



# Self driving cars- Staying Kosher on business trips- Stem cell meat

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Dovid Lichtenstein: Ayin Tova- Look the total picture

יִטב לב פרשת בלק  
וְעַשׂוּ.

וַיֹּאמֶר אֱלֹהֵי בַלַּק וְגו' אַפֶּס קָהָו תִּרְאֶה וְכָלוּ לֹא תִרְאֶה, וּבִמְסוּרָה דִּין וְאִיֶּדֶךָ וְכָלוּ מִחֲמַדִּים גַּם הַפְּסוּק גּוֹפִיָה מִקְשָׁה לְמֵאֵי הוֹצֵרֶךָ לֹא אַפֶּס קָהָו תִּרְאֶה דֵּהֵא כְּשִׂיחָא בְּאֹתוֹ מִקּוֹם מִמִּילָא יִדַּע כִּי לֹא יוּכַל לִרְאוֹת רַק קִלְתּוֹ, אֲבָל יוֹצֵן עַל פִּי מ"ש מוֹזְלָה"ה בְּסִפְרֵי יִשְׁמַח מִשָּׁה פִּרְשַׁת קִרְח לְפִרְשׁ רִנְנוּ לְדִיקוּס בְּה' וְגו' הִטִּיבּוּ נֶגֶן בְּתִרְוּעָה כִּי יִשָּׂר לְדָר ה' כִּי וְהַפְּסוּק כִּי כָל הָעֵדָה כּוֹלֵם קְדוּשִׁים בְּאַרְוֵכָה, וְשׂוֹרֵשׁ

הדברים ע"ד שמצינו כמה דברים שהן בעצמותן  
חרופים ומרים כמו מלח וחבלין אשר לא יוכל האדם  
לאוכלן לבדן, ועם דברים אחרים הם טובים, ולא  
יאכל תפל יובלי מלח ומלח ממתיקו ועד"ז א' חז"ל  
כתיב רע וקרינן הכל לישנא מעליא ר"ל אם שהדבר  
בפרוטרוט נראה רע אבל בכללות עם שאר דברים  
הוא טוב וזהו וקרינן הכל לישנא מעליא שבכללות  
הוא למעלותא, וכ"כ נמצא בני אדם בתוך עדת בני  
ישראל אשר בעצמותן נראים לכאורה בלתי יפים אבל  
בכללות ישראל כולם יפים אף נעים כי זה יש לו  
מדה טובה זאת וזה יש לו מדה טובה אחרת וכדומה  
וזה עוסק בתורה וזה במלות ומעשים טובים וזה  
בצדקה אפילו פושעים מלאים מנות כרמון זה בחכמתו  
וזה בעשרו וזה בגבורתו להגיל עשוק מיד עשוקו  
ובכללות כל מילי דמיטב איתנייהו ביה עכ"ד מוה"ה,  
ע"כ לעולם אל יוציא אדם א"ע מהכלל ע"ד שנא'  
בתוך עמי אנכי יושבת וכדמפרש הזה"ק והקב"ה  
צריך להשגיח על ישראל בכללותן ולא בפרטיותן ע"ד  
דכתיב אחס נצבים היום כלכם וגו' כשהקב"ה משגיח  
בכללות ישראל הם נצבים לפניו בקומה זקופה ע"ש  
מ"ש ברצ"ה ובלק שגח לבלעם לקטרג על שונאי  
ישראל ולזה שלח לו לכה נא ארה לי כאדם שאומר  
אורה בתאנים כדאיתא במד' הכוונה להשטין ולמלא  
קטרוג על כל אחד ואחד בפרטות כי אין לדיק  
בארץ אשר יעשה טוב ולא יחטא:

וז"ש לו אפס קהו תראה שישים עינו הרע על קתם  
וכלו לא תראה שלא ישגיח על הכלל כלו כי הלא  
וכלו מחמדים שבכללותן נמצא כל מיני מחמדים אבל  
הקב"ה הפיר עצמו ולא השגיח על פרטותן כי אם על  
התחברות כללית לזה אחז"ל אלמלא היו ישראל באגודה  
א' אין כל אומה ולשון יכולה לשלוט בהן, וטעם לזה  
נראה כי כשהם מתחברין ומתכללין יחד למטה כמו כן  
הקב"ה מודד להם כמתן לבלי להשגיח בחסרונות של  
כל אחד ואחד כי אם בכללותן דאז נראים יפים ונאים,  
וז"ש בלעם לא כמו שסובר בלק לראית אפס קתן כי  
הקב"ה אינו מביט בפרטות כי אם בכללות להטיב להם  
וזהו לא הביט און ביעקב וגו' ה' אלהיו עמו (והטעם)  
ותרועת (לשון רעות כפרשי"י) מלך בו שהתחברות של  
מלך מלכו של עולם בהן ע"ד אמה אחד ושמך אחד  
ומי כעמך ישראל גוי אחד ועל ידי זה הקב"ה משגיח  
בכללותן ואז כלו מחמדים וכנ"ל:

## Self driving cars

### תלמוד ירושלמי מסכת תרומות פרק ח הלכה ד

תני סיעות בני אדם שהיו מהלכין בדרך פגעו להן גוים ואמרו תנו לנו אחד מכם ונהרוג אותו ואם לאו הרי אנו הורגים את כולכם אפי' כולן נהרגים לא ימסרו נפש אחת מישראל ייחדו להן אחד כגון שבע בן בכרי ימסרו אותו ואל ייהרגו א"ר שמעון בן לקיש והוא שיהא חייב מיתה כשבע בן בכרי ורבי יוחנן אמר אף על פי שאינו חייב מיתה כשבע בן בכרי.

### רמב"ם הלכות יסודי התורה פרק ה הלכה ה

נשים שאמרו להם עובדי כוכבים תנו לנו אחת מכן ונטמא אותה ואם לאו נטמא את כולכן יטמאו כולן ואל ימסרו להם נפש אחת מישראל, וכן אם אמרו להם עובדי כוכבים תנו לנו אחד מכם ונהרגנו ואם לאו נהרוג כולכם, ייהרגו כולם ואל ימסרו להם נפש אחת מישראל, ואם יחדוהו להם ואמרו תנו לנו פלוני או נהרוג את כולכם, ו אם היה מחוייב מיתה כשבע בן בכרי יתנו אותו להם, ואין מורין להם כן לכתחלה, ואם אינו חייב מיתה ייהרגו כולן ואל ימסרו להם נפש אחת מישראל.

### תלמוד בבלי מסכת פסחים דף כה עמוד ב

ושפיכות דמים גופיה מנלן סברא הוא, כי ההוא דאתא לקמיה דרבא אמר ליה מרי דוראי אמר לי זיל קטליה לפלניא, ואי לא קטלינא לך. אמר ליה: ליקטלוך ולא תיקטול. מאי חזית דדמא דידך סומק טפי דילמא דמא דההוא גברא סומק טפי. ותוס' שם אף נערה המאורסה יהרג ואל יעבור - פי' הבועל אבל היא תיבעל ולא תיהרג דקרקע עולם היא כדאמר בבן סורר ומורה (סנהדרין עד:): ובריש כתובות (דף ג:): נמי פריך ולידרוש להו דאונס שרי ור"י אומר דשפיר גר' תיהרג דהא דמשמע בבן סורר ומורה ובריש כתובות דאונס שרי היינו היכא שהיא קרקע עולם ולא עבדה מעשה אבל לעשות מעשה כגון שאומר לה שתביא הערוה עליה תיהרג ואל תעשה מעשה דמרוצח ילפינן ורוצח לא מיחייב למימסר נפשיה אלא כשאומר לו להרוג בידיים **אבל אם אומר הנח לזרוק עצמך על התינוק או תיהרג אינו חייב למסור עצמו כדי להציל חברו דאדרבה איכא למימר מאי חזית דדמיה דחבריה סומק טפי דילמא דמא דידי סומק טפי** ומיהו לדידיה אם אומרים לו הנח לתקוע אותך בערוה יהרג ואל יעבור דלא מצי למימר לא עבידנא מעשה דכיון שתוקעין אותו ואין קישוי אלא לדעת כדאמרי' בריש הבא על יבמתו (יבמות נג.) ומה שהוא מתקשה הוי מעשה.

## חזון איש סנהדרין סימן כה

וַיֵּשׁ לַעֲי בַחֲדָה רֹחֵב חֶץ הוֹלֵךְ לַהֲרֹג אֲנָשִׁים רַבִּים וַיְכוּל לַהֲעוֹתוֹ  
לְגַד אַחַר וַיְהַרְג רֶק אֶחָד שֶׁצִּדָּד אַחַר, וְאֵלּוּ שֶׁצִּדָּד זֶה יוֹלוּ,  
וְאֵם לֹא יַעֲשֶׂה כְּלוֹם יוֹהַרְגוּ הַרְבֵּים וְהַאֲחָד יִשְׁאֵר צַחִיִּים, וְאִפְשָׁר דְּלֹא  
דַּמִּי לְמוֹסְרִים אֶחָד לַהֲרִיגָה דִּבְחָם הַמְסִירָה הִיא פְּעוּלָה הַאֲכֹזְרִיה  
שֶׁל הַרְיָגַת נֶפֶשׁ וּבִפְעוּלָה זֶה לִיכָח הַלְלַת אַחֲרִים בְּעֵצֶם שֶׁל הַפְּעוּלָה  
אֵלּוּ הַמְקַרְבָּה גַּרְם עֲכָשׁוּ הַלְלָה לְאַחֲרִים גַּם הַלְלַת הַאֲחֲרִים קִשּׁוֹר  
בְּמֵה שְׁמוֹסְרִין לַהֲרִיגָה נֶפֶשׁ מִיִּשְׂרָאֵל, אֲבָל הַטְּוִיַת הַחֶץ מֵאֵד זֶה  
לְגַד אַחַר הִיא צַעֲיֻקְרָה פְּעוּלָה הַלְלָה, וְאִינִה קִשּׁוֹרָה כֻּלָּל בְּהַרְיָגַת  
הַיְחִיד שֶׁצִּדָּד אַחַר, רֶק עֲכָשׁוּ בַּמְקַרְבָּה נִמְלָא צִדָּד אַחַר נֶפֶשׁ מִיִּשְׂרָאֵל  
וְאַחֲרֵי שֶׁצִּדָּד זֶה יוֹהַרְגוּ נֶפְשׁוֹת רַבּוֹת, וּבְזֶה אֶחָד, אִפְשָׁר דִּישׁ לֵנו  
לְהַשְׁתַּדֵּל לְמַעַע אֲבֻדַת יִשְׂרָאֵל בְּכָל מַאי דְאִפְשָׁר, וְהַלְלָה לְוַלְיָנוּם וּפְפּוֹם  
נִכְרַגוּ בְּשִׁבִיל לְהַנִּיל אֶחָד יִשְׂרָאֵל כְּמַשׁׁיכַ רַשׁׁי חֲטוּיָה יִיחַ צִי דִיכַ  
בְּלוֹדְקִין, וְאִמְרוּ שְׂאִין כָּל צַרִּי יִכּוּלָה לְעַמּוּד בְּמַחֲלָחָה, מִיכּוּ הַכָּא  
גַּרַע דְּהוֹרַג צִידִים, וְלֹא מַלְיָנוּ אֵלּוּ דְמוֹסְרִין אֲבָל לַהֲרֹג צִידִים  
אִפְשָׁר דְּאִין הוֹרְגִין וְהָא דְכַרְגוּ שְׁצִיב דְּמוֹרַד בְּמַלְכוּת הִיב וּמִיכּוּ  
לִיַּע בְּחוּם.

## שו"ת ציץ אליעזר חלק טו סימן ע

א' אם חייב או רשאי אדם ליכנס לספק סכנה כדי להציל את חברו מודאי סכנה. ב' אם רשאים לעשות פעולת הצלה למען הצלת רבים ממיתה כאשר על ידי זאת הפעולה ייהרג יחיד. ב"ה. ב' כסלו תשמ"ג. (הדרן לסיומא דש"ס, חלק ההלכה).

בנדה ד' ס"א ע"א איתא: הנהו בני גלילא דנפק עלייהו קלא דקטיל נפשא, אתו לקמיה דרבי טרפון אמרו ליה לטמרינן מר, אמר להו היכי נעביד, אי לא אטמרינכו חזו יתייכו, אטמרינכו הא אמור רבנן האי לישנא בישא אף על גב דלקבולי לא מבעי מיחש ליה מבעי, זילא אתון טמרו נפשייכו.

רש"י מפרש: מיחש ליה מבעי, ושמא הרגתם ואסור להציל אתכם. והתוס' בשם השאילתות דרב אחאי מפרשים: שמא הרגתם ואם אטמין אתכם חייבתם ראשי למלך [ובספר חסידים סי' תרפ"ג מבאר ג"כ עפה"ד של רש"י ז"ל, ויעוין גם בחכמת שלמה על הש"ס שם יעו"ש].

מהסיפור הזה שבזאת הסוגיא כותבים בספרים אגודת אזוב (דרושים) מהגאון בעל מראות הצובאות, ושו"ת יד אליהו סימן מ"ג מהגאון מלובלין ז"ל להוכיח - וביותר לפי פירוש התוס' בשם השאילתות - שאין אדם צריך להכניס את עצמו בספק סכנה כדי להציל את חברו מודאי סכנה, דהא בני גלילא היו בודאי סכנה אם יצאו

חייבים שהרגו, ור"ט הא היה רק בספק סכנה כי שמא לא יתגלה הדבר שהטמינם, וכמו"כ היה יכול ר' טרפון להתנצל שא"י שהרגו, עיין בדבריהם.

והגאון הנצי"ב ז"ל בהעמק שאלה שאילתא קכ"ט כותב אדרבא להוכיח מעובדא זאת לאידך גיסא, שכן יש חיוב להכנס בספק סכנה בכדי להציל את חברו מסכנה ודאית, והוא, דמדקאמר ר"ט (לפי גירסת השאילתות שם), דילמא איתא למילתא משמע שהא אם היה ברור לר"ט שאינה אלא עלילת שקר היה מזדקק לאטמינהו אף על גב שאי לא מסתייע מלתא הי' מסתכן בעצמו ומחייב ראשו, והיינו מפני דמחויב ליכנס בספק פ"נ = פקוח נפש = בשביל ודאי פ"נ של חברו, יעו"ש.

למעשה הארכתי בנוגע לזה במקו"א לבאר שאין הוכחה מסוגיא זאת לא לכאן ולא לכאן, וכי הדבר תלוי בפירושי רש"י ותוס' וכן בגירסאות השונות בסיפור (יעיין בספרי שו"ת צ"א ח"ט סי' מ"ה עיין שם).

וכעת אני חושב שגם אליבא דהעמק שאלה ולמטותא דידיה ג"כ יש לדחות ולומר דהצלת רבים שאני, דעובדא דר"ט היה לא משום הצלת יחיד בלבד כי אם משום הצלת רבים ככתוב בגמרא בלשון בני - גלילא, בני לשון רבים, וכדמצינו ביש"ש ב"ק פ"ו סי' כ"ו ומג"א או"ח סי' תקע"ד סק"ו דס"ל דיחיד צריך למסור נפשו עבור הציבור ע"ש, והיינו ליכנס בספק סכנה כדי להציל את הרבים מודאי סכנה.

כמו כן הארכתי בעצם הכרעת ההלכה בזה והוכחתי ממקומות אחרים בבלי ובירושלמי וספרי ההלכה שאין חיוב לאדם להכניס א"ע בספק סכנה כדי להציל את חברו מודאי סכנה, ושיתכן שאפילו איננו רשאי בכך (יעו"ש בספרי צ"א ח"ט, וכן בח"י סי' כ"ה פ"ז ופי"ח עיין שם). פרט בשדה - מלחמה כאשר ביררתי מזה בספרי ציץ אליעזר חי"ג סימן סי' ק' יעו"ש.

ומה שברצוני כעת הוא לפרש עובדא זאת של ר"ט ע"פ פתרון להלכה חמורה אחרת שנלפענ"ד להכריע בה.

דהנה יש להבין הויכוח שניהל ר' טרפון עם הבני - גלילא. מה כוון ר"ט בהסבר שהסביר להם שאם לא יטמין אותם יראו אותם, הרי לשם כך באו אליו בבקשה שיטמינם, וכמו כן למה היה צריך ליעץ להם שילכו בעצמם למצוא להם מחבוא, וכי הם בעצמן לא היו מבינים זאת שאם ר"ט לא יחביא אותם שצריכים הם בעצמם באין ברירה למצוא איזה מחבוא ומקלט שלא יראו אותם? הלא בנפשם הדבר. היה מספיק שר"ט ישיב להם תשובתו השלישית שלא יכול להענות למבוקשם שהוא יחביאם מכיון שאמרו רבנן דהאי לישנא בישא אף על גב דלקבולי לא מבעי מיחש ליה מבעי.

[וראיתי בספר שו"ת בית יעקב סי' ק"ז שכותב לפרש כוונת התוס' שלכן לא רצה ר"ט להטמין אותם, משום שמא יתחייבו ראשן למלך והי' אסור לו למסור אותם משום שלא היו עדים על הבני גלילאה רק יצא קול וא"כ לא היו חייבים מיתה ולכן היה אסור למסור אותם ויתחייב ר"ט ראשו למלך ולכן לא רצה להחביאן ע"ש.

ויעוין בשו"ת יד אליהו מלובלין סי' מ"ג שכותב ע"ד שו"ת בית יעקב אלה שהוציא דברי התוס' מפשרו ולא דק ע"ש].

