

Survey of Recent Halakhic Periodical Literature

THE MILK CONTRETEMPS

This past August a watchful supervisor of kosher milk production became aware of the fact that a surgical procedure had been performed upon the abdomen of a number of cows. He had valid reason to fear that the procedure might render the animal a *treifah*, i.e., an animal whose meat may not be eaten because it has sustained the perforation of one of the organs whose congenital absence, excision or perforation gives rise to such status.¹ Jewish law forbids not only eating the meat of such an animal but also prohibits the consumption of milk produced by the animal as well. Acting in a highly responsible manner, the Rabbinat of K'hal Adath Jeshurun of Washington Heights, acting upon the initiative of its distinguished *Dayyan*, Rabbi Chaim Kohn, issued a “*kashrut* alert” on August 16th directing establishments under its supervision to refrain from producing or selling any milk product “pending further clarification.” On August 18th it announced that all milk products under its supervision may be used. One day earlier, on August 17th, Rabbi Raphael Blum, the *Kashuer Rav*, of Bedford Hills, New York, issued a letter addressed to the members of his community in which he ruled that all earlier purchased milk products must be regarded as non-kosher and that all dairy utensils must be *kashered*. On that very day the Central Rabbinical Congress of the U.S.A. and Canada convened an extraordinary meeting of its members and following extensive deliberations issued a statement declaring all supervised milk products to be acceptable. On the basis of statements subsequently issued by a number of rabbinic supervisors, including New Square Kosher Certification, it is apparent that dairy cows upon whom this surgical procedure has been performed have been removed from herds whose milk are under such supervision.²

I. LEFT DISPLACED ABOMASUM AND ITS TREATMENT

The primary cause of the problem requiring surgical intervention for its correction is apparently the diet provided dairy cows in order to increase the cows' production of milk.³ Housing cows in short stalls may be an aggravating factor since cows confined in such stalls may experience diffi-

culty in rising to their feet. Struggling to rise may cause a malposition of an already dilated abomasum. The problem appears to be virtually non-existent in countries such as Australia and New Zealand where cattle are not normally fed grain but are simply allowed to graze in unconfined pastures.⁴ The high carbohydrate diet provided in this country, or perhaps the accompanying reduction in consumption of grass, results in a high concentration of unabsorbed free fatty acids which decrease motility of the smooth muscle of the cow's fourth stomach, the *keivah* or abomasum. As motility decreases, gas formation is increased by the liberation of carbon dioxide from the reaction between rumen bicarbonate and abomasal hydrochloric acid. As a result the abomasum becomes filled with gas. The abomasum normally lies to the right of the ventral midline along the abdominal wall. When distended by gas, the abomasum may become displaced and move to the left flank between the rumen and the body wall. As the distorted abomasum rises and moves out of place it may also become twisted at the point of connection of the abomasum to the intestine. In both its rising and twisting the abomasum behaves in a manner similar to a balloon filled with air. This twisting of the abomasum interferes with the free flow of the contents of the abomasum into the duodenum and the intestines. If the condition is not treated, the cow will stop eating and its milk production will decline drastically or it will suffer torsion displacement of the abomasum and die. Corrective treatment of this condition consists of anchoring the abomasum in its proper place.

Left displaced abomasum (LDA), as the condition is known, was first recognized in 1950. Since then the diagnosis has been made with increasing frequency. Professionals in the field report that it is their impression that surgical correction of LDA has become much more common in recent years.⁵ It is thus not entirely surprising that rabbinic authorities remained unaware until recently of what has now become a relatively high incidence of surgical treatment to correct this condition that causes the animal to become a *treifah*. The incidence of LDA is the subject of a recent study by Dr. Steven Eicker of Cornell University's New York State College of Veterinary Medicine in Ithaca, New York. His study of some 13,000 cows on 26 farms in New York State⁶ shows a variation between farms in the occurrence of left displaced abomasum of between five and fifteen percent.⁷ The mean for the farms surveyed is between seven and eight percent. None of the farms surveyed showed a prevalence of less than five percent.⁸

LDA is treated in a variety of different ways:

1. Drug Treatment: An increase in gastrointestinal motility may

increase the tone of the abomasum and thereby cause gas to be expelled with a result that the abomasum returns to its normal position. Calcium solutions, neostigmine and saline cathartics have been used for this purpose. This treatment is frequently unsuccessful and, even when the abomasum does return to its normal position, there is a high incidence of recurrence.

