

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 nonexistent 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, Orah 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-

tion that more than 1.63% of dairy cows on farms from which such milk is collected have been treated for LDA such milk may well be prohibited for an entirely different reason. A similar problem exists with regard to butter that is generally produced without rabbinic supervision.

The issue that remains to be addressed is whether it is permissible to purchase milk from a farm or dairy when it is known that the milk derived from *treifah* cows is less than 1.63% of the total milk processed at any given time. As recorded in *Shulhan Arukh, Yoreh De'ah* 99:5, milk that is intentionally nullified by a Jewish farmer in such a manner is prohibited to the farmer and to any person on whose behalf he intentionally nullified the non-kosher milk but is permitted to all others.

With regard to a product sold on the open market the issue is somewhat different. In such situations, the question is whether or not it is permissible to consume a product that has been nullified for the benefit of the general public rather than on behalf of a particular consumer. *Teshuvot Rivash*, no. 498, rules that nullification on behalf of the general public is tantamount to nullification for the benefit of the particular consumer and hence the food product is prohibited to all. Rivash's ruling is cited by R. Akiva Eger in his gloss to *Yoreh De'ah* 99:5 and in *Teshuvot R. Akiva Eger*, no. 207, and is the position of *Pri Hadash, Yoreh De'ah* 99:13 as well. This position is in conflict with the view of Maharshal, *Yam shel Shlomoh, Hullin* 7:59 and *Taz* as reflected in the comments of *Taz, Yoreh De'ah* 99:10. R. Yechiel Ya'akov Weinberg, *Seridei Esh*, II, no. 69, cites these conflicting views with the comment, "who can be lenient contrary to Rivash and R. Akiva Eger in a matter with regard to which they were stringent?"⁴⁴

These provisions are limited to situations in which the seller is a Jew. The halakhic issues in situations in which the producer or seller is a non-Jew are more complex. *Teshuvot Radvaz*, III, no. 547, rules that the principle of nullification does not at all apply to food purchased from a non-Jew and apparently bases his position upon two separate considerations: 1) Non-kosher food that has been nullified is permitted only *post factum* because of the financial loss involved. Prospective purchase from a non-Jew, argues Radvaz, cannot be considered a *post factum* situation since refraining from making the purchase will not result in a loss. 2) Were the nullified food product acquired from a non-Jew to be accepted as permissible, the purchaser might err on future occasions and direct a non-Jew to adulterate non-kosher foods on his behalf.⁴⁵ The first consideration is negated by the opinion of *Teshuvot ha-Rashba* as cited by Radvaz who permits the purchase of food cooked by a non-Jew in non-kosher utensils that have not been used for twen-

ty-four hours previously on the ground that such food is always permitted *post factum*. This is also the position of *Taz*, *Yoreh De'ah* 108:4, and Rema, *Yoreh De'ah* 122:6. In opposition to the position of *Teshuvot Radvaz*, Rema, *Yoreh De'ah* 96:4, rules that foods that may questionably contain non-kosher ingredients, but in small quantities so that it is certain that if such ingredients are present nullification has occurred, may be purchased from a non-Jew. Moreover, Rema, *Yoreh De'ah* 114:6, rules that foods in which the non-kosher ingredients have been nullified may be purchased by a Jew. However, those rulings may be limited to situations in which the adulteration was carried out by the non-Jew for his own benefit. Thus Rema, in these rulings, regards nullification even in the jurisdiction of a non-Jew as creating a *post factum* situation. Moreover, *Teshuvot Radvaz*, II, no. 580, contradicts his own earlier cited position in permitting the purchase of nullified *orlah* from a non-Jew. However, elsewhere, Rema, *Yoreh De'ah* 108:1, rules that purchase of a food containing non-kosher ingredients is not regarded as *post factum* and, accordingly, is not permissible unless similar unadulterated food is unavailable.

This controversy is reflected in numerous later sources as well. *Teshuvot Maharam Lublin*, no. 104, explicitly rules that non-kosher food that has been adulterated by a non-Jew may subsequently be purchased by a Jew unless the Jew has explicitly directed the non-Jew to adulterate the non-kosher food. Maharam of Lublin addresses a question involving facts remarkably similar to the problem under discussion. A Jew had contracted with a non-Jewish nobleman to buy butter and cheese produced on the latter's farm. Subsequently, a number of the animals became *treifot* but the milk of those animals, when combined with the milk of other animals on the farm, was less than 1.63% of the total quantity. Maharam of Lublin ruled that, since adulteration took place under the jurisdiction of the non-Jew, the butter and cheese were permissible. Basing himself upon that responsum of Maharam of Lublin, *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 62, goes beyond that ruling in addressing the problem of a Jew whose herd of cattle was attacked by wolves with the result that a number of his cows became *treifot*. *Hatam Sofer* permitted that person to sell his entire herd to a non-Jew and to repurchase the milk that was nullified by the non-Jew.