ולפענ"ד נראה לפרש כוונת דברי הגמ' בכזאת, ובהקדם דברי הגאון החזו"א ז"ל לסנהדרין סי' כ"ה שכותב לחקור חקירה חמורה למעשה, דמה יהא הדין באחד שרואה חץ הולך להרוג אנשים רבים ויכול להטותו לצד אחר ויהרג רק אחד שבצד אחר, ואלו שבצד זה יצולו, ואם לא יעשה כלום יהרגו הרבים והאחד ישאר בחיים. ומתחילה נוטה החזו"א לומר שצריך להטותו לצד האחר ולא דמי למוסרים אחד להריגה וכו' מפני שהטיית החץ מצד זה לצד אחר היא בעיקרה פעולת הצלה ואינה קשורה כלל בהריגת היחיד שבצד האחר ורק עכשיו במקרה נמצא בצד האחר נפש מישראל, ולכן, אחרי שבצד זה יהרגו נפשות רבות, ובצד האחר רק אחד, אפשר דיש לנו להשתדל למעט אבידת ישראל בכל מאי דאפשר. אולם לאחר מיכן מסתייג החזו"א ז"ל מזה, וכותב, דמיהו הכא גרע דהורג בידיים, ולא מצינו אלא דמוסרין, אבל להרוג בידיים אפשר דאין הורגין, והא דהרגו שבע בן בכרי מפני דמורד במלכות היה. ונשאר לבסוף בצ"ע בזה עיין שם.

והנה לכאורה היה אפשר להביא ראיה שכן צריך להטותו לצד האחר, ושעכ"פ מותר לעשות זאת, ממה שמצינו שנפסק בדומה לזה בחו"מ סימן שפ"ח סעי' ב' ברמ"א, וז"ל: היה רואה נזק בא עליו מותר להציל עצמו אף על פי שע"י זה בא הנזק לאחר עכ"ל. הרי בהדיא שמותר לו לאדם להציל עצמו מנזק [כגון שרואה אמת המים שוטפת ובאה לתוך שדהו רשאי לפנותו למקום אחר, כדמובא בהגר"א שם בשם הירושלמי] אף על פי שע"י יבוא הנזק לאחר, ולא תימא שרק בעל הנזק בעצמו מותר לו לעשות כן ולא איש אחר, דיעוין בשו"ת נודע ביהודה מהדו"ת חיו"ד סי' ע"ד בתשובה מבהמ"ח שכותב לבאר דה"ה דגם אחרים יכולים להשתדל עבורו ומוכיח זאת מדברי הש"ך בחו"מ סי' קס"ג ס"ק י"ח יעו"ש.

אבל לאחר העיון נראה דזה אינו, דאין ללמוד ממה שהותר לגבי גרימת נזק לחבירו שיהא מותר בכזאת גם בגרימת הריגה לחבירו, והגם דלענין לחייב מיתה מקילינן ביותר שלא להרוג כי אם כשהרג בפועל ממש ושלא דמי לנזקין שמחייבין אפילו כשלא היזיק בפועל ממש כדמבאר הר"ן בחידושיו לסנהדרין ד' ע"ז ע"ב כדיעו"ש, אבל לענין להתיר עשיה לכתחילה בודאי דיני נפשות חמיר בזה מדיני ממונות ואין ללמוד ממה שהותר בד"מ שיהא מותר גם בד"נ, ופשרו.

ולכן נלענ"ד דבכל כגון דא של חקירת החזו"א ז"ל קובע יותר השב ואל תעשה עדיף כי הרי ישנה טענה של מאי חזית דדמו של זה סומק מדמו של חבירו, ובהריגה ודאית אין חילוק בין יחיד לרבים, ולא אמרינן דרבים עדיפא, ולולינוס ופפוס שנהרגו בשביל להציל את ישראל כמ"ש רש"י בתענית ד' י"ח ע"ב (שמביא החזו"א שם מזה) הוא מפני שאחרת גם המה היו בהסכנה ליהרג, וכ"כ לחלק ולומר בכזאת בשו"ת יד אליהו סי' מ"ג יעו"ש, וגם י"ל דאין ללמוד משם, כי שונה הדבר אם היחיד בעצמו מוסר א"ע עבור הכלל דזה יש מקום לומר דמותר, לבין מה שאחרים יקחו אחד וימסרוהו שיהרג עבור רבים שזה בודאי אסור, ומשנה מפורשת והלכה מפורשת היא

דאם אומרים לנו תנו לנו אחד מכם ונהרגנו ואם לאו נהרוג כולכם יהרגו כולם ואל ימסרו להם נפש אחת מישראל, (עיין רמב"ם פ"ה מיסודי התורה ה"ה ויו"ד סי' קנ"ז סעי' א' ע"ש).

ומצאתי ראייה חותכת להנחתי האמורה בדברי אחד מגדולי הראשונים, והוא הרבינו יונה ז"ל בחידושי למס' ע"ז שנדמ"ח בשנת תשט"ז ונקרא בשם חדושי תלמידי רבינו יונה. דכותב שם בדף כ"ח על דברי הגמ' בסנהדרין ד' ע"ד ע"א דאיתא: ההוא דאתא לקמיה דרבא ואמר ליה אמר לי מרא דוראי זיל קטליה לפלניא ואי לא קטלינא לך, אמר ליה לקטלוך ולא תיקטול, מי יימר דדמא דידך סומק טפי דילמא דמא דההוא גברא סומק טפי, וכותב ע"ז הר"י ז"ל: דילמא דמא דחברך סומק טפי, פירוש, וכיון שדמו יותר אדום יחיה יותר ויקיים מצות ויעשה רצונו של הקדוש ברוך הוא יותר על ידי החיים, וא"ת כיון שהדבר ספק יהרוג אותו ואל יהרג הוא, יש לומר שב ואל תעשה שאני, שהאדם יש לו למנוע מלעשות שום עבירה בידיים עכ"ל.

הרי לנו שהרבינו יונה ז"ל הניח לנו כלל גדול בזה, שהקו - המנחה שהתוו לנו חז"ל על כגון דא של שאלת נפשות הוא לבחור להיות בזה במצב של שב ואל תעשה. ולא יזהר צד היוצא השב ואל תעשה כאותו צד צריך להתנהג, בהיות ואי אפשר לנו לקבוע איזה דמא סומק טפי בזה, ועל כן יש לנו לנקוט בקו של מניעה מלעשות שום עבירה בידיים ועיקרו של דבר זה שיש חילוק בין אי עביד מעשה לבין לא עביד מעשה יוצא בעצם גם מדברי התוס' בסנהדרין שם ד"ה והוא אסתר, ורק דלא נחתי להכלל האמור בזה בר"י.

ואם כן איפוא גם בנידון חקירתו של החזו"א ז"ל יש לנו ג"כ לפסוק בהחלטיות בכזאת, להיות בשב ואל תעשה ולא להטות בקום ועשה את החץ לצד אחר, דפשוט הדבר דהקו המנחה הזה הוא לא רק כשנעמדת שאלת ההעדפה עליו ועל אחר, כי אם גם כשהשאלה היא בנוגע לשני אחרים, דזיל בתר טעמא.

וזאת לדעת כי חקירת החזו"א ז"ל הנ"ל היא לא רק תיאורטית בתיאור ציור דמיוני של ראית חץ הולך להרוג והיא שיש אפשרות להטותו, כפי שמצייר החזו"א, אלא שאלה מעשית ממשית היא, ויש לה השלכות על בדומה לזה, כגון על כלי רכב כשנוסעים בדומה למשל ונקלעים פתאומית לפני אנשים רבים שחוצצים אז הכביש ויש לעשות עצירה פתאומית ע"י נסיגה אחורנית כדי שרבים מהעוברים לא יהרגו, אבל באחורה נמצא שם יחיד עומד באופן שברור שיהרג עי"כ, וכן בכל הדומה לזה, והשאלה נשאלת בכאמור במה יש לו לבחור יותר לנהוג במצב כזה, אם לישאר במצב של שב ואל תעשה ועי"כ יהרגו אחדים שלפניו, או לסגת אחורה בקו"ע =בקום ועשה = ועי"ז יהרג היחיד, וכאמור לדעתנו יש להיות בזה בשב ואל תעשה, כאשר מוכח בכזאת מדברי הרבינו יונה שהבאתי, ולא לעשות שום פעולה המתבטאת במעשה של קום ועשה, ולא משנה הדבר מה שהוא כוונתו בזה לשם פעולת הצלה, בהיות ולמעשה הוא יהרוג עי"כ בודאות את היחיד, וכאן עוד חמור ביותר אפילו מהטיית חץ לצד אחר, כי כאן בפעולת נסיעה אחורנית, הרי זאת פעולה של כחו ממש ובכח ובפועל שלו יהרוג את היחיד ולכן לא דמי זה אפילו בכלל להיא דחו"מ סי' שפ"ח לגבי הסרת נזק הנ"ל, דבשם רק מפנה המים לצד אחר, אבל לשדה חברו הולכים המים מכח הזרימה שלהם, ומשא"כ כאן וכנ"ז.

ויש לציין דאפילו בהורג את הטריפה שאין חייבים עליו, מצינו להגאון הנו"ב ז"ל במהדו"ת חחו"מ סי' נ"ט שכותב בהמשך דבריו בזה"ל: ואטו מי הותר להרוג את הטריפה להציל את השלם, זה לא שמענו מעולם, ומה בכך שעל הטריפה אינו חייב מ"מ איסור בידים עושה להרוג הטריפה ואפילו שבת החמורה מחללין על חיי שעה, ולהציל את השלם אם אינו מציל הרי הוא בשב ואל תעשה עכ"ל. הרי לנו דפשיטא ליה להנו"ב ז"ל כביעתא בכותחא שצריכים להיות בשב ואל תעשה אפילו במקרה שאם לא יעשו פעולת קו"ע להרוג את הטריפה ימות עי"כ השלם [ויש מזה השלכות לגבי חולים מסוכנים ואינם מסוכנים בנוגע להסיר ולהטות כלי הצלה רפואיים מזה לזה, והדומה לזה, ואכמ"ל]. וא"כ מינה גם, שלא רק שאין להרוג את האדם השלם כדי להציל עי"כ את הרבים כי אם להיות בשב וא"ת = ואל תעשה =, אלא אפילו בגוונא שהיחיד הזה הנמצא בצד השני הוא גם טריפה בכל זאת אין ג"כ להורגו בידים כדי להציל עי"כ את הרבים, אלא יש להיות בזה בשב ואל תעשה וכו"ל.

ואם צדקנו בדברינו האמורים, אם כן יש מקום לכוון ולפרש על זה הדרך בפירוש מקורי גם עובדת ר' טרפון עם הבני - גלילא שאנו עסוקים בה כעת. ויתיישבו ממילא גם הדקדוקים שעמדנו עליהם, והיינו, שר' טרפון הסביר את ההלכה בזה לבני גלילא, והשיב להם על מבוקשם ממנו שיחביא אותם, והסביר להם, שאמנם לגזור להשאיר אותם ככה גלויים לעין כל אי אפשר ע"פ דין בהיות וברור שיראו אותם המחפשים אחריהם, והו"ל כאילו מוסרים אותם בידים, אבל מאידך לדרוש משום כך ממנו שהוא יחביאם ג"כ אי אפשר, דכמוהו כמו שדורשים ממנו שיכנס בסכנה בקום ועשה להיות עלול ליהרג עבורם, דזה איננו מחויב, וגם איננו רשאי, אולם העצה היעוצה שיכול ליעץ להם בזה היא, שהם בעצמם ימצאו מחבוא ואיש לא יפריע בעדם, ואז יתהפך המצב לטובתם, כי אז יהא אסור כבר אח"כ ע"פ דין לגלות אותם ולמוסרם כשתבוא דרישה לכך, אלא יצטרכו להיות בשב ואל תעשה, וינצלו עי"כ, והיה בזה בכדי לרצותם ולהניח את דעתם. ואתי שפיר הכל, והוא כפתור ופרח.

### תלמוד בבלי שבועות דף ל"ה:

אלא הא דאמר שמואל מלכותא דקטלא חד משיתא בעלמא לא מינענשא  
 שנאמר כרמי שלי לפני האלף לך שלמה למלכותא דרקיעא ומאתים לנוטרים  
 את פריו למלכותא דארעא שמואל לא כת"ק ולא כו"א אלא ה"ק וי"א זה

### תוס' שם

אחדל: דקטלא חד משיתא  
 בעלמא כו"א. כהנאה למלחמת  
 הרשות קאמר: (ח) בזה כאן שבועה.

### מהר"צ חיות שם

מלכותא דקטלא חד משיתא בעלמא  
 לא מינענשא. כ"כ שמואל לטעמי דס"ל ככ"מ  
 דינא דמלכותא דינא. ועי' שו"ת מקום שמואל  
 סי' ח שבי במלחמת רשות שלהם מקרי מנאה,  
 כמו שאמרה אביגיל כי מלחמת ה' אדוני נלחם  
 ע"ש. (מהרצ"ח)



## Headlines One

# Shooting Down a Hijacked Plane: Killing a Few to Save the Lives of Many

The devastating tragedy of 9/11 introduced to the world a frightening new form of terrorism — the use of hijacked planes as torpedoes to blow up crowded buildings and skyscrapers, רחמנא ליצלן. The dreadful prospect of another 9/11-style attack gives rise to the difficult and ever so painful moral and halachic question of whether a hijacked plane may be blown up to save the civilians in the targeted building. If it is certain that the hijackers are steering the plane toward a building, would it be permissible, forbidden, or obligatory to fire a missile at the plane, killing the innocent passengers on board for the sake of saving the lives of the people down below?

### I. Killing One to Save Many

Our point of departure in addressing this question is the Mishna's discussion in *Terumos* (8:12) regarding a case in which enemies demand that the Jews in a town hand over a woman for them to rape, warning that they will otherwise rape all the women in the town. The Mishna rules that in such a case, the townspeople should refuse; they may not hand a woman over to the enemy even at the expense of the defilement of all of the town's women.

The Tosefta in *Terumos* (7:23) addresses the similar case of enemies who demand that the Jews hand over one person to be killed, warning that they will otherwise kill all of the townspeople. In such a case as well, the Tosefta rules that the townspeople should refuse and submit themselves to murder rather than hand over a fellow Jew. However, the Tosefta then proceeds to note a critical distinction: “אבל אם ייחדוהו להם כגון שייחדו לשבע בן בכרי יתנו להן ואל יהרגו כולן.” The Tosefta rules that if the enemy identifies a particular Jew by name and demands that he or she be handed over to be killed, then the townspeople should acquiesce. The Tosefta points to the example of Sheva ben Bichri, a man who led a failed revolt against King David. Sheva sought refuge from David's forces in the town of Avel Beis Maacha, and Yoav, David's general, demanded that the townspeople hand him over. In such a case, the Tosefta rules, the townspeople should hand over the wanted person in order to spare the rest of the city.

The Tosefta then cites Rabbi Yehuda as clarifying that this applies only if the wanted person is in the city and would also be killed along with the rest of the townspeople if they refuse to hand him over. If, however, the situation is such that the townspeople would be killed **instead of** the wanted person and not **along with** the wanted person, then they may not hand him over to save their lives. It is only when the wanted individual is condemned to be killed regardless of the townspeople's decision that they are permitted to hand him over to the enemy.

Rashi cites this Tosefta in his commentary to *Sanhedrin* (72b) in the context of a discussion regarding a woman whose life is threatened by a difficult labor. The Gemara establishes that if the infant had not yet exited the woman's body, it may be killed to save the woman's life, but once the head has emerged, the baby is considered a full-fledged living human being, and may not be killed to save the mother's life.<sup>1</sup> Rashi raises the question of why this case differs from the situation in which townspeople are permitted to hand over a wanted individual in order to save their lives as long as the wanted individual was specifically identified by the enemy. Seemingly, in the situation of childbirth, there is also a "named" individual — the newborn — who threatens the life of another person (the mother). Rashi explains that in the Tosefta's case, the wanted individual would be killed regardless of whether the townspeople choose to hand him over. In the case of the newborn, however, the infant's life is not at risk, and it is thus forbidden to kill the newborn to rescue the mother.<sup>2</sup>

This *halacha* is also addressed by the Talmud Yerushalmi (*Terumos* 8:10), which presents a debate between Rabbi Yochanan and Reish Lakish on the issue. Reish Lakish maintains that even if the enemy specifies a particular person by name, the townspeople may not save their lives by handing that person over. According to Reish Lakish, the people of Avel Beis Maacha were allowed to hand over Sheva ben Bichri only because he was guilty of treason and thus deserving of death. Barring such exceptional circumstances, a town may not, according to Reish Lakish, hand over a person to the enemy to save their lives, even if the enemy demands specifically that person.

At first glance, it would seem that the question of torpedoing a hijacked plane hinges on this debate among the *Amora'im*. According to Rabbi Yochanan, although the passengers are innocent and certainly not deserving to die, their lives threaten the lives of the hundreds or thousands of people in the targeted

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1. The infant is not considered a דרדף ("pursuer"), who may be killed to save the person being pursued, because, as the Gemara states, משמיה קא רדפא לה — it is God, and not the newborn infant, who threatens the woman's life.
  2. See also Rashi's commentary to *Shmuel II* 20:22.

skyscraper. Thus, just as in the case in which the enemy requests a particular resident of the town, where — according to Rabbi Yochanan — the people may hand him over since he would die either way, in our case, in which the passengers are bound to be killed regardless of whether the plane is shot down, the plane may be destroyed to spare the people below. Reish Lakish disagrees with this ruling and forbids killing a person to spare others even if he would in any event be killed.