2. Rolling and Manipulation: LDA can sometimes be corrected by massage and external manipulation of the affected organ. In this non-invasive procedure the cow is turned on its back and rolled vigorously. If the procedure is successful, the accumulated gas will cause the abomasum to "rise" to what is now the top of the animal lying in a prone position, but which is the ventral side of the abdominal cavity when the animal is standing. As a result, the connection of the abomasum to the intestine will become untwisted and the trapped gas will escape through the intestines and the abomasum, no longer distended, will remain in its normal position. This procedure, since it is non-invasive, presents no halakhic complication but, unfortunately, relapse occurs rather frequently.

3. Omentopexy: An incision of 6-8 inches through the muscle tissue is made in the right side of the animal between the thirteenth rib and the hip exposing the abomasum and the omentum (fat having the halakhic status of forbidden *helev*) surrounding the abomasum. This procedure is known as a right flank laparotomy. The abomasum is then physically pushed back into its normal position. To prevent relapse, a fold of omentum is tucked into the incision and sutured together with the muscle when the incision is closed. This serves to create tautness that, in turn, serves to anchor the abomasum in place.

Typically, the abomasum is distended to a degree that makes it impossible to manipulate it back to its proper place by means of an incision of this nature. Therefore, in virtually all cases in which omentopexy is performed, the abomasum is deflated by puncturing it with a needle inverted at an angle through the abdominal wall and the accumulated gas is released. Puncture of the abdominal wall presents a halakhic problem in that it would appear that such a procedure renders the animal a *treifah*.

4. Abomasopexy: A paramedian laparotomy, i.e., an incision in the underside of the animal above the navel and several inches right of center, is made in order to pull the abomasum into its normal location near the site of the incision. In this procedure, the wall of the abomasum is incorporated in the closure of the abdominal wall. Normally, the sutures pass through only the outer layer of the abomasum and do not penetrate to the lumen, or cavity, of the abomasum. Thus, this procedure should not render the animal a *treifah*. Nevertheless, this procedure

may also be accompanied by decompression of the abomasum by means of a needle puncture thereby giving rise to the same problem presented by omentopexy. Although decompression is rarely necessary in order to assure a successful outcome of abomasopexy, it may be performed for the comfort of the animal or the convenience of the surgeon.

5. Ventral Closed Suturing Technique (Blind Tack). No incision is made in the abdomen. The animal is laid on its back and its abomasum is manipulated into place. The abomasum is blindly sutured to the abdominal wall by means of a staple-like bar suture or a toggle button. Both the bar suture and the toggle penetrate the cavity of the abomasum thereby rendering the animal a *treifah*.⁹

Which of these procedures will actually be employed will depend upon a variety of factors, including the severity of the condition, assessments of the chance of recurrence, the relative cost of the various procedures as well as the preference and skill of the veterinary surgeon.

Care must be taken to distinguish LDA from a condition that has received significant attention in halakhic literature over a period of almost five hundred years. That condition was first described in a gloss appended to *Tur Shulhan Arukh, Yoreh De'ah* 48:2, in the Venice 5282 edition of that work. The malady described in that source is depicted as arising when "the ox fills its *keres* (rumen) with vegetables." This condition, known as bloat, affects the rumen, the first of the cow's four stomachs, and results from eating excessive quantities of grass. Excessive quantities of grass lead to bloat of the rumen while consumption of excessive carbohydrates leads to displacement of the abomasum. The remedy for bloat of the rumen has been known for hundreds of years, *viz.*, puncture of that organ by any sharp implement. The halakhic ramifications of the procedure have also been discussed by numerous authorities, including R. Judah Asad, *Teshuvot Maharya, Yoreh De'ah*, no. 60, R. Abraham Danzig, *Binat Adam, Sha'ar Issur ve-Heter*, no. 26; R. Joseph Saul Nathanson, *Sho'el u-Meshiv, Mahadura Kamma*, III, no. 81; R. Shalom Mordecai Schwadron, *Da'at Torah, Yoreh De'ah*, 48:3; R. Yechiel Michel Epstein, *Arukh ha-Shulhan, Yoreh De'ah* 48:7-14; and R. David Zvi Hoffmann, *Melamed le-Ho'il*, II, no. 9. *Melamed le-Ho'il* describes that procedure as one that was commonly performed in Germany.