Numerous additional sources supporting both sides of this dispute are cited by *Darkei Teshuvah* 108:20, *Sedei Hemed*, *Ma'arekhet ha-Kelalim*, *Ma'arekhet ha-Aleph*, sec. 360 and *Sedei Hemed*, *Pe'at ha-Sadeh*, *Kelalim*, *Ma'arekhet ha-Aleph*, sec. 10. *Erekh ha-Shulhan*, no. 115, sec. 7, citing *Teshuvot Tashbaz*, III, no. 10, distinguishes between

purchase from a private party and purchase from a non-Jewish merchant. *Tashbaz* permits the purchase of such foodstuffs from a private party but prohibits such purchase from a merchant. *Tashbaz* asserts that nullification by a merchant who engages in such practices on a regular and ongoing basis cannot be regarded as giving rise to a *post factum* situation.

Even if the permissive view of Maharshal and *Taz* is adopted with regard to non-kosher food nullified by a non-Jew the matter is not entirely resolved since all concede that if a non-Jew is requested to combine kosher and non-kosher food so that the non-kosher food becomes nullified the resultant mixture is forbidden to the Jew.

There are indeed circumstances in which a local rabbi may make inquiries with regard to the *kashrut* of a given product and, upon becoming aware that only a small quantity of a non-kosher ingredient is present in the product, the rabbi, in reliance upon the heretofore cited permissive view, might inform all interested parties that the product is acceptable as kosher. Since the gentile proprietor is not at all interested in, or even aware of, *kashrut* problems that are of concern to potential Jewish customers, the rabbi might even issue a letter or certificate to that effect.

It would, however, be naive in the extreme to assume that all *kashrut* certification, particularly of major brands, is of that nature. Large manufacturers typically solicit *kashrut* endorsement and quite frequently modify their product in order to make it acceptable to the kosher consumer. In soliciting *kashrut* endorsement, and with it a Jewish clientele, the manufacturer, in effect, declares that he intends to manufacture a product for the Jewish market and to nullify non-kosher ingredients on behalf of Jewish customers. Hence, the issue is reduced to the earlier discussed controversy with regard to whether food products adulterated for the benefit of the general public, rather than for a specific individual, may be freely purchased subsequent to nullification.

NOTES

1. See *JTA Daily News Bulletin*, August 25, 1994, p. 4 and *Der Allgemeiner Journal*, August 26, 1994, p. 1, col. 5.
2. Copies of all statements herein cited are in the possession of this writer.
3. Much of the technical information reported herein may be found in Glen F. Hoffsis and Sheila M. McGuirk, "Diseases of the Abomasum and the Intestinal Tract," *Current Veterinary Theory*, J.L. Howard, ed. (Philadelphia, 1986), II, 724-737.

4. See D. C. Blood and O. Radostits, *Veterinary Medicine* (Baltimore, 1989), p. 274.
5. An early survey of the prevalence of LDA in dairy herds conducted some twenty years ago showed that only 24% of herds reported even one case of LDA and a prevalence rate of just 1.16% among the affected herds. See C.E. Coppock, "Displaced Abomasum in Dairy Cattle—Etiological Factors," *Journal of Dairy Science*, vol. 57, no. 8 (August, 1974), pp. 926-933.
6. The dairy farms included in this survey are mostly large farms, primarily in western and central New York. The investigation was retrospective, thereby assuring that no procedures were modified because of participation in the study, and the procedures were in no way related to any experimental or pedagogic endeavor.
7. The figure of 0.4% given by Rabbi Moses D. Tendler, *Der Allgemeiner Journal*, August 26, p. 9, col. 1, represents a conjecture with regard to the incidence of intestinal torsion, a twisting of the intestine rather than of the abomasum. Intestinal torsion is a relatively rare condition that is not a significant source of concern with regard to the *kashrut* of dairy products and is but one of a variety of infrequently performed surgical procedures that may render an animal a *treifah*.
8. Dr. Eicker's study forms part of an unpublished doctoral dissertation. An abstract of preliminary data reported by Dr. Eicker and a group of his colleagues indicate incidence rates of LDA of 10%. See S. W. Eicker *et al.*, "The Incidence of Left Displaced Abomasum Diseases in Large Commercial Dairy Herds in the Northeastern United States," *Journal of Dairy Science*, vol. 76, supplement, (June, 1993), p. 297.
9. A detailed description of these surgical procedures may be found in G. D. Saint Jean *et al.*, "Comparison of the Different Surgical Techniques for Correction of Abomasal Problems," *Compendium on Continuing Education for the Practicing Veterinarian*, vol. 9, no. 11 (November, 1987), pp. 377-382.
10. *Iggerot Mosheh* states that the import of that ruling is that status of the animal is that of a *safek*, or doubtful, *treifah* but that the animal is nevertheless forbidden. Cf., *Pithei Teshuvah*, *Yoreh De'ah* 48:2.
11. See also *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 175, s.v. *ve-'ayein*.
12. This is not the case when a *rei'uta*, or empirically founded reason for suspicion of *treifut* exists. Members of the family of the sainted *Hafetz Hayyim* relate that, as was common in Eastern European villages and small towns, the family owned a cow. At one point, without explanation, the *Hafetz Hayyim* stopped drinking milk from the cow but made no effort to restrain the members of his family from doing so. Some time later, the cow ceased giving milk and was slaughtered. Upon examination, adhesions were found on the cow's lungs and it was ruled to be a *treifah*. Apparently, *Hafetz Hayyim* found reason to suspect that something was amiss but whatever gave rise to his apprehension did not rise to the level of the normative halakhic standards establishing a *safek*.
13. Rabbi Menasheh Klein, *Der Allgemeiner Journal*, September 2, 1994, p. 20, propounds an original thesis in asserting that, whenever there are a number of known *treifot* within a herd, any animal that becomes separated from the herd must be regarded as a *treifah* and hence its milk is also non-