This analysis, however, does not help us in our quest for a halachic conclusion, as no consensus has been reached among the halachic authorities on this issue. The Rambam (*Hilchos Yesodei Ha-Torah* 5:5) codifies Reish Lakish's ruling and forbids handing over a wanted individual to save the other townspeople's lives unless that wanted person is guilty of treason, as in the case of Sheva ben Bichri. The *Hagahos Maimoniyos*, as well as the *Beis Yosef* (Y.D. 157), question why the Rambam accepts Reish Lakish's view, in light of the fact that the Halacha always follows Rabbi Yochanan's rulings in his disputes with Reish Lakish. Indeed, as the *Beis Yosef* notes, the Rash and the Ran follow Rabbi Yochanan's view.<sup>3</sup> Both opinions are cited by the Rama (Y.D. 157:1), leaving this debate unresolved.<sup>4</sup>

## II. Whose Blood is Redder?

However, we may find a basis for allowing blowing up the plane in the *Hagahos Ha-Ramach*, who, commenting on the Rambam's ruling, questions the rationale underlying the unanimous ruling regarding a case in which no particular person is named. He notes the Gemara's comment in *Sanhedrin* (74a) that the reason why one may not kill to save his own life is מאי חזית דדמא דידך סומק טפי. Loosely translated, this means that one may not assume that his "blood his redder" — that is, that his life is more valuable — than that of his fellow. Killing another person to save one's own life reflects the presumption that his own life is worth more, and since no person can make such an assumption, the Torah forbids rescuing oneself at the expense of another human being's life.

The Ramach notes that this rationale clearly does not apply in the case in which townspeople must decide between handing over one person and being killed. Under such circumstances, we can indeed determine which misfortune is graver, as whomever the people choose to hand over to the enemy would otherwise be killed along with the rest of them. This is not a decision of whose blood is redder, but rather a decision between having one person killed or having him

3. The Meiri in *Sanhedrin* also appears to accept Rabbi Yochanan's ruling.

4. The *Bach* writes that the Rama appears to side with the Rambam's ruling, but the *Chazon Ish* (*Sanhedrin* 25, ד"ה והר"ש) notes that the *Bach*'s claim has no basis.

and many others killed. Thus, since the rationale of מאי חזית דדמא דידך סומק טפי does not apply, we should seemingly apply the standard principle allowing the suspension of Torah law for the sake of saving human life.

The *Kesef Mishneh* answers that in truth, the rationale of מאי חזית דדמא דידך סומק טפי does apply even in such a case. Any individual selected to be handed over could legitimately argue that his blood is no less “red” than that of any others, and there is thus no justification for choosing him to die over any other person in the town. As such, the townspeople have no right to choose any one person over others if he was not singled out by the enemy.

The *Kesef Mishneh* then acknowledges that his answer does not resolve the Ramach’s question as it applies to Reish Lakish’s view — that even if the enemy specifies the person whom they want to kill, the townspeople may not hand him over (unless he is deserving of execution for a crime he committed). In this case, it seems, since the individual will in any event be killed, the rationale of מאי חזית דדמא דידך סומק טפי does not apply and the townspeople should be allowed to save themselves by handing over the named individual. The *Kesef Mishneh* suggests that according to Reish Lakish, the rationale of מאי חזית דדמא דידך סומק טפי is not the real reason that one may not save himself by killing another; rather, this law was in truth transmitted through oral tradition and is therefore relevant even when the reasoning of מאי חזית דדמא דידך סומק טפי does not apply.<sup>5</sup>

We may also suggest an additional answer. As mentioned earlier, the Mishna applies this ruling even to situations in which the enemy demands not a life, but a woman to defile. Even in such a case, if no particular woman is named, the townspeople are forbidden from choosing a woman, even if this means that all women in the town will be defiled. This would seem to prove that this *halacha* has nothing at all to do with the issue of מאי חזית דדמא דידך סומק טפי, of whose blood is “redder.” Apparently, the Mishna and Tosefta deal here not with the

5. This answer is also given by the *Chemdas Shlomo* (O.C. 38). The question of whether or not this *halacha* is based upon מאי חזית דדמא דידך סומק טפי has been discussed at length by numerous *Acharonim* and yields several important ramifications. For example, the Meiri (*Sanhedrin* 72b) rules that if the enemy did not name a particular person, the townspeople may save themselves by handing over a טריפה (a person suffering from a terminal illness who is certain to die). He clearly works with the assumption that it is the rationale of מאי חזית דדמא דידך סומק טפי that would prevent them from handing over someone to be killed and that this rationale does not apply to a טריפה. Similarly, the *Minchas Chinuch* (295–296:24) rules that one may kill a fetus (in a manner that does not endanger the mother) in order to save his own life. (See also *Chazon Ish*, *Hilchos Rotzei’ach* 1:9; *Tiferes Yisrael, Boaz, Ohalos*, end of chapter 7; and *Iggeros Moshe*, C.M. 2:69:4, ד”ה וגם לענין אונס) By contrast, the *Noda Bi-Yehuda* (*Tanina*, C.M. 59) rules that one may not save his life by killing a טריפה or a fetus. See below in our discussion of חיי שעה.

prohibition of רציחה (murder), but rather with a more general prohibition against assisting an enemy by handing a fellow Jew over to them to be killed or raped. Thus, even if an argument could be made to permit handing over a fellow Jew on the grounds of פקוח נפש (saving human life), as the Ramach contends, it is nevertheless forbidden due to the separate prohibition against assisting enemies bent upon killing Jews.

This analysis directly affects the question concerning a hijacked airplane. In such a case, the enemies are not demanding any action on our part, and thus there is no issue of assisting a foe. Rather, there is simply the question of whether we may kill a small number of people who are bound to die anyway in order to save a larger number of people. As the Ramach observed, it seems clear that this would be permissible, and there is thus room to argue that the plane can and should be shot down in order to save the people in the building below.

### III. Killing a Fetus to Save the Mother

Another basis for authorizing shooting down the hijacked aircraft is the ruling of the *Panim Meiros* (3:8) concerning a case that appears to involve the precisely identical question. He addresses the situation in which a fetus' head has already exited the mother's body and the doctors have ascertained that the infant is bound to die, and the mother will die as well if she completes the delivery. The *Panim Meiros* rules that this situation is akin to the case described in the Tosefta in which the enemy specifies a particular person whom they seek to kill and the townspeople are allowed to hand over the wanted individual since he is going to die in any event. Similarly, if the newborn is bound to die regardless of what happens to the mother, then it may be killed so that the mother may continue living. (The *Panim Meiros* concludes on an ambivalent note, however, writing, רוצ"ע להתישב בדין זה.)

Surprisingly, the *Panim Meiros* here appears to assume the view of Rabbi Yochanan — that it is indeed permissible to hand over a person wanted by the enemy if he is specified by name and would be killed either way. As noted, however, this issue is subject to a debate among the *Rishonim* and the Rama cites both opinions, seemingly leaving this question unresolved.<sup>6</sup>

In truth, however, we might contend that even Reish Lakish would agree in such a case that the infant may be killed for the sake of rescuing the mother. The basis for this claim is the approach taken by the *Chazon Ish* (*Sanhedrin* 25, ד"ה ירושלמי תרומות) to explain the debate between Rabbi Yochanan and Reish

6. This may be the reason for the ambivalence expressed by the *Panim Meiros* at the end of his discussion.

Lakish. He claims that according to Rabbi Yochanan, if the enemy names a person whom they want handed over, that individual attains the status of a רודף (“pursuer”), as his life poses a direct threat to the rest of the townspeople. As such, he may be handed over to the gentiles, just as any רודף may be killed for the purpose of rescuing his victim. Reish Lakish, however, maintains that the wanted person cannot be considered a רודף unless there is a particular reason why he was chosen, such as in the case of Sheva ben Bichri, who was wanted because he instigated a rebellion. Whereas Rabbi Yochanan views the wanted person as a רודף under all circumstances, since he in effect threatens the townspeople, Reish Lakish contends that he cannot be considered a רודף if he was selected arbitrarily. He attains this status only if there is a substantive connection between him and the enemy’s threat. Thus, if the enemy randomly selects one person to be handed over, that person does not, in Reish Lakish’s view, obtain the status of רודף.

According to this approach, it would appear that the ruling of the *Panim Meiros* could follow even Reish Lakish’s view. The newborn’s existence directly threatens the mother’s life, and as such, it has the status of a רודף and may therefore be killed. This is not a random connection, but a natural, physical reality; the woman’s life is endangered by the infant, and under such circumstances, even Reish Lakish would agree that the infant should be killed to save the mother’s life.

Accordingly, in the case of a hijacked plane as well, Reish Lakish would agree that the passengers are regarded as a רודף with respect to the people in the building. They were not randomly selected to die in place of the others; rather, they pose an immediate threat in light of the fact that the plane is headed toward the building and threatens its occupants and the people in the area. In this case, there is a clear and direct connection between the passengers and the threat posed to the people below, and thus according to all opinions, they have the status of רודף and it would be permissible to destroy the plane to save the people on the ground.

#### IV. Diverting a Missile

We might also approach this issue in light of the question addressed by the *Chazon Ish* (שם ד”ה ויש לעיין) concerning the permissibility of diverting a missile away from a large group of people toward one person, so that only one life is lost. In discussing this case, the *Chazon Ish* observes that handing over a Jew to an enemy is inherently an act of cruelty which, under the circumstances, has the effect of rescuing a large number of people. In the case of a missile, the precise opposite is true — the act of diverting its path is fundamentally an act

of rescue, which happens in this situation to result in a person's death. In light of this distinction, the *Chazon Ish* suggests, even Reish Lakish would agree that one may divert a missile off course to save the lives of a large group of people, even if this would cause it to kill somebody else.<sup>7</sup>

The *Chazon Ish* cites in this context the story of Lulinus and Papus (which appears in Rashi's commentary to *Ta'anis* 18b), two men who falsely confessed to a murder in order to save the Jews from the government's decree. The Gemara lauds Lulinus and Papus for their selfless act, setting a clear precedent for killing a small number of people for the purpose of rescuing the lives of a large number of people. In the situation of the missile as well, we might conclude that it would be permissible to divert a missile toward one individual for the sake of rescuing the lives of many. It should be noted, however, that a clear distinction exists between the story of Lulinus and Papus and the case under discussion. Lulinus and Papus were condemned to execution along with the rest of the Jews, and thus they would have been killed even if they had not made their false confession. Their willingness to sacrifice their lives thus does not set a precedent relevant to the case of a missile, in which rescuing the large group requires killing someone who would not have otherwise been killed.<sup>8</sup>

It is not entirely clear how the *Chazon Ish's* distinction would affect the question concerning the hijacked aircraft. On the one hand, shooting down the plane is an act of הצלה, rescuing the targeted building, much like diverting a missile is an act of rescuing the targeted group of people. On the other hand, one who diverts the missile does not directly kill the victim, whereas in the case of the hijacked plane, the passengers are killed directly through the firing of a missile. We thus cannot reach any definitive conclusions regarding our question on the basis of the *Chazon Ish's* discussion.

## V. חיי שעה

Another consideration that must be taken into account is the fact that shooting down the plane will cause the passengers to die several minutes earlier than they would otherwise have died. While it is true that they are going to die regardless of whether the plane is shot down or allowed to continue to its target, allowing

7. The *Chazon Ish* then acknowledges that the reverse argument could be made: those who hand over a Jew to the enemy do not commit a direct act of murder, whereas when one diverts a missile away from its target towards a person, he directly kills the person who is ultimately struck by the missile. When the question is viewed from this angle, we might conclude that to the contrary, even Rabbi Yochanan would agree that it would be forbidden to divert the missile.

8. This point was made by Rav Eliezer Waldenberg in *Tzitz Eliezer* (15:70).

the plane to continue flying grants them an additional few minutes of life. Do these extra moments warrant forbidding shooting down the plane, compelling us to allow it to continue into a skyscraper and to kill hundreds or thousands of civilians?

This issue appears to be subject to debate among the halachic authorities. The *Yad Avraham* commentary to the *Shulchan Aruch* (Y.D. 157:1) asserts that the Tosefta's ruling allowing the townspeople to hand over a wanted person applies only if the enemies would otherwise kill the entire town immediately. In this case, since the wanted individual would die at the same time regardless of whether he is delivered to the enemy, we allow the townspeople to rescue themselves by handing him over. If, however, refusing to hand him over will result in the townspeople's deaths at a later time, then the Tosefta's ruling does not apply, and the people may not hand the person over to be killed, as they would thereby be denying him short-term survival.

The *Yad Avraham's* ruling is predicated on the assumption that we may not sacrifice a person's *חיי שעה* — the brief period he still has to live — even for the sake of the long-term rescue of others. According to the *Yad Avraham*, no distinction is drawn between short-term and long-term rescue. Thus, just as it is forbidden to kill one person to save another, it is forbidden to deny a wanted individual the brief period in which he could still remain alive by handing him over to the enemy.

By the same token, it would be forbidden to blow up a hijacked plane in order to rescue the people below, even according to the ruling of Rabbi Yochanan. Since destroying the plane would end the passengers' lives several moments before they would otherwise be killed by the plane's collision with the building, this would amount to killing some people for the sake of rescuing others, which is clearly forbidden.

However, the *Chazon Ish* (*Sanhedrin* 25, ומש"כ בגליון) disputes the *Yad Avraham's* view and maintains that once the enemy singled out a particular person for execution, it makes no difference whether he would otherwise be killed immediately or at some future point.

This debate hinges on the question of how to classify *חיי שעה* — whether or not it is equivalent in all respects to long-term survival. A number of *Acharonim* address this question in the context of the famous debate between Rabbi Akiva and Ben Petura (*Bava Metzia* 62a) concerning the case of two people traveling in a desert, one of whom has no water while the other has enough water to sustain only one of them. Ben Petura rules that the fellow must share his water with his companion, even though they will then both die, rather than drink his entire ration to sustain himself at the expense of the other man's life. Rabbi Akiva, however, citing the verse *וחי אחיך עמך* (“Your fellow shall live with you”



— *Vayikra* 25:36), establishes the rule of לחיי חברך, which means that one's life takes precedence over his fellow's life. In his view, the traveler with the jug of water may drink as much as he needs to sustain himself, even if this results in his fellow's death.

Several *Acharonim* note that Ben Petura appears to fully equate חיי שעה with long-term survival. In his view, one may not ensure his own long-term survival at the expense of his fellow's short-term survival, and the traveler with the jug must therefore share the water with his fellow so that his fellow can live for another few moments. Although Rabbi Akiva disputes this ruling, he does so only due to the inference from the verse, וחי אחיך עמך, indicating that were it not for this inference, he would accept Ben Petura's position and require sharing the water. This discussion thus perhaps lends support to the *Yad Avraham's* view equating short-term survival with long-term survival, such that one may not save a life by killing someone who will in any event die later.

By contrast, the *Shevus Yaakov* (3:75) asserts that long-term survival indeed overrides short-term survival, drawing proof from the Gemara's ruling in *Avoda Zara* (27b). The Gemara there establishes that although it was considered dangerous to seek medical treatment from idolaters (as they were regarded as potential murderers), it was permissible to seek medical treatment from them for a terminal illness. Since the patient in any event is certain to die, he may risk his life by seeking treatment from a dangerous physician. The Gemara explains, לחיי שעה לא חיישינן — meaning, we do not take into account the short-term survival that one potentially forfeits by taking this risk, as this brief period of life is not significant. Based on this, the *Shevus Yaakov* proves that short-term survival is not deemed halachically equivalent to long-term survival, and in some respects is considered insignificant.<sup>9</sup>

Clearly, however, we may distinguish between the Gemara's ruling in *Avoda Zara* and the discussion between Rabbi Akiva and Ben Petura. In *Avoda Zara*, the Gemara addresses the question of whether an individual may put **his own short-term survival** at risk for the sake of possible long-term survival. In such a case, it indeed stands to reason that the prospects of long-term survival warrant risking the patient's short-term survival. Rabbi Akiva and Ben Petura, however, address the question of whether one's long-term survival overrides **another**

9. The context of the *Shevus Yaakov's* discussion is the case of a gravely ill patient who, according to the doctors' prognosis, cannot survive in his condition for another day or two, but there is a procedure that could cure him of his illness, but might also kill him within an hour or two. The *Shevus Yaakov* draws proof from the Gemara's discussion in *Avoda Zara* that the patient may take the risk and undergo the procedure, since in any event he is going to die and the חיי שעה that he may be forfeiting is insignificant.

**person's short-term survival**, and the answer, in principle, is that it does not. With regard to our question, then, we might indeed draw proof from Rabbi Akiva and Ben Petura that one may not sacrifice another person's short-term survival to secure his own long-term survival, as the *Yad Avraham* claims.

As mentioned, however, the *Chazon Ish* disputes this ruling. In his view, we may indeed apply Rabbi Yochanan's ruling to our case to allow shooting down a hijacked airplane to save the people on the ground, even though this means ending the passengers' lives several minutes earlier than they would have otherwise ended.<sup>10</sup>

## VI. Conclusion

Based on what we have seen, there is room to allow and even require shooting down a hijacked plane to protect the people in the targeted building. In addition to the fact that several *Rishonim* accept Rabbi Yochanan's view, allowing handing over a wanted person to rescue a town, we noted that even Reish Lakish would allow shooting down the plane, as the passengers have not been randomly "selected." Moreover, since this situation does not involve the issue of assisting an enemy threatening the Jewish people, it is likely that the entire discussion between Rabbi Yochanan and Reish Lakish does not apply and the rationale of מאי חזית is likewise inapplicable, thus warranting killing the few to rescue the many.

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10. One might examine the possible relevance of the *Chazon Ish's* ruling with regard to the controversy surrounding organ transplants, which can generally be performed only when a patient is brain dead but still breathing. Contemporary halachic authorities have debated whether or not brain death constitutes halachic death such that organs may be removed from a brain dead patient. One might perhaps argue that regardless of this question, the organs may be taken because the donor's *חיי שעה* does not override the recipient's long-term survival. Even if we consider the brain dead patient halachically living, he is at very least a *טריפה* and has only a short period of time left to live, in which case his short-term survival should not take precedence over other patients' long-term survival according to the *Chazon Ish's* ruling.

In truth, however, we must distinguish between the situation addressed by the *Chazon Ish*, in which the enemy has stated their intent to kill the person in question, and the case of an ill patient. Clearly, it is inconceivable that we may remove the organs of any elderly hospital patient since in any event he or she has only *חיי שעה* in contrast to the young patients in need of a transplant. The *Chazon Ish's* ruling was said in reference to a case in which the person is condemned to death, and thus allowing him some extra moments of life should not, according to the *Chazon Ish*, come at the expense of the lives of all the townspeople.