II. APPLICABILITY OF KOL DE-PARISH

An inquiry submitted to the late R. Moses Feinstein over forty years ago, in 1952, by Rabbi Elimelech Schwartz of Kansas City concerns "animals that the doctors puncture between the ribs to remove gas." In

light of the widespread employment of this veterinary procedure, Rabbi Schwartz questions the reliability of *kashrut* certification of meat purveyed as kosher. In his response, published in *Iggerot Mosheh, Yoreh De'ah*, I, no. 20, Rabbi Feinstein takes it for granted that the procedure in question involves perforation of the *keres*, i.e., the rumen.

There is a controversy both in the Gemara, *Hullin* 50b, and among the early decisors with regard to the status of an animal whose *keres* has sustained a trauma of this nature. *Shulhan Arukh, Yoreh De'ah* 48:2, rules that the animal is a *treifah*.¹⁰ However, perforation of the *keivah* renders the animal a *treifah* according to all authorities. Statistically, the incidence of bloat is far less prevalent than that of LDA. The halakhic problems occasioned by procedures to correct each of these conditions are identical although, for some authorities, the resolution of those problems is somewhat different.

With regard to the question addressed to Rabbi Feinstein concerning the permissibility of meat slaughtered as kosher, *Iggerot Mosheh* explains that animals brought to market are permissible on the basis of the principle *kol de-parish me-rubba parish* and carefully delineates the parameters of that principle. The principle is applicable to situations in which both permitted and prohibited entities are known to exist but in which the prohibited entities are neither discernible nor known to be commingled with permitted entities. Put simply, the principle establishes that, if the majority of the entities are members of a permitted class and one of the entities becomes separated from the larger group, the separated entity is presumed to be one of the permitted majority rather than one of the prohibited minority. Quite apart from the question at hand, it is precisely that principle which must be relied upon in eating any animal product. Although the majority of animals (that are members of permitted species) are kosher, a significant minority are *treifot*. Since, with the exception of the lungs, there is no obligation to examine the animal's organs for possible *treifot*, and it is indeed impossible to examine a properly slaughtered animal for all possible forms of *treifot*, permissibility of the animal's meat rests upon the principle of *kol de-parish me-rubba parish*. Since none of the internal organs can be examined while the animal is yet alive, it is obvious that the permissibility of milk is also predicated upon this principle. Thus, the mere knowledge that the procedure in question is performed upon a minority of cattle presents no inherent halakhic problem; indeed, acknowledgment that a significant minority of animals are *treifot* is an accepted principle of Halakhah. Thus, under usual circumstances, milk is unquestionably permissible on the basis of the principle *kol de-parish me-rubba parish*.

It should not be thought that reliance upon *kol de-parish* is tantamount to acceptance of a leniency of some sort or that abjurance of such reliance constitutes a form of meritorious pietism. R. Moses Sofer, *Teshuvot Hatam Sofer, Orach Hayyim*, no. 83, s.v. *u-mihu*, observes that one who acts in accordance with this principle and then subsequently discovers that he has consumed meat of a non-kosher animal has committed no transgression whatsoever and requires no atonement “for He who commanded and admonished with regard to the *treifah* is the One who commanded us to rely upon the majority.”¹¹ Rather, one who declines to be governed by the principle of *kol de-parish* demonstrates himself to be theologically suspect.¹² The principle of *kol de-parish*, in its basic formulation, applies in situations in which both permitted and prohibited entities are known to be in existence but there is no knowledge that they have become commingled in a single recognizable group. The problem becomes more complex in situations in which it is known that a non-kosher entity has become commingled with kosher entities, e.g., it is known that a non-kosher animal is actually present within a specific herd. Under such circumstances each animal is prohibited as a *safek treifah*, i.e., as doubtfully kosher.