kosher. The *kashrut* of any animal is determined on the basis of *kol de-parish* despite the fact that it is concomitantly presumed that a minority of all animals are *treifot*. This minority is a significant one (*mi'ut ha-mazui*) as evidenced by the halakhic requirement of the examination of the animal's lungs subsequent to slaughter. *Teshuvot Rivash*, no. 193, declares that the minority of all *treifot* is "close to one half." If so, argues Rabbi Klein, the presence of even a small number of known *treifot*, when added to the "close to one half" of the other animals that are also *treifot*, results in a situation in which an actual majority of the animals in the herd are non-kosher. Hence, concludes Rabbi Klein, under such circumstances, the principle of *kol de-parish* operates to establish that any individual animal that becomes separated from the herd is a *treifah*.

Rabbi Klein himself concedes that this line of reasoning is novel. It is certainly evident from the ruling of Rema, *Yoreh De'ah* 81:2, that the principle of *kol de-parish* remains operative if there are at least sixty kosher cows in the herd for each non-kosher cow. More significantly, if taken to its logical conclusion, Rabbi Klein's thesis would yield the conclusion that, whenever a significant number of animals of a given species are known to be *treifot*, no member of that species could be considered to be kosher. The principle of *kol de-parish* is a principle applied to the class of all animals and to all members of a species. If "close to one half" of all animals are presumed to be *treifot*, the addition of a significant quantity of known *treifot* would serve to create a situation in which the majority of all animals or of all members of a species are *treifot*.

It seems to this writer that the halakhic presumption that a significant minority of animals are *treifot* or that, according to *Teshuvot Rivash*, "close to one half" are *treifot*, is a presumption whose formulation takes into account known *treifot* as well as animals regarding whose status no information is available. Thus, in identifying an animal as a *treifah* it has been identified as a member of the minority which totals no more than "close to one half" and hence there is no basis to consider that animal in aggregation to the minority.

14. Rabbi Klein's assertion that such records are a responsibility mandated by government regulation is inaccurate. See *Der Allgemeiner Journal*, September 2, 1994, p. 20, col. 1, s.v. *u-levarer* and s.v. *gam*.
15. The records will not necessarily disclose which of the various available procedures was employed to correct the problem. That information, however, can often be obtained from the veterinarian who performed the procedure and can also be determined by examining the animal to determine the location of the surgical incision. It must be reiterated that omentopexy and blind tacking always cause the animal to become a *treifah* and abomasopexy occasions at least a *safek treifah*.
16. *Shakh*, *Yoreh De'ah* 81:7, rules that if the non-kosher cow is known to produce more milk than any one of the kosher cows, this presumption is rebutted. Under contemporary circumstances, even according to *Shakh*, when production records are maintained for each cow, the calculation of one-sixtieth must be made in terms of the proportion of the milk derived from the non-kosher cow compared with the total yield of all cows in the herd.
17. Each of the various individuals who has written on this topic speaks of a

puncture of the rumen as well. Rabbi Klein, p. 21, col. 3, s.v. *u-me'ata*, cites a report of a veterinarian who was observed to have made "a large hole in the rumen and afterwards he punctured the abomasum." Such reports are undoubtedly inaccurate. None of the measures described in the literature for the correction of LDA involve any procedure performed upon the rumen. Accordingly, discussions by those writers of the *keres* and the fat surrounding the *keres* are entirely irrelevant.

