בית דין אחר ובקש לבטל דברים הראשונים ולעקור אותה התקנה ואותה הגזרה ואותו המנהג, אינו יכול עד שיהיה גדול מן הראשונים בחכמה ובמנין. היה גדול בחכמה אבל לא במנין, במנין אבל לא בחכמה, אינו יכול לבטל את דבריו. אפילו בטל הטעם שבגללו גזרו הראשונים או התקינו אין האחרונים יכולין לבטל עד שיהיו גדולים מהם, והיאך יהיו גדולים מהם במנין? הואיל וכל בית דין ובית דין של שבעים ואחד הוא, זה מנין חכמי הדור שהסכימו וקבלו הדבר שאמרו בית דין הגדול ולא חלקו בו. השגת הראב"ד, שם: יהיה גדול בחכמה וכו'. אמר אברהם, עיטור שוקי ירושלים בפירות קשיא עליה שהראשונים תקנוהו, ור'³ יוחנן בן זכאי ביטלה אחר חרבן מפני שנתבטל הטעם לראשונים, ולא היה גדול כראשונים.