Nevertheless, even in such situations, most authorities maintain that any animal that becomes separated from the herd is permissible on the theory that the principle of *kol de-parish* establishes a presumption that the origin of the separated entity is from among the majority of entities within the larger group. Similarly, those authorities maintain that if a gentile separates an animal from the herd it is permissible on the basis of *kol de-parish*. *Tosafot, Sanhedrin* 80a and *Zevahim* 70b, rule that it is even permissible for a Jew to cause animals to become separated from the herd individually in order to acquire the status of permitted animals by virtue of *kol de-parish*. However, *Shulhan Arukh, Yoreh De'ah* 110:6, follows the opinion of those who maintain that such a procedure is prohibited by rabbinic edict lest the individual err and remove the animal directly from the herd. In the latter case, the animal is forbidden since *kol de-parish me-rubba parish* is not applicable so long as the animals remain *in situ*. Rosh, cited by *Tur, Yoreh De'ah* 110, and apparently followed by *Shakh, Yoreh De'ah* 110:36, maintains that, once the presence of a *treifah* within the herd becomes known, all the animals are prohibited and the principle of *kol de-parish me-rubba parish* does not serve to confer status as a kosher animal upon an animal that became separated from the herd. However, even according to that opinion, animals acquired prior to discovery of the fact that there was a *treifah* in the herd remain permissible.¹³

The halakhic issues affecting the *kashrut* of the milk posed by procedures utilized to correct LDA are analyzed by R. Shalom J. Gross in a relatively short but incisive discussion and in a wider ranging survey by R. Menasheh Klein. Both discussions appear in *Der Allgemeiner Journal*, September 2, 1994, pp. 20-21. A brief item authored by R. Shlomoh ha-Kohen Gross appears in the Tishri 5755 issue of *Ha-Pardes*.

Rabbi Shalom Gross carefully shows why the present situation regarding the *kashrut* of milk is halakhically different from the question of the *kashrut* of the meat of slaughtered animals as explicated by *Iggerot Mosheh*. One highly significant difference is not noted by Rabbi Gross, *viz.*, the percent of beef cattle upon whom decompression of the rumen is performed in order to relieve bloat is far lower than the percent of dairy cows suffering from LDA. Indeed, even the incidence of LDA in beef cattle is believed to be far lower than among dairy cows. However, that factor, in itself, is of no consequence whereas the differences noted by Rabbi Gross are themselves halakhically dispositive. Following the position of Rosh and *Shakh*, *Iggerot Mosheh* pointedly comments that, when it is known that a particular cattleman is in possession of an animal that has been rendered a *treifah* as a result of a procedure of this nature, none of his animals may be purchased for kosher slaughter. Thus, the principle of *kol de-parish* does not at all apply in the case of milk acquired from a dairy farm in which even a single animal has been rendered a *treifah* in this manner. Moreover, declares *Iggerot Mosheh*, the non-Jewish seller has no credibility to represent any of his animals as free from that defect unless the existence of the *treifah* is known only through the owner's own admission or, alternatively, information establishing that a particular animal is free from the defect is disclosed by the seller in the course of casual conversation in a manner not designed to convey such information to the purchaser for any significant purpose (*mesiah le-fi tumo*). Since many farmers customarily retain written or computerized records of all veterinary procedures performed upon dairy cows,¹⁴ whether or not such a procedure has been performed upon any of the farm's cows may be readily determinable.¹⁵ It is clearly mandatory to seek such information in order to become aware of problems of *treifot* when such information is available. In point of fact, when such a treatment has been performed, evidence of the incision can usually be seen by the naked eye unless a midline incision has been made, in which case it may not be readily visible after a period of approximately one year.

Fundamental to an analysis of the relevant halakhic principle is a point passed over in silence by Rabbi Gross, presumably because it is so obvious. The *kashrut* of animals brought to slaughter is predicated upon

kol de-parish, i.e., a halakhic presumption with regard to each animal establishing that it is a member of the major class of kosher animals. That principle is not at all relevant to the status of milk collected from all cows on a farm known to have a *treifah* in its herd and mixed in common utensils. Since some of the milk is definitely non-kosher the only relevant principle is *bittul be-rov*, or “nullification by the majority.” *Bittul be-rov* does not apply antecedently to the non-kosher animal itself both because the non-kosher animal is recognizable and because living creatures are not subject to *bittul* or “nullification.” In practice, in order for *bittul* to occur, the quantity of kosher milk must not only be greater than the non-kosher milk but must be sixty times as great as the quantity of non-kosher milk. Stated somewhat differently, the non-kosher milk cannot exceed 1.63% of the total quantity of the mixture. Rema, *Yoreh De'ah* 81:2, rules that milk produced on a farm is permissible provided there are sixty times more kosher animals than *treifah* animals in the herd maintained on the farm. Absent information to the contrary, it is presumed that, on average, each cow yields an equal quantity of milk.¹⁶