## תלמוד בבלי מסכת בבא מציעא דף סב עמוד א

ורבי יוחנן, האי וחי אחיך עמך מאי עביד ליה? - מבעי ליה לכדתניא: שנים שהיו מהלכין בדרך, וביד אחד מהן קיתון של מים, אם שותין שניהם - מתים, ואם שותה אחד מהן - מגיע לישוב. דרש בן פטורא: מוטב שישתו שניהם וימותו, ואל יראה אחד מהם במיתתו של חברו. עד שבא רבי עקיבא ולימד: וחי אחיך עמך - חייך קודמים לחיי חבריך.

## Keeping Kosher on business trips

### תלמוד בבלי מסכת שבת דף קיט עמוד ב- קק ע"א

ואמר רבא: לא חרבה ירושלים אלא בשביל שפסקו ממנה אנשי אמנה, שנאמר שוטטו בחוצות ירושלים וראו נא [ודעו ובקשו ברחובותיה אם תמצאו איש] (אם יש איש) עושה משפט מבקש אמונה ואסלח לה. איני? והאמר רב קטינא: אפילו בשעת כשלונה של ירושלים לא פסקו ממנה אנשי אמנה, שנאמר כי יתפש איש באחיו בית אביו (לאמר) שמלה לכה קצין תהיה לנו - דברים שבני אדם מתכסין בהן כשמלה ישנן בידיך, והמכשלה הזאת תחת ירך דברים שאין בני אדם עומדין עליהם אלא אם כן נכשלים בהן ישנן תחת ירך קצין תהיה לנו. ישא ביום ההוא לאמר לא אהיה חבש וגו'. אין ישא אלא לשון שבועה, וכן הוא אומר לא תשא את שם ה'. לא אהיה חבש - לא אהיה מחובשי עצמן בבית המדרש, ובביתי אין לחם ואין שמלה - שאין בידי לא מקרא ולא משנה ולא תלמוד. וממאי? דילמא שאני התם, דאי אמר להו גמירנא, אמרו ליה: אימא לן! - הוה ליה למימר: גמר ושכח. מאי לא אהיה חבש - כלל. - לא קשיא, כאן - בדברי תורה, כאן - במשא ומתן.

# Stem cell Meat

## Headlines One

### A Kosher Cheeseburger? The Halachic Status of Synthetic Beef

On August 5, 2013, a press conference held in London introduced the world's first "test tube hamburger," a burger manufactured from the stem cells of a living animal. A group of scientists from the Netherlands took stem cells from a cow's muscle tissue and added nutrients and chemicals that caused them to rapidly multiply. Eventually, there was enough muscle tissue for the production of a piece of meat.

Many groups around the world are encouraging this process as a means of increasing the world's meat supply without depleting natural resources, and animal rights activists are supporting the endeavor to produce meat without killing animals. The researchers say that it will take at least a decade before the new meat-production technique becomes commercially viable, but in anticipation of this eventuality, it behooves us to address the question as to the halachic status of meat produced in a laboratory from a stem cell. The precise question at hand depends on the circumstances surrounding the extraction of the initial stem cell:

- If the stem cell was taken from a live animal, should the meat be regarded as בשר מן החי — meat taken from a live animal — which is forbidden?
- If the stem cell was taken from a non-kosher animal, should we treat the meat as ordinary meat from a non-kosher species?
- If the stem cell was taken from a kosher animal that was killed without proper שחיטה (a נבילה), should it be considered ordinary non-kosher meat?
- If the stem cell was taken from a kosher animal that had undergone proper שחיטה, is the artificially produced meat considered halachic meat, which may not be cooked or eaten with dairy products, or is it considered parve?

#### I. היוצא מן האסור אסור

In situations in which the stem cell was taken from a forbidden carcass — either a non-kosher species or a kosher animal that did not undergo שחיטה — it seems clear that the stem cell falls under the category of היוצא מן האסור, something that emerges or is extracted from a forbidden animal. The Mishna in *Bechoros* (5b) states explicitly והיוצא מן הטמא טמא והיוצא מן הטהור הטהור — anything which emerges from an animal's body has the same status as the animal itself. Thus, the *Shulchan Aruch* (Y.D. 81:1) rules that the milk and brine of a non-kosher species

or of a טריפה (a terminally ill kosher animal, which is forbidden for consumption), is forbidden just like its meat. Presumably, this would apply to a stem cell as well, and thus a stem cell taken from a forbidden animal should be forbidden for consumption. By extension, a stem cell taken from the carcass of a kosher animal that did not undergo שחיטה would be considered נבילה, just like the meat.<sup>1</sup>

Similarly, if the stem cell is taken from a live animal, it must be regarded as בשר מן החי and thus forbidden, as it is part of an animal that had not undergone שחיטה. The Gemara in *Chulin* (67b) discusses the case of worms discovered inside an animal after it was slaughtered and skinned, ruling that since they were grown inside the animal, they cannot become permissible without שחיטה, and since they are not covered by the שחיטה performed on the animal,<sup>2</sup> they never become permissible. It clearly emerges from the Gemara that a part of the animal that is not included in the שחיטה does not become permissible for consumption, and this should apply in the case of stem cells, as well.

The more complex question relates to stem cells taken from a kosher animal after it has undergone proper שחיטה. Since the meat has been produced from an animal, we might assume, at first glance, that it is halachically considered meat in all respects, just like ordinary animal meat, and it is therefore forbidden to be cooked or eaten with dairy products. On the other hand, several factors distinguish this meat from natural animal meat, which might perhaps lead us to the opposite conclusion.

## II. יוצא — The Status of Substances Extracted From an Animal

The first issue we will address is the distinction between יוצא — a substance extracted from an animal — and בשר — halachically defined meat. Although the permissibility of something extracted from an animal is determined based upon the status of the animal, as discussed above, a number of sources indicate that יוצא is treated differently than halachic בשר.

Rav Chaim of Brisk (cited in *Chiddushei Ha-Griz, Nazir* 50a) proves this distinction from the fact that a special inference is needed to establish the *halacha* that the blood of a נבילה transmits טומאה like the animal's meat. Without this

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1. I discussed this issue with both Rabbi Shlomo Miller of Toronto and with Rabbi Menachem Genack, head of the Kashruth Division of the Orthodox Union, and they both felt that the stem cells taken from a forbidden animal would clearly fall under the category of יוצא מן האסור.
  2. Rashi explains that they are not covered by the שחיטה because יש להם חיות לעצמן — they constitute separate entities.

inference, it appears, we would have assumed that although the carcass' flesh transmits טומאה, its blood does not. The animal's blood, which flows from the carcass, clearly falls under the category of יוצא, and we must therefore conclude that substances extracted from an animal are halachically distinct from its meat.

This point is also made by Rav Aharon Kotler (*Mishnas Rabbi Aharon* 16) concerning the status of extraneous parts of an animal. The Rambam (*Hilchos Ma'achalos Asuros* 4:18) rules that it is forbidden to eat the skin, bones, sinews, horns, or hooves of a forbidden animal (whether it belongs to a non-kosher species, was not properly slaughtered, or is a טריפה), but one is not liable to מלקות (court-administered corporal punishment) for this violation. Rav Aharon explains that these parts of the animal are forbidden because they are considered יוצא מן האסור — substances extracted from a forbidden animal<sup>3</sup> — and the Rambam rules explicitly earlier (3:6) that one is not liable to מלקות for eating בשר בחלב (milk and meat) applies only to the parts of animal that are halachically classified as בשר, to the exclusion of יוצא. He cites the Rambam's ruling later in *Hilchos Ma'achalos Asuros* (9:7) that one does not violate בשר בחלב if he cooks an animal's skin, sinews, bones, horns, or hooves with milk, a ruling that is codified by the *Shulchan Aruch*, as well (Y.D. 87:7). Clearly, then, substances taken from an animal are not included in the prohibition of בשר בחלב, as they are not considered actual meat.<sup>5</sup> Rav Aharon applies this conclusion to the case of gelatin produced from the skin and bones of kosher, properly slaughtered animals, ruling that this product should be treated as parve, since it falls under the category of יוצא, rather than בשר.

At first glance, this ruling should apply to in vitro meat as well, as the stem cell is considered יוצא and does not have the status of halachic בשר.<sup>6</sup>

We may, however, question the application of this ruling to in vitro meat. All the cases of יוצא discussed in halachic literature — such as skin, bones, hooves,

3. Rav Aharon cites this point from the *Or Samei'ach* (*Hilchos Ma'achalos Asuros* 4:20).

4. The Rambam draws a comparison between the prohibition of יוצא and that of חצי שייעור — eating a small amount of forbidden food that does not render one liable to מלקות, but nevertheless constitutes a Torah prohibition. Tosfos (*Chulin* 64a, ד"ה שאם רקמה) disagrees with the Rambam's ruling and maintain that one is liable to מלקות for eating יוצא מן האסור.

5. Rav Aharon suggests that the rationale for this concept lies in the fact that milk is also יוצא — something extracted from the animal. Thus, if the Torah forbids cooking it with meat, it must be that יוצא is not regarded as “meat” in this respect. We may, however, refute this argument, as it is very possible that milk was singled out for this prohibition and does not reflect on all substances that fall under the category of יוצא.

6. Indeed, Rabbi Genack expressed to me his unequivocal view that in vitro meat should be considered parve.

etc. — are items which bear no resemblance to meat, and it is therefore clearly understood why they would not fall under the halachic category of בשר. Meat produced from stem cells, however, has the same physical and chemical properties as meat, and this resemblance might require treating it as halachic בשר.

The basis for this distinction is the comments of Rav Chaim of Brisk (*Hilchos Ma'achalos Asuros* 3:11) distinguishing between two applications of the rule of היוצא מן האסור אסור. The Mishna (*Bechoros* 5b) establishes that if a non-kosher animal gives birth to an animal that has all the physical characteristics of a kosher animal, the offspring is nevertheless forbidden for consumption, due to the rule of היוצא מן האסור אסור. Rav Chaim contends that although generally one is not liable to מלקות for eating something extracted from a forbidden animal, one would be liable for eating the offspring of a non-kosher animal that resembles a kosher animal. He explains that when dealing with milk, eggs, and other substances that emerge from a non-kosher animal, the rule of יוצא establishes that these substances are forbidden like the non-kosher animal. But in the case of טמאה שילדה טהורה, where a non-kosher animal gave birth to a kosher animal, the rule of יוצא establishes that the offspring is itself a non-kosher animal despite its physical characteristics. It is forbidden not because of the separate prohibition of היוצא מן האסור, but rather because it is classified as a non-kosher animal. Understandably, then, although generally one is not liable to מלקות for violating the prohibition of היוצא מן האסור, one is liable to מלקות for partaking of a kosher animal delivered by a non-kosher animal, because he has eaten a non-kosher animal. Rav Chaim writes:

חלב וביצים של טמאים איסורן אינו מחמת עצמן כיון דאינן מין בשר ואין בהן איסורא  
דטמאים האמור בתורה...

The prohibition against [eating] milk and eggs of non-kosher animals is not due to their essence, **as they are not in the category of בשר**, and they are thus not subject to the Biblical prohibition against [eating] non-kosher animals...

When a non-kosher animal gives birth to a kosher species of animal, the offspring is itself regarded as a non-kosher animal, whereas substances that “are not in the category of בשר” are forbidden by force of the separate prohibition of היוצא מן האסור.

In light of Rav Chaim’s theory, we might distinguish between meat developed from a stem cell and other substances extracted from an animal, such as its hooves and bones. Although generally substances taken from an animal are not treated as בשר, this is true only for substances that are not, in Rav Chaim’s terminology, מין בשר. But if actual meat is taken from an animal, then it would

be regarded not just as יוצא, but as בשר, just like the case of a kosher species of animal born to a non-kosher animal. It could thus be argued that if a stem cell is taken from an animal and develops into meat, it should be considered בשר, and thus forbidden to be cooked or eaten with dairy products.

### III. גידולין

This question must also be addressed in light of the Gemara's discussion in *Nedarim* (57b) regarding an onion harvested during the שמיטה year which is planted the following year and produces additional onions. The Gemara raises the question, גידולי היתר מעלין את האיסור או לא. Seemingly, the question is whether the initial plant loses its status as שמיטה produce due to its being negated by the new plants it produces, which came into existence after שמיטה. This is, indeed, how Tosfos and the Rosh interpret the Gemara's question. According to this reading, it is clear that the new plants do not have the status of שמיטה produce, and the question is whether the initial plant loses this status by force of the majority.

The Ran, however, explains the Gemara differently, claiming that the question relates to the new onions, whether they should be treated as שמיטה produce, since they are the products of an onion harvested during שמיטה.

The Rambam discusses a similar case in *Hilchos Kil'ayim*, describing a situation in which an onion was planted in a vineyard — in violation of the prohibition of כלאים (planting vegetables in a vineyard) — and then the vines were cut down. The Rambam rules that the original onion retains its forbidden status of כלאים regardless of how many new onions it produces after the vines are removed. This ruling is codified in the *Shulchan Aruch* (Y.D. 296:18), and the Vilna Gaon, in his *Bei'ur Ha-Gra*, notes that the implication is that the new onions are not considered כלאים. The Gaon adds that according to the Ran, the new onions would indeed assume the status of כלאים.

At first glance, we might compare in vitro meat to these new onions. The meat is produced from an animal's stem cell, just as the new onions are produced from the original onion. Thus, according to the accepted ruling codified in the *Shulchan Aruch*, just as the new onions do not assume the halachic status of the original onion, the meat produced from the stem cell should similarly not be assigned the same status as the cell. As such, it should not be regarded as meat, and it may be cooked and eaten with dairy foods.

We may, however, distinguish between the two cases. In the case of the onions, the original onions produce new onions which then exist separate and apart from the original plant. In the case of the stem cell meat, however, the stem cell itself grows and develops into meat, and there is thus less reason to



distinguish the resultant product from the initial stem cell. Quite possibly, even the aforementioned *Rishonim* and the *Shulchan Aruch* would agree that the meat should be treated as בשר, even though onions are not assigned the status of the onion from which they were produced.

However, one might suggest distinguishing between in vitro meat and the case of the onions in the opposite direction. The onions are produced from a living plant, whereas the in vitro meat is produced from something removed from a living entity. The meat does not emerge directly from an animal, but is rather grown by removing a portion of the animal from its source. As such, we have greater reason not to view it as meat, as opposed to the new onions, which emerged directly from the original onion and might therefore assume the same status as that onion.

Developing this argument further, we might compare the case of in vitro meat to the situation discussed in the Gemara (*Menachos* 54a) of a small quantity of forbidden food, such as נבילה meat, which is left out in the rain and expands as a result of the moisture it absorbs. According to the accepted view (Rambam, *Hilchos Ma'achalos Asuros* 14:4), if the piece of meat was not originally the size of a *ke-zayis*, one who eats it is not liable to מלקות even though it expanded to this size as a result of the rain. This might indicate that when an object expands after it is removed from its source, its initial status does not apply to the newly added portion. By the same token, perhaps the growth of the stem cell in the laboratory is viewed as separate and apart from its origin, and is not considered halachic animal meat.

Clearly, however, one may distinguish between the two cases. When the meat expands as a result of the rain, the meat itself does not expand; the expansion is due to the absorbed moisture, which certainly should not be treated as forbidden food. This is much different than the stem cell, which actually grows and expands. The growth of the stem cell far more closely resembles the case of an onion producing additional onions (and, as we noted, the meat may be even more likely to be associated with its origins than the onions), since the cell itself grows, as opposed to the food that merely absorbs moisture. Thus, although the expanded portion of the forbidden meat left out in the rain is not considered forbidden meat, the expansion of the stem cell is considered בשר, as the cell itself has grown and expanded.

#### IV. Manmade vs. Natural Meat

Another argument that could be advanced for not considering in vitro meat בשר is the fact that it did not come into existence naturally. When all is said and done, this meat was produced by scientists in a laboratory and was not made through

natural means out in the wild. The intensive involvement of human beings in transforming a stem cell into a hamburger should perhaps force us to view the burger as an artificially engineered product, not as animal meat.

The Mishna, however, might suggest otherwise. In *Maseches Kilayim* (1:9), the Mishna addresses the case of one who placed a turnip or radish in the ground, a practice which, as Tosfos (*Shabbos* 50b) explains, has the effect of producing new growth. The Mishna rules, somewhat ambiguously, that as long as some of the leaves were exposed, there is no מעשר obligation. The Rambam explains this to mean that tithes are not required from the new portion of the vegetable that grew during this period, because the Torah obligates giving tithes only מזרע הארץ, from that which grows in the ground. Since the vegetable was not entirely submerged underground, the new growth is not considered the exclusive product of the ground. The Rash explains differently, claiming that the Mishna refers to a case in which the vegetable was placed underground during the next agricultural year, when different tithing obligations apply.<sup>7</sup> According to the Rash, the Mishna establishes that the new portion of the vegetable is subject to the previous year's obligations, just like the original portion, because it is considered part of the original plant.

As in the case of the meat in the laboratory, we deal here with an item which expanded as a result of human intervention. According to the Rash, the expanded portion is not considered a new entity that we can dissociate from its source, and is rather treated as part of the original entity. Applying this to in vitro meat, the expansion of the original stem cell retains its association with that cell despite the fact that the expansion was brought about through human intervention. It should also be noted that according to the Rambam, the new growth is exempt from tithes only because of an inference from the phrase מזרע הארץ. If not for this inference, the new portion of the vegetable would be treated as ordinary agricultural produce, and it would thus be obligated in tithes despite the fact that it was “engineered” through human intervention. Apparently, human intervention is not a factor when determining the halachic status of something produced from a preexisting entity.