18. A problem also exists in situations in which the veterinarian claims to have corrected the problem by means of a surgical procedure, such as abomasopexy, without decompressing the abomasum. R. Moses Sofer, *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 122, prohibited consumption of stuffed geese that had been punctured under the wing because of a fear that the fowl's lung may have been perforated. There would appear to be similar reason to fear that an abdominal incision might inadvertently lead to perforation of an organ that would render the animal a *treifah*. However, elsewhere, in discussing a situation involving bloodletting in the area of the neck, *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 21, *Hatam Sofer* dismisses such a concern on the grounds that a skilled professional would not err in such a matter. R. Shalom Mordecai Schwadron, *Da'at Torah* 33:30, asserts that *Hatam Sofer* does so only because, in that case, he found other permissive factors upon which to base his ruling. See also, R. Meir Asch, *Teshuvot Imrei Esh, Yoreh De'ah*, no. 24; *Teshuvot Hesed le-Avraham, Yoreh De'ah*, no. 25; *Teshuvot Brit Avraham*, nos. 22 and 23; and *Teshuvot Maharya, Yoreh De'ah*, no. 60. R. Yitzchak Ya'akov Weisz, *Teshuvot Minhag Yitzhak*, IV, no. 57, sec. 12, requires examination of the internal organs in such situations and cites authorities who also stipulate that the animal may be regarded as kosher only if it survives for a period of twelve months.
19. Thus the distinction between the role of permitted fat and forbidden *helev* in closing the puncture is not rooted in considerations of permissibility or prohibition but in the disparate nature and structure of those tissues. Forbidden fat is covered by a membrane that is readily peeled away and does not adhere firmly to the underlying organ whereas permitted fat, by its nature, adheres firmly to the organ and, consequently, the organ is not regarded as having been punctured through and through unless the covering layer of fat is penetrated as well. See *Hullin* 49b and *Aruch ha-Shulhan, Yoreh De'ah* 46:2.
19. *Derishah, Yoreh De'ah* 36:2, explains that tissue that is naturally present serves effectively to close the puncture because it is strong and firm in contradistinction to a "membrane" arising in the course of the healing process that is weaker and hence likely to tear at some time in the future. Cf., *supra*, note 17. A different explanation is advanced by *Shakh, Yoreh De'ah* 36:6, and *Taz, Yoreh De'ah* 36:4, who state simply that the "closing" must be simultaneous with the puncture. *Derishah* also cites another explanation, *viz.*, a hole tightly sealed by adjacent tissue that is already present does not leave the internal portion of the organ exposed and hence, for purposes of *treifut*, is not a "hole." Cf., *Tevu'ot Shor, Yoreh De'ah* 36:14, and *infra*, note 21. Cf. also, *Dagul me-Revavah, Yoreh De'ah* 49:2, who, quoting Ran, *Hullin* 46b, cited *infra*, note 22, asserts that a hole capable of closure by means of fat is not a hole that renders an animal a *treifah*.

21. Cf., *Teshuvot Ne'ot Desha*, no. 127, who asserts that *Tosafot* and other early-day authorities disagree with the thesis expounded by Ran as cited later in this footnote, and analyze the talmudic discussion in *Hullin* 44a in a manner that accepts the notion that *treifut* can be reversed. However, contrary to the suggestion of R. Shlomoh ha-Kohen Gross, *Ha-Pardes, Tishri* 5755, p. 23, *Ne'ot Desha* declares explicitly that, even according to *Tosafot*, the concept of reversible *treifut* is limited to explicitly mentioned *treifut* of the lungs. [According to Maharshah there is a further exception with regard to certain afflictions of the kidney. See *Taz, Yoreh De'ah* 44:13, and *Shakh, Yoreh De'ah* 44:15.] *Ne'ot Desha* further declares that it is impossible for us to adjudicate between the conflicting views of *Tosafot* and Ran.