Thus, in the situation under discussion, it must be determined whether the cows subjected to a *treifah*-rendering procedure represent more or less than one sixtieth of all the cows whose milk is commingled in the production process. Since the overall incidence of LDA in dairy cattle in some areas is between five and fifteen percent, it is highly likely that the milk coming from a farm in which surgical procedures to correct LDA are carried out must be regarded as non-kosher, particularly in areas in which the problem is routinely corrected by omentopexy or blind tacking. That, however, is a matter that must be determined with regard to each herd separately.

III. ORGAN PERFORATION AND *TREIFUT*

As has been stated, an animal that has been treated for LDA by a method involving puncture of the abomasum is ostensibly a *treifah*.¹⁷ The Mishnah, *Hullin* 42a, lists perforation of the *keivah* or abomasum, as one of the enumerated *treifot*.¹⁸ This provision of the laws of *treifot* is codified in *Shulhan Arukh*, *Yoreh De'ah* 48:1.

Shulhan Arukh, based upon the discussion of the Gemara, *Hullin* 49b, qualifies this ruling by stating that if the perforation is closed by fat lying upon the *yeter*, the inner or lesser curvature of the abomasum, the animal is kosher, whereas if it is closed by the fat of the *keshet*, or “bow”, i.e., the outer or greater curvature of the abomasum, the animal is not kosher. That provision is in accordance with a rule formulated in

Yoreh De'ah 46:1 providing that, with a number of exceptions, a perforation "closed" by permitted fat adhering to an organ does not render the animal a *treifah* whereas the animal remains a *treifah* despite closure of a perforation by prohibited fat, or *helev*. That qualification, however, is of no significance with regard to the matter under discussion. This principle reflects the consideration that a puncture that does not penetrate the full thickness of the wall of the organ does not render the animal a *treifah*. The fat described as "closing" the wound is depicted as a structure that congenitally adheres to the organ and is tightly attached to it.¹⁹ Therefore, the organ wall is not deemed to have been pierced in its entirety unless the layer of fat adhering to it has been penetrated as well. Once the organ is pierced, a receding overlay or growth of a layer of fat upon the opening cannot correct the defect any more so than does natural sealing of the wound or the growth of scar tissue. Rashi, *Hullin*, 43a, s.v. *eino krum*, carefully explains that a puncture can be "closed" by surrounding tissue only "at the beginning" but not by tissue that grows subsequently.²⁰ As stated by the Gemara, *Hullin* 68b, "a *treifah* animal, once it has been rendered a *treifah*, can never become permissible."²¹ A rather obvious ramification of this principle is that provisions regarding the "closing" of a wound by fat are restricted to situations in which the fat itself has not been pierced.²² The Gemara, *Hullin* 48a, states that an animal that has sustained a puncture that is sealed by adjacent tissue nevertheless becomes a *treifah* when the adjacent tissue is itself punctured. This point is readily grasped from the comments of *Arukh ha-Shulhan*, *Yoreh De'ah* 46:8. R. Mordecai Schwadron, *Da'at Torah*, *Yoreh De'ah* 46:4, in discussing the case of a needle that has penetrated the wall of an organ and has become lodged in fat that seals the hole, states quite explicitly that in circumstances in which there is reason to suspect that a needle "may have pierced through and through" but subsequently became partially withdrawn within the overlay of fat with resultant healing of the punctured portion vacated by the needle, the animal is a *treifah*.²³

It is thus readily apparent that the provisions recorded in *Yoreh De'ah* 46:1 and 48:1 apply solely to situations in which the perforation of the organ originates in the internal portion of the organ, e.g., the animal swallows a needle or other sharp object that penetrates the wall of the organ but fails to puncture the covering layer of fat as well. These provisions have no application in situations involving surgical incision of the organ since, in such cases, the surrounding layer of fat must be incised in order to penetrate the wall of the organ. Moreover, the abomasum is generally decompressed by piercing the area covered by the

keshet,²⁴ or prohibited fat, that does not at all serve as a barrier, i.e., does not serve to “stop” the puncture.²⁵