7. The Rash gives the example of a vegetable grown during the second year of the seven-year halachic agricultural cycle, and is thus subject to the obligation of מעשר שני. It is then placed underground during the third year, when the מעשר שני obligation is replaced by מעשר עני. Since the growth is regarded as part of the original vegetable, it is subject to the obligation of מעשר שני, and not מעשר עני.

## V. Conclusion

We have explored numerous possible comparisons between the situation of in vitro meat and cases addressed in halachic sources. We noted that although extraneous portions of an animal, such as bones and hooves, as well as substances extracted from an animal, such as eggs and blood, do not have the halachic status of meat, in vitro meat differs because it shares the same properties as meat. Additionally, we saw that although there is some discussion concerning the status of vegetation produced by a plant as to whether it assumes the halachic characteristics of the original plant, in the case of the stem cell meat, the stem cell itself expands into a piece of meat, and the meat is not merely a product of the stem cell. This, too, gives us reason to treat it as actual halachic meat. Although one could argue that since it was engineered through human intervention, it cannot be regarded as natural animal meat, we noted the example in the Mishna in *Kilayim* suggesting that this is not a factor.

It thus stands to reason that just as stem cell meat has all the physical properties of ordinary meat, it should be assigned all the halachic properties of ordinary meat, as well.

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## שו"ת אחיעזר חלק ג סימן לג אות ה

בדבר שאלת הדר"ג אם באפשר להכשיר מין אבק חדש אשר מוצאו מעצמות יבשות אשר מערבים אותו בהרבה מיני מאכל גם מעמידים על ידו מינים שונים, וביאר אופן עשיתו בפרטיות, שלוקחים עצמות יבשות ושורין אותן בעסיד ממלח, אח"כ שמים העצמות במים עם חמר וגם שמים העצמות בפוספר, ומבשלים ומנקין ומיבשין, והעצמות מתיבשות אח"כ במשך ארבעים ושמונה שעה וטוחנים אותו כמו קמח סוכר, ומבאר כתר"ה הכל בדיוק אופן העשי'.

והנה כתר"ה העלה להתיר בדברים נכונים, עפמש"כ הרמ"א ביו"ד פ"ז סי' ט' בעור הקיבה דלפעמים מולחים אותו ומיבשין ונעשה כעץ וממלאים אותו חלב מותר דמאחר שנתיבש הוא כעץ בעלמא ואין בו לחלוחית בשר, והש"ך כ' דה"ה בשאר בני מעים והרבה אחרונים מתירים גם בבשר אסור ודם ותולעים אם נתיבשו כעץ וכ"ש עצמות שאין עליהם איסור לאו בנבילה וטריפה כמש"כ הרמב"ם בפ"ד מה' מאכ"א, ופלפל בזה ונסתייע מד' הר"מ מבשר המת שנפרך, ומד' הירושלמי בערלה פ"ג, ומד' הרמ"א בסו"ס קנ"ה גבי שרץ שרוף, זהו תו"ד.

ולכאורה בעצמות יבשות אין שום חשש, דהא עצמות האיסור מצטרפים עם ההיתר לבטל האיסור כמבואר ביו"ד סי' צ"ט, ואפי' בעצמות הרכין שהחמיר הש"ך כ' הפוסקים דאם הסירו הבשר ונתיבשו דינם כשאר כלי עצם וכלי מתכות ועץ [ומש"כ הרמב"ם בפ"ד מהל' מאכ"א הי"ח מן העור והעצמות והגידין כו' אף על פי שהוא אסור הר"ז פטור היינו בעצמות הרכין או שיש בהם מוח, אבל בעצמות הקשים והיבשים בודאי גם איסורא ליכא, וכ"ה במשנה בפ' העור והרוטב, ופירש"י שיש בהם מוח ואינם מצטרפים לכזית להשלים שיעור נבילה לטמא, דזה ילפינן מדרשא דנבלתה] וא"כ פשוט דעצמות שנתיבשו אין בהם חשש איסור כלל. ועי' בתוס' ע"ז ס"ט דודאי רגלי הדבורים כיון דעצמות בעלמא ניהו מותרים דהא עצמות החמור טהורות ורגלי הדבורים כעצמות החמור כו' ולענין אכילה שפיר דמי.

ומה שיש לחוש בזה מהעצמות שנתבשלו ובלעו מבשר נבילה כמבואר יו"ד / בסו"ס צ"ט ס"ב, ובזה הא בעינן הגעלה כמו בשאר כלי עצם (וילה"ע ע"ז מפסחים פ"ג דמקשה הני עצמות היכי דמי אם לית בהו מוח נשדינהו ולמה בשריפה. וצ"ע הא העצמות בלעו מן הפסח בשעת צלי' ונעשה הבלוע נותר ולהכי צריך שריפה משום הבלוע של העצמות. ואולי כונת הש"ס דהא אפשר בהגעלה וצע"ק), אלא דבאינו בן יומו הא נוטל"פ =נותן טעם לפגם = מותר, מ"מ הא לכתחלה אסור קדירה שאינו ב"י = בן יומו = כמבואר בע"ז ע"ה וביו"ד סי' קכ"ב - דגזרינן קדירה שאב"י אטו ב"י, והא הבלוע תמיד אי"ר = אינו ראוי = לאכילה, א"כ מה בכך שנתיבשו, מ"מ אפשר שהבלוע יוצא ע"י בישול, וה"נ יש לחוש מצד הבלוע. אולם נראה באופן זה שנפסד לגמרי, ע"י הסיד של מלח והפאספאר השורף ומכלה ואינו ראוי עוד לפליטה. ויעוי' בשו"ת הרשב"א, הובא בב"י או"ח סוס"י תמ"ז בנוטל"פ בפסח דאסור, ובלבד שלא יהי' נפסד לגמרי דכל שנפסד כ"כ אין בו איסור כלל, ולא עדיף הבלוע מגוף האיסור, דהיכי דהוי עפר נתבטל מתורת איסור וכמבואר בתמורה ל"א דלכי גביל הוי עפרא בעלמא וכמש"כ הר"ן בע"ז ל"ט בטעם ההיתר מהמוסק בנבילה שנתהפכה לדבש לפי שנעשית מתחלה פגום (והארכתי בזה באחיעזר

חיו"ד סי' י"א להתיר בכדומה יעו"ש) וגם למש"כ הש"ך בסי' פ"ז דה"ה בשאר בני מעיים כשמיבשים אותו שנעשה כעץ, דלכתחילה אין לעשות כן, נראה דכל זה בבני מעיים, אבל לא בעצמות, אפילו לדברי החולקים לשי' הרמ"א שם דאין עצמות מעלין, משום דס"ל דיש בהם לחלוחית, מ"מ נראה דהיכי דנתיבשו ואין בהם עוד שום לחלוחית, הוי עצמות יבשות ובכה"ג כו"ע מודים ולא דמי לשאר בני מעיים, ועוד נראה למש"כ הגרעק"א בתשובה סי' ר"ז הובא בפתחי תשובה שם דכל היכי דאיכא ששים דלא יבוא לידי איסור דאורייתא לא חיישינן לכתחילה וא"כ ה"נ בנידון דידן לא יבוא לידי איסור דאורייתא, דהא דבר המעמיד לא בטל אמד"ר = אינו אלא מדרבנן = כמש"כ הש"ך בסי' צ"ט וכמו שהרגיש בזה גם רומעכת"ה.

ומה שתמה רומעכת"ר במכתבו ע"ד הרמ"א /יו"ד/ בסי' קנ"ה שכתב דמותר לשרוף שרץ או שאר דבר איסור ולאוכלו לרפואה ולא לאכילת רשות דאיזה איסור יש בדבר וכבר תמה ע"ז בס' מנחת יעקב ומש"כ לתרץ דדוקא גבי שרץ או שאר איסור מאוס דיש בו משום שקוץ אפילו אחר שנשרף, משא"כ בשאר איסורים עכ"ד אין זה מספיק למש"כ רש"י במעילה י"ז, דחייב משום בל תשקצו על נבילה ועיין ברמב"ן בטה"מ בשורש תשיעי, שכ' דהוי לאו שבכללות ועי' בטו"ז סוסי' קט"ז וא"כ גם בנבילה יתחייב משום בל תשקצו והא עיקר דין כשאינו ראוי לגר אינה קרוי' נבילה, בנבילה כתיב. אולם ביד אברהם שם כ' דהעיקר משום אחשבי' כמו בחרכו קודם זמנו, דאפילו בנפסל מאכילת כלב אסור לאוכלו ועי' בשאג"א סוף סי' ע"ה שכ"כ וכל זה באוכלו בעיני', דס"ל דאחשבי', אבל בעושה מזה אבק דק לצורך העמדה ומעמיד בזה, אין בזה אחשבי' ובעיקר ההוראה הנני מסכים עם רומעכת"ר להקל בזה.

### **חידושי ר' חיים הלוי הלכות מאכלות אסורות פרק ג הלכה יא**

אפרוח שנולד מביצת טריפה מותר שאין מינו טמא עכ"ל. ובהשגות ז"ל מה ראה לשנות הטעמים שפירשו בו חכמים שהם מתוקנים יותר מכלם כי ביצת טריפה אינה ממין טמא ואסורה והטעם שפירשו בו לאימת קא גביל לכי קא מסרחא וכי מסרח עפרא בעלמא הוא עכ"ל, והשגתו היא מהא דאיתא בתמורה דף ל"א [ע"ב] דלהכי מותר אפרוח שנולד מביצת טריפה משום דכי גביל עפרא בעלמא הוא וקשה על הרמב"ם שכתב טעמא שאין מינו טמא, וצ"ע.

והנה בחולין דף נ"ח [ע"א] אמר אמימר הני ביעי דטריפה שיחלא קמא אסירא מכאן ואילך הוה ליה זה זה גורם ומותר, ובתוס' שם ז"ל אף על גב דבסוף כתובות [ק"א ע"ב] פסקינן כר' יהודה בפרדות דמספקא ליה בפ' אותו ואת בנו [ע"ט ע"א] אי חוששין לזרע האב או לא וכו' עכ"ל, וקושייתם יש לפרש בתרי גווני, או דהקושיא היא דהרי אף אם חוששין לזרע האב מ"מ להוי כזה זה גורם דמותר, או דר"ל דאם אין חוששין לזרע האב א"כ הא לא הוי זה זה גורם כלל וא"כ גם הכא תהוי ספיקא. ונראה לומר, דבאמת הך דינא דיוצא מן הטמא טמא מחדש לן תרתי, דטהור הנולד מן הטמא איסורו הוא מחמת עצמו ואהני ליה הך דינא דיוצא מן הטמא טמא שיהא איהו מצד עצמו חייל ביה איסורא דאמו, ובדין אמו קאי, דהרי הוא כאמו, ועוד נכלל ביה דין איסור בפני עצמו של יוצא מן הטמא, דמשום זה לחוד שהוא יוצא מן הטמא חייל ביה איסורא, ואף דאינו קאי בדין אמו ולא חייל עליו

איסור מצד עצמו, מ"מ אסור הוא מאיסורא דיוצא מן הטמא, ואיסורו אינו מחמת עצמו כי אם משום שיוצא מן הטמא זהו איסורו.

ומתבאר זאת מדברי הרמב"ם בפ"ג מה' מאכלות אסורות הל"ו שכתב ז"ל אעפ"י שחלב בהמה טמאה וביצי עוף טמא אסורין מן התורה אין לוקין עליהן שנאמר מבשרם לא תאכלו על הבשר הוא לוקה ואינו לוקה על הביצה ועל החלב והרי האוכל אותן כאוכל חצי שיעור שהוא אסור מן התורה ואינו לוקה עכ"ל, והרי בטהור הנולד מן הטמאה ודאי דלוקין עליו ואף על גב דתרווייהו איסורייהו משום יוצא מן הטמא ניהו, אלא ודאי כמו שכתבנו, דטהור הנולד מן הטמאה איסורו הוא מחמת עצמו, והרי הוא נכלל באיסורא דטמאים האמור בתורה, וממילא דיש בהו גם מלקות ככל הטמאים, משא"כ חלב וביצים של טמאים איסורן אינו מחמת עצמן כיון דאינן מין בשר ואין בהן איסורא דטמאים האמור בתורה, ורק דאסורין הן מאיסורא דיוצא מן הטמא, וע"כ אין בהם מלקות, ומשום דאע"ג דאסור מן התורה מ"מ דין איסור זה של יוצא מן הטמא כאיסורא דחצי שיעור שאין בו רק איסורא ולא מלקות, וזהו שכתב הרמב"ם טעמא משום שנאמר מבשרם על הבשר הוא לוקה ואינו לוקה על הביצה ועל החלב, ר"ל דהך קרא דמבשרם אתי לאורויי על איסורא דטמאים דאינו רק בבשר, ולא על ביצה וחלב, ולא חייל בהם איסורא דטמאים מצד עצמן, וא"כ ממילא דדין יוצא שלהן חייל רק לענין זה שיהיו אסורין מאיסורא של יוצא מן הטמא, ובהך איסורא לית ביה מלקות כחצי שיעור. ולפ"ז נראה דחלוק בזה ולד טמאה מולד טריפה, דהנה זה שכתבנו דבכל היכא דהוי מין בשר מהני ליה הך דיוצא מן הטמא טמא לענין שיהא חייל בהולד איסורא מצד עצמו, כל זה לא שייך אלא בטמאים, דאיסורו במינו תלוי, ומעצמו הוא שבא לו איסורו, ע"כ שפיר שייך דבר זה גם בהולד שהוא כאמו וחד איסורא להו, משא"כ בטריפה, שאיסורה דבר אחר גרם לה ואין איסורה בא לה מעצמה, א"כ ממילא לא שייך בזה שיהא גם הולד כמוה שיהא גם הוא חשוב טריפה, ובעל כרחך דאיסורו של הולד הוא רק מאיסורא דיוצא מן הטמא, שזה שהוא יוצא מן הטמא גורם לו איסורא, וע"כ שייך דבר זה גם בטריפה, כיון דיוצא הוא מן האסור ע"כ גם הולד אסור.

ולפי זה יתבאר היטב החילוק שבין הך דינא דחוששין לזרע האב ובין הדין דזה דזה גורם מותר, דהנה יסוד הפלוגתא אם חוששין לזרע האב איתא לקמן דף ע"ט [ע"א] לענין ארבעה מילי, אם חייל ביה איסורא דאותו ואת בנו, ולענין חלבו אם הוא אסור או מותר, ולענין דמו אם טעון כיסוי אם לא, ולענין אם חייב במתנות כהונה, אשר בכל אלה לא שייך כלל הך דיוצא מן הטמא, דהוא רק על יוצא מן האסור, אבל לא על חיוב מצוה כמתנות וכיסוי, בזה לא שייך כלל דין יוצא, וכן לענין חלב ג"כ לא שייך לומר דין יוצא, דאטו משום דאביו חלבו אסור יהיה דין יוצא גם על חלבו של הולד, הרי החלב והבשר שוין הן דיוצאין הן מחלב האב והבשר דמבלבל זרעיה וכמבואר בסוגיא דחולין דף ס"ט, ולא שייך בזה כלל דין יוצא מן האסור, וגם בדין אותו ואת בנו כיון דאינו מאיסורי מאכלות והנאות ואין בזה איסור חפצא שהחפץ מקרי דבר האסור ממילא לית ביה דין יוצא מן הטמא, אלא פשוט דהדין דחוששין לזרע האב הוא לענין אם הוא חשוב מינא דאבוה אם בהמה אם חיה, וכן אם טמא אם טהור, וממילא אית ביה כל הנך דינים דאבוה מעצמו, שהוא בעצמו כאביו או חיה או בהמה או טהור או טמא. ולפ"ז הרי ניחא הא דחוששין לזרע האב ולא שרינן ליה מטעמא דזה וזה גורם, דהא דזה וזה גורם מותר לא

נאמר אלא היכא דלית ביה איסורא מעצמו, ואיסורו הוא רק מחמת שיוצא מן האסור והאיסור שיצא ממנו הוא דהוי גורם לאיסורו, בזה הוא דהוי הילכתא דזה וזה גורם מותר, משא"כ בהך דחוששין לזרע האב דחייל ביה דין איסורו מחמת עצמו, ואין כאן גורם, כי אם גופו של איסור עצמו הוא דאית ביה מחמת אבוהי, וע"כ שפיר נוהג בו דינא דאבוהי אם לאיסור אם להיתר וכמו שנתבאר. וכן ניחא נמי למ"ד דזה וזה גורם אסור דאתינן עליה גם בטריפה מצד אביו אפילו למ"ד אין חוששין לזרע האב, משום דנהי דלא חשיב מינא דאבוהי לענין למיחל ביה דיני אביו מחמת עצמו משום דאין חוששין לזרע האב מ"מ איסורא דיוצא מן הטמא מ"מ אית ביה, ושפיר חייל ביה הך דינא דזה וזה גורם.

ומעתה מיושבים היטב דברי הרמב"ם שכתב טעמא דמותר אפרוח שנולד מביצת טריפה משום דאין מינו טמא, ולא תקשי עליה מהא דבתמורה אמרינן דטעמא הוא משום דכמה דלא מסרח לא גביל וכי מסרח עפרא בעלמא הוא, דהרמב"ם סובר דהך טעמא דכי מסרח עפרא בעלמא הוא לא מהני רק אם באנו לדון איסורו מדין יוצא, וזהו עיקר איסוריה משום שבא מן הטמא, ובזה הוא דמהניא הא דכיון דבשעתא דקא גביל עפרא בעלמא הוא ע"כ שוב לא הוי יוצא מן הטמא, אבל אם אמרינן דאיהו מצד עצמו חייל ביה איסורא א"כ לא שייך כלל טעמא דגביל מעפרא דמ"מ שפיר חייל עליה אח"כ איסורא מחמת עצמו, וזהו שהוסיף הרמב"ם הא דאין מינו טמא, ר"ל דמשום הכי לית ביה איסורא מחמת עצמו, וכל איסורו הוא רק משום יוצא מן הטמא, וע"ז מהני טעמא דקא גביל מעפרא, ונמצא דהנך תרי טעמים תרומיהו צריכין להדדי, וכמו שנתבאר.