The suggestion that *treifut* arising from a perforation is reversible was advanced by R. Israel Belsky in an article published in *Ha-Metivta*, Sivan 5747, long before recognition of a problem regarding the *kashrut* of milk in light of the prevalence of LDA. The evidence adduced by Rabbi Belsky in support of that thesis on the basis of terminology employed by Rashi and *Shakh* indicating that closure of a perforation by a membrane does not assure the *kashrut* of the animal because the membrane itself may become torn is not at all dispositive. The underlying principle is that a trauma causing damage that is correctable does not at all render the animal a *treifah*, i.e., the animal does not return to a permissible status subsequent to correction of the damage but is judged *ab initio* not to have been a *treifah*. Thus, the import of Rashi's statement is simply that, were an animal to develop a strong, permanent seal, growth of such a seal would reveal that the animal was never a *treifah*; but, since every membrane grown to seal a puncture will eventually become perforated, every animal suffering such a puncture is a *treifah*. See Ran, *Hullin* 46b; *Taz, Yoreh De'ah* 44:13; *Dagul me-Revayah* 49:2; and *Teshuvot Ne'ot Desha*, no. 127. The principle that "once a *treifah*, always a *treifah*" is expressly formulated by Rashba, *Hullin* 44a. Rabbi Belsky's contention that this thesis is formulated by Rashba only in elucidation of a question posed by the Gemara but is abandoned in the Gemara's resolution of that difficulty is rebutted by citation of Rashba's statement as a normative principle by *Pri Megadim, Mishbezot Zahav* 36:3. See also, *Pri Megadim, Mishbezot Zahav* 33:4, cited later in this footnote. Moreover, Rashba himself, in his *Mishmeret ha-Bayit, Hilkhhot Bedikah*, p. 35a, explicitly affirms this principle as a normative rule pertaining to all *treifot*, including those resulting from perforation of internal organs as does Ran, *Hullin* 46b. Indeed, *Rashba, Mishmeret ha-Bayit, loc. cit.*, explicitly explains that the principle "once a *treifah*, always a *treifah*" is elucidated and affirmed by the Gemara in its concluding statement. Even more significant is the fact that elsewhere, *Hullin* 68b, the Gemara declares unequivocally "a *treifah* animal, once it has been rendered a *treifah*, can never be permissible."

As has already been noted, the Gemara, in its concluding statement, *Hullin* 44a, must be understood as affirming the principle "once a *treifah*, always a *treifah*" at the same time that it affirms the rule that an animal whose lung has been perforated cannot be regarded as kosher unless the perforation becomes encased in muscle tissue. The problem presented by

the fact that the perforated lung is not immediately sealed by muscle tissue but remains exposed until the muscle grows around the perforation is readily resolved on the basis of the thesis developed by Ran, *Hullin* 46b, viz., a perforation destined to be sealed is not a perforation that renders an animal a *treifah*. It is for this reason that *Tevu'ot Shor*, *Yoreh De'ah* 36:14, finds *Derishah's* analysis of "a closure from the beginning" (*setimah me-'ikara*) to be correct and that of *Shakh* to be superfluous. See *supra*, note 20. Rashba, *Mishmeret ha-Bayit*, *Hilkhos Bedikah* 34a, disagrees with Rashi's contention that all adhesions of the lung arise at the site of a perforation and hence has no basis for accepting Ran's thesis that perforations destined to be healed do not render an animal a *treifah* since that thesis was developed by Ran for the specific purpose of explaining why certain adhesions do not render the animal a *treifah*. Accordingly, *Mishmeret ha-Bayit* explains that, although the rule is that a perforation of the lung renders the animal a *treifah* unless the site of a perforation subsequently becomes encased in muscle tissue, it is not *subsequent* "closure" by muscle tissue that serves as a corrective but *immediate* closure by the rib cage itself. Subsequent enclosure by muscle tissue is simply evidence that the original "closure" by the rib cage was a strong, solid closure that will not subsequently open or loosen. As cited *supra*, note 19, *Shakh* and *Taz*, who define *setimah me-'ikara* as simultaneous sealing of the perforation, must be understood as explaining that concept in accordance with the view of *Mishmeret ha-Bayit* rather than in accordance with the thesis of Ran. Cf. *Pri Megadim*, *Mishbezot Zahav* 36:3. [The position of Re'ah, *Bedek ha-Bayit*, *Hilkhos Bedikah*, p. 34b, in ruling that a perforation of an organ other than the lung or the esophagus that is subsequently sealed by a "membrane" does not render the animal a *treifah* must be understood in accordance with the earlier-cited thesis of Ran. See *Even Shlomoh*, *Sefer Ra'avan*, sec. 126. Re'ah also follows Rashi in stating that an adhesion of the lung is indicative of a previous perforation. That position entails acceptance of Ran's thesis. Thus Re'ah's position in this matter is entirely consistent.] The alternative explanation cited by *Derishah*, i.e., that *treifut* occurs when an organ is exposed by means of a puncture and therefore there is no *treifut* when the perforation is simultaneously sealed, leaves a problem with regard to a perforation of the lung that is subsequently sealed, by encasement in muscle tissue, viz., a puncture of that nature does leave the organ exposed for a time and hence the animal should remain a *treifah*.