Another qualification of the general rule regarding perforation of organs rendering an animal a *treifah* is considered by R. Judah Asad, *Teshuvot Maharya, Yoreh De'ah*, no. 60. That discussion is directly relevant to the halakhic analysis of the procedure employed in treating LDA because, in decompressing the abomasum, the puncture is made at an angle such that the internal layer is pierced at a distance of approximately one-half inch from the puncture of the external layer. Angled decompression is the procedure of choice because it serves both to decrease the likelihood of infection and to hasten healing of the wound.

Mahari Asad's interlocutor suggested that oblique penetration of an organ such as the rumen should not render the animal a *treifah*. A puncture that is blocked by flesh, or even by permitted fat, does not render the animal a *treifah* since the hole is regarded as incomplete. Similarly, he argued, an angled puncture leaves tissue covering the hole at every point of penetration; accordingly, at no point does there result a hole that is not blocked. *Mahari Asad* rejects that contention by demonstrating that such an inference is contradicted by statements of *Teshuvot ha-Rashba*. Indeed, *Teshuvot ha-Rashba*, I, no. 383, writes that perforation of the small intestine renders the animal a *treifah* “whether the hole is straight or whether the hole is angled.” Furthermore, argues *Mahari Asad*, the argument is cogent only if the hole in the wall of the organ is made incrementally in a manner such that tissue collapses and “closes” each small punctured segment before the next is made, but does not apply when the entire length of a needle or instrument is allowed to penetrate the entire wall at once and to remain in place until the accumulated gas is removed. Under such circumstances, even an angled puncture is not blocked.²⁶

The identical point was made earlier by *Teshuvot Noda bi-Yehuda, Yoreh De'ah, Mahadura Tinyana*, no. 18, sec. 5. *Noda bi-Yehuda* similarly dismisses peremptorily the contention that an angled puncture does not render an animal a *treifah* with the comment that his interlocutor “has not spoken properly” and that “it is not necessary to rebut a matter that is a nullity.” R. Shlomoh Kluger, *Teshuvot Tuv Ta'am va-Da'at*, II, no. 178, discusses a similar question with regard to the puncture of the stomach of a fowl. *Teshuvot Tuv Ta'am va-Da'at* cites the comments of Rosh, *Hullin* 43a, indicating that the animal is a *treifah* because a puncture makes it possible for partially digested food to invade the abdominal cavity²⁷ and concludes that the same result will occur if the puncture is angled.²⁸ Earlier, in discussing a question

involving a needle found in the wall of a goose's stomach, *Teshuvot Radvaz*, IV, no. 58, states that he would not rely upon the fact that the needle was crooked but employs it only as a *snif*, or additional consideration, in light of other factors that render the animal permissible. This consideration is, however, relied upon by R. Jonathan Eibeschetz, *Kereti u-Peleti*, *Yoreh De'ah* 31:1.²⁹ *Kereti u-Peleti* appears to be unaware of the contradictory authoritative opinion of *Teshuvot ha-Rashba*, as indeed also seems to be the case with regard to the earlier cited authorities who independently reached a conclusion identical to that of Rashba.

It must be emphasized that the fact that an animal whose abomasum has been punctured can, and regularly does, survive more than twelve months is entirely irrelevant. It is indeed true that the Sages did declare that, as a general rule, a *treifah* cannot survive more than twelve months. It is also perfectly clear that our own observations, as well as the observations of rabbinic scholars who lived centuries ago, indicate that this principle, even as a general rule admitting of exceptions, is at variance with empirical reality.³⁰ Nevertheless, as definitively stated by authorities as early as Rambam, *Hilkhot Shehitah* 10:13, and *Teshuvot Rivash*, no. 447, and as recent as *Hazon Ish*, *Yoreh De'ah*, *Hilkhot Treifot* 5:3,³¹ the changed circumstances we observe have no bearing upon determinations of Halakhah. A full discussion of why this is so is beyond the scope of the present endeavor.³²