### **שו"ת נודע ביהודה מהדורא תניינא - יורה דעה סימן י**

תשובה שלום להאי צורב, העוסק בחקי חורב, ה"ה כבוד אהובי האלוף התורני מוהר"ר גומפריכט אפנהיים י"ץ :  
מכתבו קבלתי ואם אינני מכירו ולא ידענא ליה אך אשר בא לשאול שאילתא ומשתעי בלישנא דחכמתא הנני משיב לכל שואל. ושורש שאלתו איש אחד אשר זכהו השם בנחלה רחבה ויש לו כפרים ויערות אשר בהיערות תרמוש כל חיתו יער אם מותר לו לילך בעצמו לירות בקנה שריפה לצוד ציד או אם אסור לישראל לעשות דבר זה אי משום צער בעלי חיים אי משום בל תשחית ואי משום שנהגו בו איסור צעב"ח כמבואר בתוס' במסכת ע"ז דף י"א והיינו בפסקי תוס' ובאו"ה כלל נ"ט סימן ל"ו כתב בשם הרא"ש כל שיש בו משום רפואה (אין בו משום רפואה) אין בו משום דרכי אמורי וכתבו התוס' בע"ז אף על פי שצעב"ח = שצער בעלי חיים = דאורייתא ואם יועיל לאיזו דבר מותר כו'. ובאמת בתוס' בע"ז דף י"א ע"א בד"ה עוקרין משמע היפך. וז"ל התוס' שם וא"ת אמאי לא פריך והא איכא צעב"ח בשלמא משום בל תשחית ליכא כיון דלכבודו של מלך עושין כן אין כאן השחתה והוי כמו תכריכין של מאה מנה אלא צעב"ח היאך הותר וי"ל דשאני כבוד המלך שהוא כבוד לכל ישראל ואתי כבוד דרבים ודחי צעב"ח עכ"ל התוס'. וא"כ משמע מדבריהם דצעב"ח חמיר מבל תשחית ואינו מותר אפילו לצורך רק משום כבוד רבים. ופוק חזי שהתוס' קורין אותו דחיה שכבוד הרבים דחי צעב"ח וא"כ איך נימא שיהיה מותר לצורך דבר הרשות. אבל בפסקי תוס' שם כתבו צעב"ח אינו אסור אלא כשמצערה בלי ריוח עכ"ל. ובאמת דברי התוס' גופייהו כאן במסכת ע"ז שמוכח מדבריהם שאיסור צעב"ח חמור טפי מאיסור בל

תשחית סותר לדברי התוס' במסכת ב"מ דף ל"ב ע"ב בד"ה מדברי שניהם כו' שכתבו וא"ת א"כ אמאי עוקרין על המלכים כו' וי"ל דמשום כבוד מלך ונשיא עדיף כמו בל תשחית דנדחה מפני כבודן כו' הרי שמדמים איסור צעב"ח לבל תשחית. ובאמת דברי התוס' בב"מ הם נגד דברי הרמב"ם דהרי שם במסכת ב"מ קיימו התוס' בהאי מ"ד דסבר צעב"ח דאורייתא והרי בל תשחית בדבר שאינו קציצת אילנות הוא רק מדרבנן. וז"ל הרמב"ם בפ"ו מהל' מלכים הלכה ח', אין קוצצין אילני מאכל כו' וכל הקוצץ לוקה ולא במצור לבד אלא בכל מקום כל הקוצץ אילן מאכל דרך השחתה לוקה, ובהלכה יו"ד כתב ולא אילנות בלבד אלא כל המשבר כלים וקורע בגדים והורס בנין וסותר מעין ומאבד מאכלות דרך השחתה עובר על בל תשחית ואינו לוקה אלא מכות מרדות מדבריהם. הרי ששאר השחתות שאינן קציצת עץ מאכל הוא רק מדבריהם באיסור בל תשחית :

ואמנם אין לנו להאריך בזה כי כבר האריך מהרא"י בפסקים וכתבים סימן ק"ה שכל דבר שיש בו צורך להאדם לית ביה משום צעב"ח וגם לא שייך צעב"ח אלא לצערו ולהניחו בחיים אבל להמית בהמות וחיות וכל מיני בעלי חיים לית ביה משום צעב"ח וכן מוכח בחולין דף ז' ע"ב עקרנא להו איכא צעב"ח קטלנא להו איכא משום בל תשחית הרי אף שהשיב לו על עקרנא דאיכא צעב"ח אעפ"כ אמר קטלנא להו. וא"כ אין בנדון שאלתו משום צעב"ח, ומשום בל תשחית ודאי ליכא דהרי נהנה בעור וגם אינו עושה דרך השחתה. וגם עיקר איסור בל תשחית אף שהוא מדרבנן מ"מ שורשו הוא ממה שאסרה התורה בקציצת עץ מאכל והנה שם כתיב כי ממנו תאכל ואותו לא תכרות וגו' וא"כ כל דתיקון רבנן כעין דאורייתא תיקון שלא ישחית דבר שיכול האדם ליהנות ממנו לא ישחית ויפסיד אותו ההנאה ואולי אפילו בדבר של הפקר שייך זה אבל דבר שאין בו הפסד לשום אדם לא שייך בל תשחית, וא"כ הני חיתו יער כל זמן שהם בחיים אין בהם שום הנאה לאדם רק עיקר הנאה במותן בעורותיהם ובבשרם ואיך נימא שיהיה אסור להמיתם משום בל תשחית. ולומר שאסור מצד דברים המותרים ואחרים נהגו בהן איסור ג"כ ליכא למיחש דדבר דלא שכיח לא שייך בו למימר שנהגו בו איסור. והנה עד כה דברנו מצד הדין :

ואמנם מאד אני תמה על גוף הדבר ולא מצינו איש ציד רק בנמרוד ובעשו ואין זה דרכי בני אברהם יצחק ויעקב, ופוק חזי לומר תבלה ותחדש כתב מהרי"ו בפסקיו הביאו רמ"א בא"ח סוף סימן רכ"ג שאין לומר כן על הנעשה מעורות בהמה משום ורחמיו על כל מעשיו, ואף שרמ"א כתב עליו שהוא טעם חלוש היינו מצד שאינו חיוב שבשבילו ימיתו בהמה וכמה עורות יש שכבר מוכן וכמה מתים מאליהם ויכולים להשתמש בעורותיהם ועם כל זה סיים רמ"א שרבים מקפידים על זה, ואיך ימית איש ישראלי בידיים בעלי חיים בלי שום צורך רק לגמור חמדת זמנו להתעסק בצידה ואי משום שדובים וזאבים ושאר חיות הטורפים מועדים להזיק והרי אמרו שהזאב והארי כו' כל הקודם להרגן זכה, גם זה טעות הוא מתרי טעמי, חדא שאין הלכה כר"א בזאב וארי ודוב ונמר וברדלס, ואפילו בנחש נחלקו הרמב"ם והראב"ד בפ"ה מהלכות סנהדרין הלכה ב'. ועוד אפילו לר"א הרי אנו קיי"ל כריש לקיש דדוקא כשכבר הרגו וכמבואר ברמב"ם שם ועיין בכ"מ שם, ואמנם אכתי יש לבעל הדין למצוא מקום ולומר דהיינו כשיש להם בעלים ויש להם תרבות וכמבואר בסנהדרין דף ט"ו ע"ב דמסיים על דברי רשב"ל אלמא קסבר יש להם תרבות ויש להם בעלים וכן הוא לשון הרמב"ם שם ארי ודוב וברדלס שיש להן תרבות ויש



להם בעלים כו' וא"כ אותן שלא נתגדלו בבתיים אינם בני תרבות ודרכן להזיק והרי אפילו בשבת עכ"פ מותר לדרסן לפי תומו כמבואר בשבת דף קכ"א ע"ב ובשלחן ערוך סימן שי"ו סעיף יו"ד. ואמנם גם זה אינו ענין לנדון דידן דהתם כשבאו לישוב במקום בני אדם והם באו לידם בחול יהרגם ובשבת ידרסם לפי תומו, והרי כך אמרו שם במסכת שבת תנו רבנן נזדמנו נחשים הרגן בידוע שנזדמנו לו להרגן כו', אבל לרדוף אחריהם ביערות מקום מעונתן כשאין רגילין לבוא לישוב אין כאן מצוה ואין כאן רק לרדוף אחר תאות לבו ועצת הנדמה כטביא. ומי שהוא איש הצריך לזה ופרנסתו מצידה כזו בזה לא שייך אכזריות והרי שוחטין בהמות וחיות ועופות וממיתים דגים לצורך האדם ומה לי טהורים שיאכל מבשרם ומה לי טמאים שיאכל ויפרנס עצמו מדמי עורותיהן וכל בעלי חיים ניתנו לאדם לכל צרכיו, אבל מי שאין זה לצורך פרנסתו ואין עיקר כוונתו כלל בשביל פרנסתו הוא אכזריות. ועד כאן דברתי מצד יושר ההנהגה שראוי לאדם להרחיק מזה ועכשיו אני אומר אפילו איסורא איכא שהרי כל העוסקים בזה צריכין להכנס ביערות ולהכניס עצמם בסכנות גדולות במקום גדודי חיות ורחמנא אמר ונשמרתם מאוד לנפשותיכם, ומי לנו גדול ואומן בקי בצידה יותר מעשו שהכתוב העיד עליו ויהי עשו איש יודע ציד וכו' ופוק חזי מה אמר הוא על עצמו הנה אנכי הולך למות וגו' ואין מקרא יוצא מידי פשוטו שהיינו שהוא מסתכן בכל יום בין גדודי חיות וכן פירשו הרמב"ן, ומעתה איך יכניס עצמו איש יהודי למקום גדודי חיות רעות ואף גם בזה מי שהוא עני ועושה זו למחייתו לזה התורה התירה כמו כל סוחרי ימים מעבר לים שכל מה שהוא לצורך מחייתו ופרנסתו אין ברירה והתורה אמרה ואליו הוא נושא את נפשו ואמרו רז"ל מפני מה זה עלה בכבש ונתלה באילן ומסר עצמו למיתה לא על שכרו כו', אבל מי שאין עיקר כוונתו למחייתו ומתאות לבו הוא הולך אל מקום גדודי חיות ומכניס עצמו בסכנה הרי זה עובר על ונשמרתם מאוד כו'. וז"ל הרמב"ם בפ' י"ב מהל' רוצח ושמירת נפש הלכה וי"ו וכן אסור לאדם לעבור תחת קיר נטוי כו' וכן כל כיוצא באלו ושאר הסכנות אסור לעבור במקומן :

ומעתה אני אומר שיש בדבר זה איסור וגם סכנה, ועוד בו שלישיה שעכ"פ מזכירין עונותיו שאין זה פחות מקיר נטוי ואולי לזה כיונו חכמי המשנה במסכת ברכות פ"ד משנה ד' ר"י אומר המהלך במקום סכנה מתפלל תפלה קצרה ואומר הושע השם את עמך כו' בכל פרשת העבור כו' ואמרו שם בגמרא דף כ"ט ע"ב מאי פרשת העבור אמר רב חסדא אמר מר עוקבא אפילו בשעה שאתה מתמלא עליהם עברה כו' איכא דאמרי כו' אפילו בשעה שהם עוברים על דברי תורה כו' ע"ש. ולדרכנו יובן דזה המהלך במקום סכנה הוא עובר על דברי תורה דכתיב ונשמרתם מאוד לנפשותיכם וגם מזכירין עונותיו וממילא הקדוש ברוך הוא מתמלא עליו עברה דאילו בשאר איסור שאדם עושה לא בשביל עבירה זו יתמלא הקדוש ברוך הוא עברה עליו אבל זה שגורם להזכיר כל עונותיו הקדוש ברוך הוא מלא עליו עברה. והנה במי שמוכרח לזה מחמת פרנסתו הורו לו חכמינו ז"ל תפלה שיתפלל על עצמו אבל מי שעושה כן בשאט נפש איך תקובל תפלתו, ולכן יש בדבר זה מדה מגונה דהיינו אכזריות וגם איסורא וסכנתא וגם הזכרת עונותיו ולכן השומע לי ישכון בטח השקט ושאנן בביתו ולא יאבד זמנו בדברים כאלה. ולולא אהבתי להגביר המפורסם במדות טובות לא הייתי מזדקק להשיב על שאלה כזו. אבל להיות יודע שהגביר וכל ביתו שפיר שמעיהו ולכן צריך אני לשמור בכל כחי את כל בני ביתו שלא יתנו מקום לשונאי הגביר שנאה מחמת קנאה שימצאו מקום להתלונן. והיה זה שלום. מנאי הטרוד.

## Selected Emails from our listeners

Shalom and thank you for your interesting show. I would just like to make one comment that I feel is very important. This past week you commented on the recent Asifa, which I actually hadn't even heard of until you mentioned it. While I do agree with you that I think that nowadays they take it too far, and they look at things in a very "black and white" outlook without seeing the many shades in-between, I do feel that you did not show proper Kavod to the Satmar Rebbe ZT"L. Do you honestly think that he didn't know his own grandfather's dvar Torah? Do you not think he himself was able to judge the whole person, yet still felt that it was necessary for him to do what had to be done? Don't forget that we're talking about somebody who had kol hatorah kulah at his fingers and was a Makach Elokim. So when you say that you see even the Satmar Rebbe holds like me! He once said a vort which had nothing to do with the question at hand but I think he would have held like me! I find it very disrespectful to his Kavod and I think you should clarify and ask mechila. I sometimes get the feeling you say these things just for attention, and in my opinion being pogeah in the Kavod of one of the gedolim of the previous generations is just too high a price to pay just for some attention

Y. Teitelbaum

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Dear R Dovid

This week was a truly fascinating show, covering so many topics. I enjoyed it very much.

I have quite a few comments, and I think they are all important.

1. Rabbi Eichenstein was brought on to discuss the unfortunate machlokes and the unfortunate actions resulting from it.

His response was that R' Shteinman understands our generation, and he is doing is what is necessary for our generation.

I will first make it clear that I am not at all on any side.

I will just comment that his statement is not really helpful, because the other side feel that the person **they** follow understands better! It would have been more helpful for him to say that even if you disagree, screaming & marching is not the way to express it! (which still may not solve matters, because if the one they are following is instructing them to do this, we are back to square one!).

2. The autonomous car- it was inferred that this creates the situation for the question.

I would like to comment that this question always existed! If I am driving a car today with 5 people in it, and I find myself in that situation ie a truck coming towards me, and a motorcycle in the next lane, I have the exact same dilemma!

3. The autonomous car- You were claiming that the programmer is the potential murderer. I think that may need some thought. The driver is making the decision to drive the car which is programmed in a certain way. He is the responsible one. If it is not programmed עפ"י הלכה it is אסור to drive it!

4. The lab grown meat- Rabbi Smith pointed out the problem of it soaking in blood for 24 hours. May I suggest a simple solution: Once every 24 hours, take it out of the blood for a second! This would solve the problem of כבוש.

5. The lab grown meat- Rabbi Smith claims there is a major problem of מראית העין. I think there is no problem at all, once it becomes widespread. For example, nowadays you can have a hot dog with cheese, when the hot dog is not fleishig, and the cheese is not milchig! Everybody knows this, and there is therefore no מראית העין.

6. Rabbi Smith quoted R Chaim as saying that by meat we don't have the הלכה of יוצא, and it only applies to liquids. I beg to disagree. R Chaim makes a distinction by a טהורה כמין שילדה טהורה. He does not say why. However, this certainly does not apply to lab grown meat! Lab grown meat is not "meat". The definition of "meat" is something that was a part of an animal. What grows in the lab was never part of an animal! It is not "meat"!

7. Lab grown meat- even if there is a problem of יוצא, there could possibly be an עצה of taking cells from the lab grown meat, and growing them. This "second generation" of lab grown meat would be יוצא מן היוצא which could very well be מותר. (To explain this: There is a famous chazal which says that לעתיד לבוא the חזיר will become מותר. Some explain that it will have סימני טהרה. The question on this is that even if it develops סימני טהרה it is still אסור because of הטמא מן הטמא. Some answer that nevertheless the next generation will be מותר because יוצא מן יוצא (מותר is היוצא)

Looking forward to your reply!!

Yours Sincerely  
Ahron Kramer  
07854783391  
**Leeds Kollel**  
**Registered charity 1154962**

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Assuming that this is kosher and pareve:  
<https://www.impossiblefoods.com/faq/>

Is it maaras ayin to eat this as a cheeseberger? Do you have to leave the packaging conspicuously on the table?

Best regards,  
Moshe Rappoport

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R' Dovid,

As an avid listener of your show, I found the recent one with Rabbi Spitz about stem cell meats to be absolutely fascinating!

As opposed to several other guests in the past, he certainly seems to have an excellent grip on the source material. It was simply a great show, especially in the same show about the self driving cars of the future - great job showcasing different types of modern technology through a Torah lens.

On the last point you brought up about meat without shchita being more humane - Shchita is one of the taryag Mitzvos! True it's not chiyuv, but shver to say better to get rid of it altogether. I believe that that was what the rabbi meant about shchita being the proof that Torah shebaal peh and Torah shebksav are really one.

It seems to me that your idea of using stem cell meat to avoid shchita might be (almost) akin to genetically engineering fetuses to be born gemalt so only hatafas dam bris would have to be done - a quite tenuous position from a halachic standpoint.

Keep the fascinating shows coming!

Chaim Mordechai Berstein

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The Rambam counts גירושין as a mitzvah to, notwithstanding that, most of us would be happy if it never occurred again.  
There are many more mitzvot like that as well.