As earlier noted, *Teshuvot Ne'ot Desha*, no. 127, declares that an animal remains a *treifah* despite the fact that the puncture has healed because the tissue sealing the perforation is also "in the category of a membrane arising from a wound." Noteworthy are the remarks of *Pri Megadim*, *Mishbezot Zahav* 33:4, who suggests that, although a *treifah* is not expected to survive for more than a twelve month period, nevertheless if a perforation is sealed by "a membrane arising from a wound" the animal may indeed survive for "a thousand years" and yet the animal remains a *treifah*. The identical point is made by *Nahal Eshkol*, *Hilkhos Treifut*, no. 17, p. 14, sec. 2. Cf. *Teshuvot Ketav Sofer*, *Yoreh De'ah*, no. 20, sec. 9 and *Da'at Torah*, introduction to *Hilkhos Treifot*, sec. 20.

The foregoing notwithstanding, one authority, R. Raphael ha-Kohen

- Hamburger, *Torat Yekuti'el*, *Yoreh De'ah* 44:6, does deny the principle that the status of an animal that has become a *treifah* is irreversible and endeavors to interpret the opinion of earlier authorities in a manner consistent with that view. See *infra*, note 35. Rabbi Belsky's discussion effectively parallels that of *Torat Yekuti'el*.
22. This point is in no way contradicted by the comments of Ran, *Hullin* 46b, or by the comments of *Dagul me-Revavah*, *Yoreh De'ah* 49:2, who explain that, according to Rashi, certain types of perforations of the lung do not render the animal a *treifah* if they are subsequently closed by adhesions. In those cases, as Ran carefully explains, the puncture is defined as a hole that does not generate *treifut* and is not at all comparable to the case of a hole that has penetrated both the organ and covering fat that does indeed render the animal a *treifah*. Nor is this point contradicted by the position of the authorities cited by *Avnei Nezer*, *Yoreh De'ah*, no. 25, who maintain that a hole sealed by the tissue of another organ does not render the animal a *treifah*. In that case, the tissue that seals the hole is treated as part of the organ itself. Hence, since that tissue was never pierced, the animal, according to these authorities, is not deemed to be a *treifah*.
 23. See also the comment of *Mishmeret ha-Bayit*, *Hilkhot Bedikah*, p. 35a.
 24. See also Rambam's definition of *yeter*, *Hilkhot Ma'akhlot Asurot* 7:6 and cf., *Arukh ha-Shulhan*, *Yoreh De'ah* 48:2.
 25. Cf., however, *Teshuvot Maharya*, *Yoreh De'ah*, no. 60, s.v., *ve-'od*, who notes that whether or not prohibited fat can "stop" a puncture is a matter of controversy between Rav and R. Sheshet as recorded by the Gemara, *Hullin* 49b. Accordingly, he tentatively suggests that the ruling declaring such fat not capable of sealing a puncture may not be absolute but reflective of an inability to resolve this controversy. If so, survival for a period of twelve months may suffice to render the animal permissible. See *Yam shel Shlomoh*, *Hullin* 3:80. However, *Teshuvot Maharya*, *loc. cit.*, s.v. *aval*, concludes that *Shulhan Arukh's* ruling stating that forbidden fat cannot seal a puncture is dispositive and hence survival for a twelve-month period is irrelevant. See also the responsum of R. Mendel Kargau published in *Melamed le-Ho'il*, II, no. 9, in which he states that survival for a period of twelve months does not serve to resolve a matter of doubt arising from a controversy recorded in the Gemara.
 26. In piercing the abomasum, even if the needle is tunneled in order to pierce the various layers at different points in order to facilitate healing, the holes must be aligned in order to allow the accumulated gas to escape. Thus, the animal whose abomasum has been punctured in this manner is a *treifah*.
 27. See also *Tosafot Hullin* 50b, s.v. *mahat*; cf., however, Rema, *Yoreh De'ah* 47:5 and *Da'at Torah*, *Yoreh De'ah* 46:1.
 28. Cf. *Da'at Torah*, *Yoreh De'ah* 48:4, who relies upon this line of reasoning when the puncture occurs in the very top portion of the organ and the animal survives for a period of twelve months.
 29. See also the citation of *Hagahot Minhag Aharon* 31:1.
 30. Cf., however, *Teshuvot Ne'ot Desha*, no. 127, and *Da'at Torah*, *Yoreh De'ah*, introduction to *Hilkhot Treifot*, sec. 19.
 31. *Hazon Ish's* position is that halakhic provisions of this nature reflect empirical positions prevalent in the historical epoch in which the Torah was

given. Since, according to *Hazon Ish*, certain *treifot* may be presumed to survive as a matter of course, the question of reliance upon survival for twelve months in cases of doubtful trauma as evidence that a *treifah*-rendering wound did not in fact occur would seem to require re-examination. Cf., *Pri Megadim*, *Mishbezot Zahav* 33:4 and *Nahal Eshkol*, cited *supra*, note 21. This point has apparently not been raised by contemporary rabbinic scholars.