Survival for a period of twelve months is a significant phenomenon only in the case of a *safek treifah*, e.g., when there is reason to suspect that one of the organs whose perforation renders an animal a *treifah* had been punctured but there is no certain knowledge of that fact. Under those circumstances, survival for a period of twelve months is acceptable as establishing that perforation of the organ did not, in fact, occur. Although other authorities disagree, *Shakh*, *Yoreh De'ah* 57:48, citing *Yam shel Shlomoh*, *Hullin* 3:80, extends this principle to situations in which it is certain that a perforation has been made but there exists an unresolved halakhic controversy with regard to whether a perforation of the nature in question renders the animal a *treifah*. This view serves as the basis of the ruling of *Binat Adam*, *Sha'ar Isur ve-Heter*, no. 26, cited by *Pithei Teshuvah*, *Yoreh De'ah* 48:2, to the effect that an animal that survives twelve months subsequent to puncture of its rumen is kosher.³³ The Gemara, *Hullin* 52b, records a controversy with regard to the particular area of the rumen that must be punctured if the animal is to be considered a *treifah*. As Rashi indicates in his comments, since there is no definitive resolution of that controversy, we treat perforation of any

part of the rumen as a *treifah*. *Binat Adam* asserts that, since the matter is unresolved, perforation of any part of the rumen creates only a state of doubt that is resolved by survival for a twelve month period.³⁴

This issue is totally irrelevant to situations involving puncture of the abomasum. Puncture of any part of the abomasum unquestionably renders the animal a *treifah* according to all authorities and, as Rema, *Yoreh De'ah* 48:18, definitively rules, an animal that has certainly sustained a wound rendering it a *treifah* is prohibited as a *treifah* even if the animal survives more than twelve months.

There does exist one latter-day source that can be cited in support of a permissive view with regard to the entire problem. In sharp contradiction to what has been stated earlier, R. Aaron ha-Levi (Re'ah), in his commentary *Bedek ha-Bayit* on Rashba's *Torat ha-Bayit, Hilkhot Bedikah*, p. 34b, declares that, although the perforation of specified organs renders an animal a *treifah*, nevertheless, with the exception of the lungs and the esophagus, a puncture that is later sealed by a "membrane" (*krum she-alah mahmat makah*) does not render the animal a *treifah*.³⁵ That position is rebutted by Rashba in his *Mishmeret ha-Bayit, ad locum*, and is apparently rejected by virtually all later authorities with the notable exception of Ra'avan as cited by *Torat Hayyim* in the latter's commentary on *Hullin* 43a.³⁶ Although the position of Re'ah is rejected by subsequent authorities, one latter-day authority, R. Menachem Mendel Kargau,³⁷ contends that the rejection of Re'ah's opinion by Rashba and by those who accepted Rashba's view is not categorical. R. Mendel Kargau argues that Re'ah's position is rejected because a "membrane" that grows at the site of a perforation is likely not to be strong in nature and hence may tear; consequently, such a "membrane" is not permanent and does not serve as a proper seal. Accordingly, argues Rabbi Kargau, if the "membrane" is indeed strong and permanent, as evidenced by the fact that the animal has survived for a twelve month period, Rashba would concede that development of a "membrane" of such nature indicates that the animal is not a *treifah*.³⁸ Moreover, argues Rabbi Kargau, since the basic issue with regard to the seal of a puncture by a membrane is the subject of controversy between early-day authorities, *viz.*, Re'ah and Rashba, the position of *Yam shel Shlomoh* and others who maintain that in cases of "doubt" arising from halakhic controversy survival for a twelve-month period is sufficient evidence that the animal is not a *treifah* may be relied upon in order to rule that the animal is kosher.³⁹ Nevertheless, Rabbi Kargau concludes his responsum with a disclaimer stating that he cannot rule leniently "in a matter [with regard to which] I do not have a tradition from my

teachers, nor have I found explicit permissibility in [scholarly] works.” R. Mendel Kargau’s responsum was published in its entirety by R. David Zevi Hoffmann in the latter’s *Melamed le-Ho’il*, II, no. 9. *Melamed le-Ho’il* appends a short comment in which he concludes that “one who relies upon the decision of R. Mendel Kargau, particularly in time of need, is not to be rebuked.”