### **Selected audio from our listeners**

The attitude of the Reb Chaim Brisker towards the Israeli government *[click here](#)*

The attitude of the Satmar Rov towards the Israeli government (1) *[click here](#)*

The attitude of the Satmar Rov towards the Israeli government (2) *[click here](#)*

The attitude of Rav Dessler towards the Israeli government *[click here](#)*

Dan Lcaf Zchus the protesters *[click here](#)*

Self driving cars- A comment on the show *[click here](#)*

# Headlines

## Halachic Debates of Current Events

BY DOVID LICHTENSTEIN



## A Kosher Cheeseburger? The Halachic Status of Synthetic Beef

### BACKGROUND

On August 5, 2013, a press conference held in London introduced the world's first "test tube hamburger" – a burger manufactured from the stem cells of a **living animal**. A group of scientists from the Netherlands took **stem cells from a cow's muscle tissue** and added nutrients and chemicals that caused the cells to rapidly multiply. Eventually, there was enough muscle tissue to produce a piece of meat.

Many groups around the world are encouraging this process as a way to increase the world's meat supply without depleting natural resources. Animal rights activists are supporting this endeavor because it produces more meat without killing more animals. Researchers say that it will take at least a decade before the new meat-production techniques become commercially viable, but meanwhile, in anticipation of this eventuality, it behooves us to address the question: What would be the halachic status of meat produced from stem cells?

This question is quite complex, because it depends on the precise circumstances surrounding the extraction of the initial stem cell from the animal: Was the animal kosher? Was it alive at the time of extraction? If the animal was dead, was it slaughtered properly according to Jewish law?

### QUESTIONS TO CONSIDER

- If the stem cell was taken from a **non-kosher species** (such as a horse or a pig), is the artificial meat produced from its stem cells **also** considered non-kosher?
- If the stem cell was taken from a **n'veilah** – a kosher animal (such as a cow or sheep) that was killed **without proper halachic shechitah** – is the artificial meat produced from its stem cells also forbidden?
- If the stem cell was taken from a **live animal**, should the resultant meat be regarded as **basar min hachai, meat that was taken from a live animal**, which the Torah forbids us from consuming?
- If the stem cell was taken from a **fully kosher** piece of meat, is the resultant artificial meat considered *fleishig* or *pareve*?

### THE PRINCIPLE OF "HA'YOTZEI MIN HA'ASSUR - ASSUR"

If a stem cell is taken from a **forbidden animal carcass** – such as a non-kosher species or a kosher animal that did not undergo proper *shechitah* – it seems clear that the stem cell would also be forbidden. This prohibition is due to the halachic principle of **ha'yotzei min ha'assur, assur** – something that either emerges or is extracted from a forbidden animal is also forbidden. This rule is established by the Mishna in Bechoros, which were later codified in the Shulchan Aruch as the accepted halachah:

### Mishna Bechoros 1:2

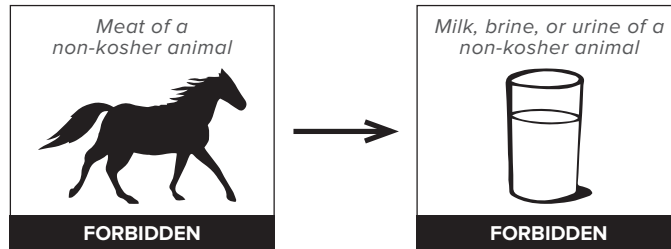
If a kosher animal gives birth to a non-kosher animal, the newborn is permitted, whereas if a non-kosher animal gives birth to a kosher animal, the newborn is forbidden, because **whatever emerges from an impure animal is impure**, and whatever emerges from a pure animal is pure...

בהמה טהורה שילדה כמין בהמה טמאה  
מותר באכילה וטמאה שילדה כמין בהמה  
טהורה אסור באכילה שהיוצא מהטמא טמא  
...היוצא מן הטהור טהור...

**Shulchan Aruch: Yoreh Dei'ah: Hilchos Behaimah V'Chaya Tehorah 81:1**  
 Rabbi Yosef Karo (1488–1575)

It is forbidden to consume the **milk, brine, or urine** of a non-kosher animal or a *treifah*, just as eating its meat is forbidden.

חלב בהמה וחיה טמאה או טריפה וציריה  
 ומי רגליה אסורים כבשרה.



**QUESTIONS TO CONSIDER**

- How might this rule of *ha'yotzei min ha'assur, assur* apply to stem cells taken from forbidden animals?

**APPLICATION OF "HA'YOTZEI MIN HA'ASSUR - ASSUR"**

Applying the halachic principle of *ha'yotzei min ha'assur, assur* to stem cells would result in the following conclusions:

- A stem cell taken from a **non-kosher animal** should be considered **non-kosher** as well, and its consumption would be forbidden.
- A stem cell taken from a **n'veilah** – the carcass of a kosher animal that was not properly slaughtered – would be considered **n'veilah** as well, and its consumption would be forbidden.
- A stem cell taken from a **live** animal would be regarded as **basar min ha'chai** – meat from a live animal – and its consumption would be forbidden.

**QUESTIONS TO CONSIDER**

- Take a look back at our original four questions. Based on what we have discussed thus far, which questions have we already answered? Which questions have not yet been resolved?

**IS ARTIFICIAL MEAT CONSIDERED FLEISHIG?**

The Shulchan Aruch's ruling seems to answer the first three questions about stem cells taken from (1) **non-kosher** animals, (2) **n'veilah** carcasses, and (3) **live** animals. Each of these cases would be **forbidden** due to the principle of *ha'yotzei min ha'assur, assur*.

The question still left unanswered is the case of stem cells taken from a **kosher animal** after it has undergone proper halachic *shechitah*. We might assume, at first glance, that the artificial meat should be **fleishig** – just as ordinary animal meat is **fleishig** – and it would therefore be forbidden to cook or eat such artificial meat together with dairy products. However, although it is true that *ha'yotzei min ha'assur – assur*, we cannot necessarily deduce the corollary that *ha'yotzei min ha'fleishig, fleishig!*

As we will soon see, there are several factors that make artificially-produced meat notably **different** from natural animal meat. These factors leave room to argue that meat produced from stem cells might actually be *pareve*; **it would not necessarily share the same fleishig status as the natural animal meat from which it was derived.**

**THE DIFFERENCE BETWEEN "BASAR" (MEAT) AND "YOTZEI" (EXTRACTIONS)**

The first issue to address is the distinction between **yotzei (something extracted from an animal)**, and the actual **basar (meat)** of the animal. Although anything extracted from a forbidden animal is itself forbidden as well (as discussed in the Shulchan Aruch above), a number of sources indicate that one who **eats** forbidden *yotzei* (the extractions) is not punished in the same way as one who eats forbidden *basar* (meat). Consider the following Rambam:

## Mishneh Torah of the Rambam: Hilchos Ma'achalos Assuros 4:18

Maimonides (1138–1204)

If someone eats the **skin, bones, sinews, horns, or hooves** of a non-kosher animal, a *n'veilah*, or a *treifah*... even though doing so is forbidden, such a person is **exempt from receiving lashes as a punishment** since these items are not fit to be consumed...

האוכל מנבלה וטריפה, או מבהמה וחיה הטמאים מן העור ומן העצמות ומן הגידים ומן הקרנים ומן הטלפים ומן הצפרנים של עוף ממקומות שמבצבץ משם הדם כשיחתכו ומן השליא שלהן אף על פי שהוא אסור ה"ז פטור מפני שאלו אינן ראויין לאכילה ואין מצטרפין עם הבשר לכזית...

It is forbidden to eat the meat, skin, bones, sinews, horns, or hooves of any forbidden animal. However, the Rambam here draws the distinction that one who eats the **meat** of a non-kosher animal receives lashes\* for this violation, **but one who eat the skin, bones, sinews, horns, or hooves of a forbidden animal is not punished with lashes**. Why is a person not punished in the latter case? Eating skin, bones, sinews, horns, or hooves is forbidden, so shouldn't the person be punished for their violation?

\*Note: The actual punishment of *malkos* (lashes) can only be administered under very specific circumstances. Nowadays, lashes are not administered at all, since the original chain of *semicha* has disappeared. Nevertheless, understanding which cases theoretically warrant lashes is critical for understanding the broader nature and extent of many prohibitions, as we will see here.



Rav Aharon Kotler (1891–1962) explains that the **skin, bones, sinews, horns, and hooves** of a forbidden animal are **treated differently from its meat**. Although these former parts of the animal are forbidden from consumption, they are still considered forbidden only due to their status of *yotzei min ha'assur* – and do not taken on the full status of the forbidden meat. One only receives lashes if they eat the *basar* (meat) of a forbidden animal, but **not** if they eat the *yotzei* (extractions) from the animal, since eating forbidden *yotzei* is a separate and lower-level prohibition. This understanding would explain the Rambam's ruling that one who eats the skin, bones, sinews, horns, or hooves of a forbidden animal does not receive lashes.

### QUESTIONS TO CONSIDER

- If *yotzei* is considered categorically different from *basar* (meat), does that mean that *yotzei* would not be *fleishig*?

### IS "YOTZEI" CONSIDERED FLEISHIG?

Rav Aharon further notes that the prohibition of *basar b'chalav* (mixing milk with meat) applies **only to the parts of an animal that are halachically classified as *basar* (meat), but does not apply to *yotzei***. As proof, Rav Aharon cites the Rambam's ruling later (Hilchos Ma'achalos Assuros 9:7) that one does **not** violate the prohibition of cooking meat with milk if he cooks an animal's skin, sinews, bones, horns, or hooves with milk. Clearly, then, substances taken from an animal would be considered *pareve*.



Rav Aharon also applies this conclusion to gelatin produced from the skin and bones of properly-slaughtered kosher animals, ruling that the **gelatin should be treated as *pareve***, since it falls under the category of *yotzei* (an extraction), rather than the category of *basar* (meat).

### QUESTIONS TO CONSIDER

- Now that we established that *yotzei* is *pareve* (at least according to Rav Aharon Kotler), does that mean that stem cells would be *pareve*? Are stem cells considered *yotzei*?

IS ARTIFICIAL MEAT CONSIDERED “YOTZEI”?

At first glance, Rav Aharon’s ruling seems to apply to artificial meat produced from stem cells as well. Just as Rav Aharon permits eating gelatin with milk, it would seem that Rav Aharon should permit eating artificial meat produced from stem cells with milk as well, since the stem cells are also only forbidden due to *yotzei*.

QUESTIONS TO CONSIDER

- What do you think? Are stem cells comparable to gelatin in that they are both extractions from animals? Can you think of any distinction between gelatin and hamburgers created from stem cells? Is there any reason to argue that artificial hamburgers might still be considered *fleishig* even though they were created from stem cells that are *yotzei* (extracted from an animal)?

NOT ALL “YOTZEI”S WERE CREATED EQUAL: A REASON TO CONSIDER ARTIFICIAL MEAT AS FLEISHIG

One might argue that Rav Aharon’s ruling (that all types of *yotzei* are *pareve*) **would not apply to artificial meat produced from stem cells**. All cases of *yotzei* discussed in halachic literature – such as skin, bones, and hooves – are items that bear **no resemblance** to meat, and it is therefore clearly understandable why they would not fall under the halachic category of *basar* (meat) and would not be *fleishig*. **Artificial meat produced from stem cells, however, does have the same physical and chemical properties as natural meat, and this resemblance might mandate treating it as halachic *basar* (meat) and hence *fleishig*.**

The basis for this distinction is found in comments of Rav Chaim of Brisk, where he distinguishes between two applications of the rule that forbids eating *yotzei*:

**Chiddushei Rav Chaim HaLevi: Hilchos Ma’achalos Assuros 3:11**  
Rav Chaim of Brisk (1853–1918)

The Rambam writes that even though it is forbidden to consume the **milk** of a non-kosher animal or the **eggs** of a non-kosher bird, **one does not receive lashes** for doing so, because the verse, “From their meat you shall not eat,” (Vayikra 11:8) **only** explicitly mentions eating the **meat** of such species [but does not mention their milk or eggs]... At the same time, it is clear that **one does receive lashes for eating an animal resembling a kosher animal born from a non-kosher animal**, even though both of these two cases are **forbidden** due to the same rule of *yotzei*...

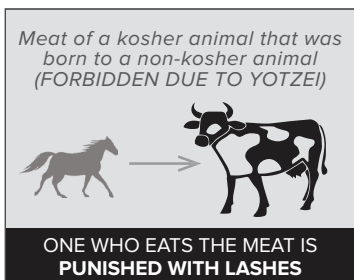
[How can we explain this? If both of them are forbidden only due to *yotzei*, why does one warrant *malkos* (lashes) while the other does not?

One can see from here that there must be **two independent concepts of *yotzei***:

(1) An animal that was **born** from a non-kosher species is one type of *yotzei*, where the new creature has the **same status** as the animal it emerged from [i.e. it is forbidden and *fleishig*], and hence one who eats it is subject to lashes just as one who eats the mother is subject to lashes.

However, (2) **milk and eggs** of non-kosher animals are [also forbidden due to *yotzei*] but do **not** have the exact same status as the animal they emerged from [i.e. they are not *fleishig*], **since they are not actually meat [*eino min basar*], and one who consumes them does not receive lashes...**

ומתבאר זאת מדברי הרמב"ם בפ"ג מה' מאכלות אסורות הל"ו שכתב ז"ל אעפ"י שחלב בהמה טמאה וביצי עוף טמא אסורין מן התורה אין לוקין עליהן שנאמר מבשרם לא תאכלו על הבשר הוא לוקה ואינו לוקה על הביצה ועל החלב והרי האוכל אותן כאוכל חצי שיעור שהוא אסור מן התורה ואינו לוקה עכ"ל, והרי בטהור הנולד מן הטמאה ודאי דלוקין עליו ואף על גב דתרווייהו איסוריהו משום יוצא מן הטמא ניהו, אלא ודאי כמו שכתבנו, דטהור הנולד מן הטמאה איסורו הוא מחמת עצמו, והרי הוא נכלל באיסורא דטמאים האמור בתורה, וממילא דיש בהו גם מלקות ככל הטמאים, משא"כ חלב וביצים של טמאים איסורן אינו מחמת עצמן כיון דאינן מין בשר ואין בהן איסורא דטמאים האמור בתורה, ורק דאסורין הן מאיסורא דיוצא מן הטמא, וע"כ אין בהם מלקות, ומשום דאע"ג דאסור מן התורה מ"מ דין איסור זה של יוצא מן הטמא כאיסורא דחצי שיעור שאין בו רק איסורא ולא מלקות...





As we saw earlier, the Mishna (Bechoros 1:2) established that if a non-kosher animal gives birth to an animal that has the same physical characteristics as a kosher animal, this offspring is forbidden from consumption, due to the rule of *ha'yotzei min ha'assur, assur* – whatever emerges from a forbidden animal is forbidden.

Rav Chaim of Brisk here contends that although one is generally **not** subject to lashes for eating something (such as milk or eggs) that were **extracted** from a forbidden animal, one **would** receive lashes for eating the **offspring** of a non-kosher animal that resembles a kosher animal. He explains the difference in punishment as follows:

When dealing with **milk, eggs, and other substances** that emerge from non-kosher animals, the rule of *yotzei* simply establishes that these substances are forbidden, just as the non-kosher animal from which it was extracted was forbidden. However, **the extracted yotzei substances do not take on the full set of halachic properties** (such as *fleishig* vs. *pareve*) as the original animal from which they were extracted.

By contrast, in the case where a **non-kosher animal gives birth to a kosher animal** (such as a cow born to a horse), **the rule of yotzei establishes that the kosher-looking offspring takes on all the halachic properties of its non-kosher mother**, despite its physical kosher characteristics.

A person who eats this kosher-looking offspring therefore violates the full-blown prohibition of eating a non-kosher animal. Although one does not receive lashes as a punishment for violating most cases of “plain” *yotzei*, **one does receive lashes for eating the offspring in this case.**

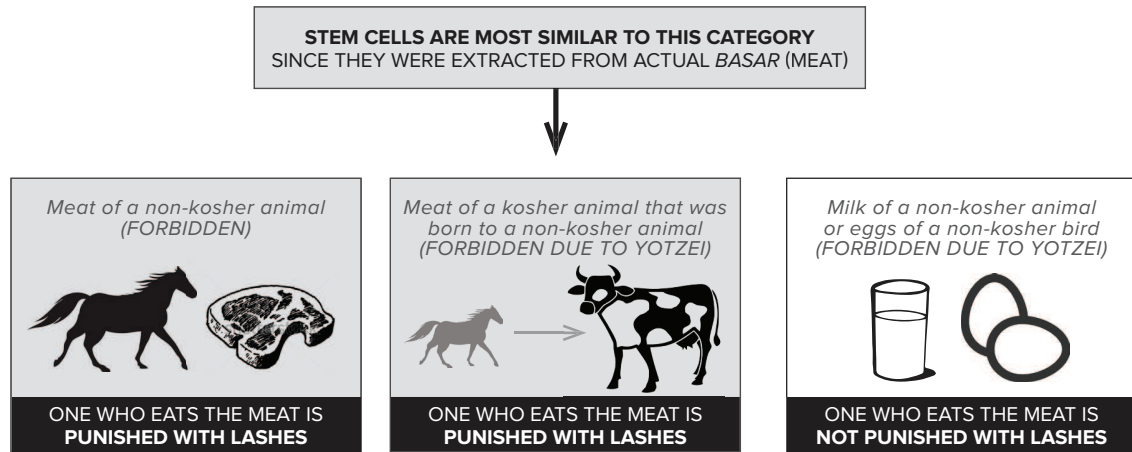
**QUESTIONS TO CONSIDER**

- What are the implications of Rav Chaim’s ruling for artificial meat produced from stem cells? Would the artificial meat be *fleishig*? Would it be possible to eat a cheeseburger made of artificial meat, or would this be forbidden due to *basar b'chalav* (eating meat with milk)?