32. See J. David Bleich, "On the Immutability of Torah," *Viewpoints on Science and Judaism*, ed. Tina Levitan (New York 1978), pp. 19-22.

33. Cf. also, *Arukh ha-Shulhan*, *Yoreh De'ah* 48:7-14.

34. The contention that an animal that survives for a period of even several days subsequent to puncture of the rumen is kosher is entirely groundless. The argument is that the hole in the rumen must have been sealed by permitted fat; otherwise the contents of the rumen would have leaked into the abdominal cavity with the result that the animal would contract peritonitis and die. See *Der Allgemeiner Journal*, August 26, p. 9, col. 1. Recognition of the principle that the sealing of a perforation after it has occurred does not reverse the animal's status as a *treifah* renders this argument a *non sequitur*. The animal does not contract peritonitis for the simple reason that the puncture of the rumen and its surrounding fat seals rapidly. But once the puncture has penetrated both the wall of the rumen and the fat surrounding it the animal is a *treifah*, provided that the puncture occurs at a site on the rumen that renders the animal a *treifah*. See *supra*, note 21.

Moreover, *Binat Adam's* reliance upon survival for a twelve-month period in order to confirm the status of the animal as permissible is challenged by *Nahal Eshkol*, cited *supra*, note 21, on the grounds that an animal suffering a puncture that is subsequently sealed by a "membrane" may survive for an indefinite period and yet remain a *treifah*.

35. In explaining this provision, *Shakh*, *Yoreh De'ah* 36:6, unequivocally emphasizes that even a strong and durable seal (*setimah me'alyuta*) is ineffective in negating the animal's status as a *treifah*. Rashi, *Yevamot* 76a, s.v. *le-mi'utei*, and numerous other authorities state that a "membrane" that seals a puncture will eventually tear. That principle is regarded as an irrebuttable halakhic presumption. See *Pri Megadim*, *Mishbezot Zahav* 33:4, cited *supra*, note 21. *Torat Yekuti'el*, *Yoreh De'ah* 44:6, is the only authority who asserts that a *setimah me'alyuta* serves to reverse an animal's status as a *treifah*. According to *Torat Yekuti'el*, only an animal that actually does develop a *setimah me'alyuta* is permissible. Although he devotes great effort in striving to reinterpret numerous statements of early-day authorities in a manner that does not contradict his thesis, *Torat Yekuti'el* freely concedes that *Shakh*, *Yoreh De'ah* 44:15, disagrees with his position and with his analysis of the position of those early-day authorities.

36. The inference is drawn from the comments of Ra'avan, *Sefer Ra'avan*, *Hullin*, sec. 126. Cf., however, *Even Shlomoh*, a commentary on *Sefer Ra'avan*, *ad locum*.

37. R. Menachem Mendel Kargau (1772-1842), one of the foremost halakhic authorities of his day, was a *dayyan* and *rosh yeshivah* in Fürth and the author of *Giddulei Tohorah* on *Hilkhot Mikva'ot*. He was a student of R. Nathan Adler, R. Pinchas Horowitz and R. Ezekiel Landau. Rabbi Kargau

was a contemporary of R. Wolf Hamburger and is frequently cited in the latter's works.