It must be emphasized that Rabbi Kargau was willing to entertain the possibility of a permissive ruling only in the wake of the cow’s survival for a twelve-month period. However, since survival for that period simply serves to demonstrate that the “membrane” sealing the wound is indeed “strong and permanent,” it might perhaps be argued that with regard to a procedure, such as that of a puncture made in the course of correcting LDA, in which it is known that countless numbers of animals have survived with normal bovine longevity, that phenomenon itself demonstrates that the “membrane” grown by the animal to heal such a wound is indeed “strong and permanent.” Nevertheless, such an argument takes the position of Rabbi Kargau and *Melamed le-Ho’il* beyond their own announced conclusion.⁴⁰ The weight to be given even to *Melamed le-Ho’il*’s explicitly declared opinion, particularly in light of the fact that it is not widely cited, is a matter for determination by individual rabbinic decisors.⁴¹ It is perhaps instructive that the argument formulated by Rabbi Kargau is not advanced in any of the classic responsa discussing relief of bloat by means of decompressing the rumen and Rabbi Kargau’s line of reasoning is ignored in the relatively few recent discussions of treatment of LDA.

IV. RELIANCE UPON *BITTUL* OR NULLIFICATION

In summation, it may be said that, according to the vast majority of rabbinic decisors, if more than approximately 1.63% of the dairy cows in a herd or on all the farms from which milk is collected by a dairy for processing have been treated for LDA in a manner rendering them *treifot*, and assuming that the average milk production of such cows is roughly equal to the average milk production of the rest of the herd, all milk produced by that dairy is forbidden. Similarly, if an animal has been surgically treated for LDA but it is not known whether the treatment employed involved the puncture of the abomasum the animal must be regarded as a *safek treifah*. Such a situation is entirely analogous to the case of the *safek derusah*, i.e., an animal that has been clawed in the thoracic area by a venom-bearing beast but it is unknown whether or not its trachea or esophagus has been affected, that is declared by the Gemara, *Hullin* 43b

and 53a, to be a *safek treifah*. In such situations the animal is no longer regarded as a member of the class of the majority of animals that are kosher.⁴² Accordingly, if more than 1.63% of the animals are *treifot* or *safek treifot* the milk is forbidden. If, however, it is impossible to determine whether the total number of animals treated for LDA exceeds 1.63% but, as is usually the case, the number certainly does not exceed fifty percent of the herd, the milk is permissible.⁴³ However, as explained by *Taz, Yoreh De'ah* 98:6, this rule applies only if it is entirely impossible for any person to make such a determination. Mere inconvenience entailed in making such a determination or inability of an individual or a group of individuals to make such a determination does not render the milk permissible. In practice, the number of animals that have been surgically treated for LDA is readily determinable by visual examination; hence the number of *treifot* or *safek treifot* is indeed determinable. This halakhic provision with regard to doubt concerning the percent of animals rendered *treifot* is, however, applicable with regard to cheese that has been processed some time in the past in situations in which the cows from which the milk was derived can no longer be examined.

To some, it is embarrassing in the extreme that the problem involving a biblical prohibition was discovered in the production of milk under rabbinic supervision. That supervision is designed to avoid the rabbinic transgression involved in drinking the milk of an animal milked by a non-Jew other than in the presence of a Jew lest the milk be adulterated with milk derived from a non-kosher species. *Kashrut* supervisors and supervising agencies acted in good faith since, being unaware of the prevalence of procedures that render cows *treifot*, their supervision was limited to the actual milking process. In the absence of a known defect rendering the animal a *treifah*, they were under no obligation to examine each cow for possible *treifot* but were fully justified in relying upon the principle of *kol de-parish*. Now that it is recognized that there is a strong likelihood of known, easily identified *treifot* within any given herd, one may presume that henceforth such supervision will include proper vigilance with regard to the status of the cows as well and that any cow found to be a *treifah* or *safek treifah* will be culled from the herd.

The incident has, however, highlighted a problem with regard to unsupervised milk. Many have relied upon the opinion of those rabbinic scholars who have ruled that, for purposes of the rabbinic prohibition attendant upon milk milked by a non-Jew, fear of penalties imposed by governmental authorities for adulteration of milk substitutes for the presence of a Jew at the milking of the cow. If, as appears to be the case, the records maintained by most dairymen will readily yield the informa-