38. To this writer, it seems that Rabbi Kargau's argument is readily refuted by referring to Rashba's own comments. The Gemara, *Yevamot* 76a, *Hullin* 43a and 48a, states that the halakhic disability attendant upon perforation of male genitalia is reversed upon development of a membrane sealing the wound. That situation is presented by the Gemara as a singular and unique case of a reversible defect. Accordingly, argues Rashba, growth of a membrane over a perforation must be of no consequence with regard to any *treifah* and not simply with regard to the esophagus and the lung; otherwise, growth of a membrane sealing a perforation of the esophagus or the lung should have been presented as the exceptions to the general rule that such defects are reversible upon development of the membrane. Applying the same argument, if such defects occurring in other organs are reversed upon growth of a "strong and permanent membrane," as evidenced by survival for a twelve-month period, it is then indeed the case that the general rule is that such defects are reversible, i.e., when the membrane is "strong and permanent." If so, it follows that the provision with regard to perforation of male genitalia is not at all a singular exception to the general rule. Since the provision with regard to perforation of male genitalia is presented as a singular case it must be concluded that the animal is a *treifah* despite the presence of a "strong and permanent" membrane.
39. See, however, *Pri Megadim*, *Sifte' Da'at* 81:5, who states that, even according to *Yam shel Shlomoh*, survival for a twelve month period is of no avail in situations in which a majority of decisors rule that the animal is a *treifah*. See also *Pri Megadim*, *Sifte' Da'at* 57:48.
40. *Teshuvot Hatam Sofer*, *Hoshen Mishpat*, no. 38, does indeed maintain that, in cases of doubtful *treifot* in which the doubt arises because of an unresolved halakhic controversy, survival of one animal is dispositive with regard to other similarly afflicted animals as well. An opposing view is held by R. Joseph Teumim, author of *Ginat Veradim*, in his *Gan ha-Melekh*, no. 141. Sources and arguments in support of those opposing positions are discussed in *Da'at Torah*, introduction to *Hilkhot Treifot*, secs. 18 and 21. See also, *Da'at Torah* 48:3.
41. Another individual opinion that might be given consideration is that of R. Joseph Saul Nathanson, *Sho'el u-Meishiv*, *Mahadura Kamma*, III, no. 81. *Sho'el u-Meishiv* states that an animal is rendered a *treifah* as a result of a puncture only "if it is punctured by happenstance by a thorn or needle . . . which pains it inordinately" but not if the puncture is done carefully for therapeutic purposes since such a procedure "does not cause [the animal] pain." In the latter case, *Sho'el u-Meishiv* rules that the animal is permissible if it survives for twelve months. In context, *Sho'el u-Meishiv* issues this ruling with regard to a puncture of the rumen. He also, in a seemingly incongruous manner, compares this situation to blood letting of an animal in the thoracic area which does not render the animal a *treifah* because it is assumed that a skilled practitioner will not inadvertently perforate the trachea or the esophagus. It seems to this writer that *Sho'el u-Meishiv* intends his ruling to be applicable only to a puncture of the rumen and left unstated the considerations advanced by R. Mendel Kargau, *Binat Adam*, *Sha'ar*

Issur ve-Heter, no. 26, and *Arukh ha-Shulhan* 48:8-10, viz., that the rule stating that a perforation occurring at any spot on the rumen renders the animal a *treifah* is, in actuality, a rule stating that the animal is a *safek treifah* because, in light of the imprecision of the multiple opinions recorded in the Gemara, *Hullin* 50b, we are unable to determine with exactitude the area of the rumen termed the "inner" rumen. Accordingly, *Sho'el u-Meishiv* may be understood as asserting that, since skilled practitioners have learned where to perforate the rumen without endangering the animal as evidenced by survival of the animal for a period of twelve months, it may be assumed that the area they puncture is not part of the "inner" rumen. In any event, *Sho'el u-Meishiv's* position is not cited authoritatively by subsequent scholars.

42. See *supra* note 18.
43. The latter case is comparable to the provisions recorded in *Shulhan Arukh*, *Yoreh De'ah* 98:2, and reflects the rule that dilution in a slightly larger quantity (*rov*) of a permitted liquid of an identical species and taste is sufficient to satisfy the biblical requirement for "nullification" of a prohibited liquid. Since a quantity sixty times as great is only a rabbinic requirement, in cases of doubt with regard to whether that requirement has been satisfied, the mixture is permitted. However, in a case in which the total number of *safek treifot* is more than 1.63%, the milk must be regarded as non-kosher as is the rule with regard to all matters of doubt concerning matters governed by a biblical prohibition. This is so because the underlying doubt is with regard to applicability of a biblical prohibition, i.e., the prohibition against consuming the meat or milk of a *treifah*. Since the animal is forbidden because of the possibility of violation of a biblical prohibition the subsequent mixture is also prohibited despite the fact that the requirement for "nullification" of a forbidden liquid in other permitted liquids in a quantity at least sixty times as great as the prohibited liquid, as opposed to nullification in a quantity of permitted liquid slightly greater than the prohibited liquid, is rabbinic in nature. See *Darkei Mosheh*, *Yoreh De'ah* 97, and *Shakh*, *Yoreh De'ah* 110:19.
44. Cf., however, *Arukh ha-Shulhan*, *Yoreh De'ah* 39:12 and 99:26.
45. Rabbi Klein cites *Teshuvot Radvaz* as asserting that since a non-Jew bears no responsibility for commandments concerning forbidden foods there can be no nullification while such foods are in his possession. Thus, nullification occurs only when the product comes into the possession of a Jew. Since nullification occurs at the time of purchase, and intentional nullification is prohibited, it is therefore argued that it is forbidden even to purchase such foodstuffs from a non-Jew. See *Der Allgemeiner Journal*, p. 20, col. 3, s.v. *od yesh*. However, even a cursory reading of *Teshuvot Radvaz* will reveal that there is no hint whatsoever of this imaginative argument in that source.