**IS MEAT PRODUCED FROM STEM CELLS CONSIDERED “BASAR” (MEAT)?**

In light of Rav Chaim’s theory, we might distinguish between **meat produced from a stem cell** and **other substances** extracted from an animal, such as its hooves and bones. Although substances taken from an animal are generally not treated as *fleishig* meat, this is true only for substances that are not, in Rav Chaim’s terminology, “*min basar*” – meat-like in quality. But **if actual meat is taken from an animal, then it would be regarded not just as yotzei, but as basar**, just as a kosher-looking animal born to a non-kosher animal takes on the **full status** of the non-kosher animal.

It could thus be argued that if a stem cell is taken from an animal and develops into meat, it should be considered *fleishig* meat, and thus forbidden to be cooked or eaten with dairy products.



THE CONCEPT OF  
"GEEDULIN"

Although we have thus far assumed that a stem cell would fall under the halachic category of *yotzei*, it is not entirely clear that this is the case. An alternative approach is to view the artificial meat in the same way that halachah views *geedulin* – additional growth which vegetables produce after being removed from a forbidden state.

For example, the Shulchan Aruch describes a situation in which an onion was planted in a vineyard – in violation of the prohibition of *kilayim* (the Torah-based prohibition of cross-breeding certain plants) – and then the grape vines were later cut down. There are two questions related to this case:

1. After the grape vines have been removed, is it permissible to eat the **original onion** that grew while the vineyard was still intact, or does the onion lose its status as *kilayim* once the grape vines are gone? (Perhaps the original onion should become *bateil* [insignificant in relative quantity and thereby halachically nullified] in comparison to the new onions that grew later.)
2. Is it permitted to eat the **new onions (*geedulin*)** that grew after the vineyard was removed – or are those considered *kilayim* as well?

The Shulchan Aruch discusses the first question:

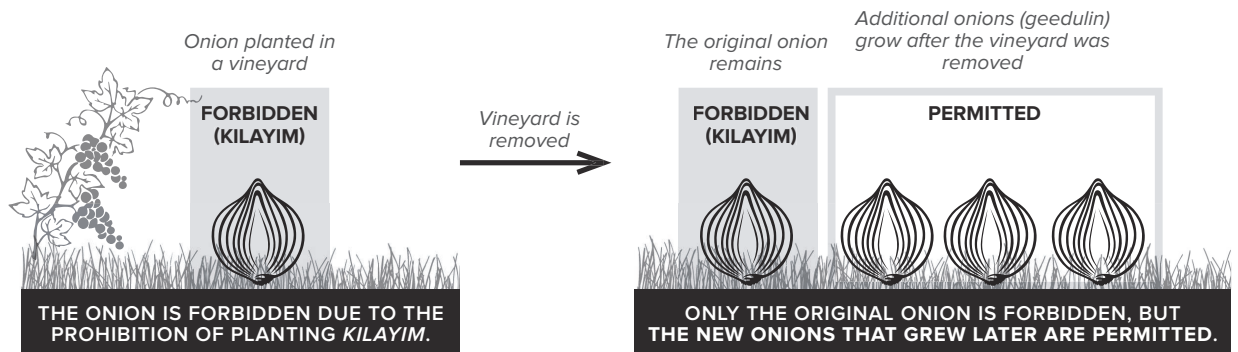
**Shulchan Aruch: Yoreh Dei'ah: Hilchos Kil'ei HaKerem 296:18**

If an onion was planted in a vineyard [in violation of the prohibition of *kilayim*], and the vineyard is later removed – but the onion remains and continues to grow, the **original part of the onion plant that grew in a prohibited state [i.e. while the vineyard was still intact] remains forbidden...**

בצל שנשעו בכרם ואח"כ נעקר הכרם, ואחר כך צמחו בצלים מן העיקר הנשוע, אף על פי שרבו הגידולים על עיקרו במאתים, הרי אותו העיקר באיסורו, שאין גידולי היתר מעלין את העיקר האסור.

The Shulchan Aruch rules that even after the grape vines have been removed, **the original onion retains its original status as forbidden *kilayim*.**

What about the new onions (*geedulin*) that grew from this onion after the grape vines were already removed? Based on the Shulchan Aruch's comments, the Vilna Gaon rules that the **new onions** which grew after the vineyard disappeared are **not considered *kilayim*.**



QUESTIONS TO  
CONSIDER

- How might the concept of *geedulin* apply to stem cells?

COMPARING  
ARTIFICIAL MEAT  
PRODUCED FROM  
STEM CELLS TO  
"GEEDULIN"

At first glance, we might compare artificially-produced meat to the new onions that grew after the vineyard was removed. The artificial meat is produced from an animal's stem cell, just as the new onions were produced from the original onion. Thus, based on the Shulchan Aruch, one could argue that just as the new onions do **not** assume the same halachic status as the original onion, **meat produced from a stem cell should not be assigned the same halachic status as the stem cell.** Specifically:

- Artificial meat that was produced from stem cells of a **kosher** animal would **not** acquire the same ***fleishig*** status as the *basar* (meat) from which the cells were extracted. The artificial meat would therefore be *pareve*.
- Artificial meat that was produced from stem cells of a **non-kosher** animal would **not** acquire the same **non-kosher** status as the animal from which the cells were extracted. The artificial meat would therefore be permitted for consumption.

QUESTIONS TO CONSIDER

- Are the cases of the onion and the artificial meat truly comparable? Can you think of any distinguishing factors between the cases?

REFUTING THE VIEW THAT ARTIFICIAL MEAT IS LIKE "GEEDULIN"

Although the two cases appear similar, one could argue that there is an important distinction between the cases. In the case of the onion, the original onion produced new onions which then existed as separate entities apart from the original plant. In the case of the stem cell meat, however, **the stem cell itself** grew and developed into a larger piece of meat. There is therefore less reason to say that the artificial meat would have a different halachic status from the initial stem cell. Quite possibly, even the Shulchan Aruch would agree that the meat should be treated as *fleishig* meat for this reason.

COMPARING ARTIFICIAL MEAT TO RAIN-BLOATED MEAT

Although we have refuted the argument that artificial meat produced from stem cells may be compared to *geedulin*, it may be possible to compare artificial meat to a different case discussed in halachah.

The Gemara (Menachos 54a) discusses the case of a small quantity of forbidden food, such as *n'veilah* meat, which was left out in the rain and then expanded as a result of the moisture it absorbed. A person would not be subject to lashes for eating the original tiny piece of forbidden meat (since it was smaller than a *k'zayis*), **but once the meat has expanded to a larger size, would one now be punished with lashes for eating it?**

**Rambam: Hilchos Ma'achalos Assuros 14:4**

Maimonides (1138–1204)

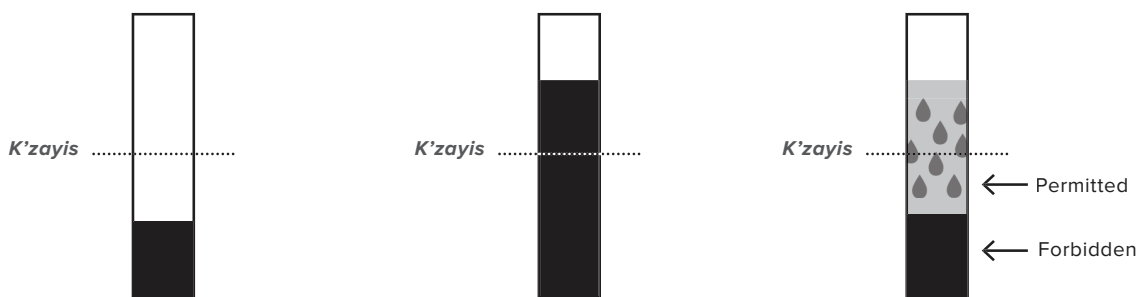
If exactly a *k'zayis* of forbidden fats or *n'veilah* or other forbidden foods was left outside in the sun and shrank from the heat, one who eats the shrunken piece of meat is exempt from lashes...

If one leaves a piece of forbidden meat that is less than a *k'zayis* out in the rain and it **expands to the size of a *k'zayis***, although it is obviously **forbidden** to consume such meat, nevertheless **one does not receive lashes for eating it.**

כזית חלב או נבלה או פגול או נותר וכיוצא בהן שהניחו בחמה ונתמעט, האוכלו פטור, חזר והניחו בגשמים ונתפח חייבין עליו כרת או מלקות, היה פחות מכזית מבתחלה ונתפח ועמד על כזית אסור ואין לוקין עליו.

According to the view of the Rambam (which is accepted today as the mainstream halachah), if the piece of meat was **not originally the size of a *k'zayis*** [the minimum amount one can eat from most forbidden foods to be liable for corporal punishment], **one who eats the expanded meat is not subject to lashes** if the meat expanded to this size only as a result of rain.

The above ruling of the Rambam may indicate that when an object **expands** after it has been removed from its source, its **initial status** (of permitted-or-prohibited) **does not apply to the newly added portion.**



**NO LASHES FOR EATING LESS THAN A K'ZAYIS OF FORBIDDEN MEAT**

**YES LASHES FOR EATING MORE THAN A K'ZAYIS OF FORBIDDEN MEAT**

**NO LASHES FOR EATING MORE THAN A K'ZAYIS OF MEAT IF THE FORBIDDEN MEAT ONLY EXPANDED DUE TO ABSORBING MOISTURE**

Applying the Rambam's rule to the case of stem cells would then result in the following: The meat that grew out of a stem cell is viewed as separate and apart from its origin, and is therefore not considered halachic animal meat.



QUESTIONS TO CONSIDER

- Is a piece of meat that expanded in the rain truly comparable to artificial meat grown from a stem cell? Why or why not?

It seems clear, however, that there is a distinction between these two cases. When meat expands as a result of rain, the meat itself does not “grow.” Rather, the expansion is due to the **absorbed moisture**, which certainly should **not** be treated as forbidden food.

This stands in contrast to the stem cell, which actually grows and expands itself as its cells multiply in number. The growth of the stem cell more closely resembles the case of the onion producing additional onions, since the animal cell **itself** grows and multiplies. Thus, although the expanded portion of forbidden meat left out in the rain does not take on the status of “forbidden,” the new cells produced from of the stem cell **may still be** considered meat, with the same status as the animal from which it was taken.

CONCLUSION

We have explored numerous possible comparisons between in vitro meat and cases addressed in halachic sources. We noted how all meat grown from a stem cell which was itself forbidden would seem to remain forbidden under the principle of *ha'yotzei min ha'tamei, tamei*.

We then attempted to explore whether meat taken from a kosher stem cell should be considered halachic meat and hence forbidden with milk. We noted that although many portions of an animal which falls under the parameters of *yotzei* – such as eggs and blood, do not have the halachic status of meat – in vitro meat differs because it shares the same properties as meat, and hence is more likely to be treated as *fleishig*. We also attempted to compare meat grown from a stem cell to additional growth (*geedulin*) that appears on vegetables, or to meat that expands due to rainwater, though both comparisons were deemed tenuous at best.

At the end of the day, it seems that there is strong grounds to consider a stem cell hamburger just as *fleishig* as its beef counterpart, though there is certainly room for debate.

DISCLAIMER:

The views and opinions presented in this sourcesheet should not be taken as *halachah l'maaseh*. Before applying these halachos to real-life situations, one must consult with a competent halachic authority.

# SUMMARY

## QUESTION A

If stem cells were taken from a forbidden animal - are the stem cells forbidden?

**HALACHIC PRINCIPLE:** *Ha'yotzei min ha'assur, assur* - Anything extracted from a forbidden animal takes on its forbidden status as well.

**APPLICATION TO STEM CELLS:** A stem cell that is extracted from a forbidden animal is likewise prohibited. Examples of prohibited animals include non-kosher species, *n'veilah*, and live animals.

**CONCLUSION:** Yes, the stem cells are **forbidden**, and any meat produced from these cells may not be eaten.

## QUESTION B

If stem cells were taken from a kosher animal - are the stem cells (and resultant meat) *fleishig*?

**HALACHIC PRINCIPLE:** Only *basar* (meat) is *fleishig*, but *yotzei* (extractions from an animal, such as its skin, bones, sinews, horns, hooves, or gelatin) are *pareve*.

**APPLICATION TO STEM CELLS:** Stem cells are *yotzei* (extractions from an animal), so they would seem to be *pareve*.

**QUALIFICATION:** Although stem cells are indeed *yotzei*, any meat produced from these stem cells must additionally be considered *basar* (meat), since the artificial meat resembles meat and has meat-like properties.

**CONCLUSION:** Yes, artificial meat produced from stem cells would be ***fleishig*** because it is *basar* (meat).

## TWO COMPARISONS OF CASES TO STEM CELLS THAT CAN BE QUESTIONED

[1] "Geedulin" Grown from Onions	[2] Rain-Bloated Meat
<p><b>HALACHIC PRINCIPLE:</b> Any <i>geedulin</i> (additional growth) of onions that grew after grape vines have already been removed do <b>not</b> take on the same <i>kilayim</i> status as the original <i>kilayim</i> onion that grew while the grape vines were intact.</p>	<p><b>HALACHIC PRINCIPLE:</b> If a piece of forbidden meat expanded due to absorbing moisture, the newly-expanded portion of meat does <b>not</b> take on the same forbidden status as the initial piece of meat. (One would not receive lashes for eating more than a <i>k'zayis</i> of expanded meat.)</p>

### POTENTIAL APPLICATION TO STEM CELLS

Artificial meat that is grown from stem cells **would not take on the same status** as the meat from which the cells were extracted. Therefore:

- Artificial meat produced from (regular, natural, *fleishig*) meat would nevertheless be *pareve*.
- If the original meat was non-kosher, the artificial meat produced from it would nevertheless be kosher.

### REFUTING THE COMPARISON TO STEM CELLS

[1] "Geedulin" from Onions	[2] Rain-Bloated Meat
<p>These two cases are not comparable because <b>the new onions grew separate and apart from the original onion</b>, whereas the artificial meat grew out of the stem cell itself.</p>	<p>These two cases are not comparable because the former piece of meat expanded due to <b>absorbing water</b>, whereas the artificial meat grew by multiplying its own cells (beginning with the initial stem cell itself).</p>

### CONCLUSION

- It seems that no proof can be drawn from these cases; one cannot compare these two cases to the case of artificial meat produced from stem cells.
- Artificial meat produced from stem cells may still be ***fleishig***.
- If the original meat was forbidden, then the resultant artificial meat may also be **forbidden**.

# **The Halachic Status of Genetically Engineered Meat**

By Rabbi Yehuda Spitz

Recently, BBC broke an exclusive story;<sup>1</sup> one that many claim has potential to change the world. Professor Mark Post of Maastricht University in the Netherlands has done the impossible: he has created the world's first laboratory grown hamburger. While news of this \$325,000 hamburger was welcomed by environmentalists, animal rights activists, and doom n' gloom predictors alike; and others defining it as "just plain weird", our concern is how such a creation would be viewed through the lens of *halacha*.

## **Frankenbusters?**

This hamburger was created by extracting stem cells (the body's master cells; templates from which specialized tissue develop) from a cow's muscle tissue. These stem cells were cultured and multiplied with nutrients and growth promoting chemicals, and later coalesced, forming tiny strips of muscle fiber. Approximately 20,000 of these strips were needed to create just one hamburger.

It is important to note that currently, with the price tag of test tube beef being in the six figures, its production unrealistic in the foreseeable future, and the exact scientific process kept under wraps, this *halachic* discussion is primarily academic, firmly entrenched in the realm of theory and perhaps science-fiction. If and when lab grown burgers become affordable and mainstream, its status would need to be appraised by the expert *Rabbanim* of the time, based on the actual *metzius*, or facts on the ground, of how these burgers are made.

Several Rabbis recently addressed the issue of whether or not such a burger should be considered kosher and even possibly pareve, yet, based on different precedents cited, their theorized conclusions were quite diverse.<sup>2</sup> Would this man made and modified meat be considered kosher or *treif*? Pareve or *fleishig*? This article sets out to address the different potential *halachic* possibilities.

## **Magical Mystery Meat**

Truthfully, meat created from non-traditional sources has a tradition and precedent, and is already mentioned in the Gemara, once regarding meat that came down from the heavens, and again concerning meat that was created using the "*Sefer Yetzira*", "the Book of Creation" attributed to Avraham Avinu.<sup>3</sup>

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<sup>1</sup> BBC: <http://www.bbc.co.uk/news/science-environment-22885969>.

<sup>2</sup> See for example Jerusalem Post article: <http://www.jpost.com/Jewish-World/Jewish-News/Orthodox-groups-debate-kashrut-of-lab-grown-meat-322642>.

<sup>3</sup> *Sanhedrin* 59b and 65b. However, it must be noted that on a practical level there are differences between these two *Maasei Chazal*. The *Gemara* in *Menachos* (69b) deals with whether the *Mincha* for a *Korban* can be brought from 'wheat that came down from the clouds', as the Torah mandates it be from '*moshvosaichem*', 'your dwelling places' (*Vayikra, Parshas Emor* Ch. 23: 17). *Rashi* (ad loc. s.v. *sheyardu*) understands this case to mean that the clouds sucked in wheat from a wheat-laden ship in the ocean and when raining some wheat kernels rained down along with the rain. Yet, *Tosafos* (ad loc. *chittin*) maintains that this was an actual *Neis*, meaning a genuine miracle. Indeed, the *Rambam* (*Hilchos Tamidim U'Musafim* Ch. 8: 3) concludes that although the *Gemara* leaves the issue as an '*eebau delo ifshitai*' (meaning, it did not rule conclusively whether cloud based grain truly constitutes '*memoshvosaichem*'), still, such wheat is at least *kosher*

The *Malbim* writes that meat created using the “*Sefer Yetzira*” is essentially pareve. That is why Avraham Avinu was able to give the visiting Angels a meal containing both milk and meat; the meat was truly pareve, as Avraham created it that day!<sup>4</sup> The *Cheshek Shlomo*, Av Beis Din of Vilna in the nineteenth century, extrapolates further. He averred that ergo, milk from a cow that was created via the “*Sefer Yetzira*” is not truly ‘*milchig*’, rather pareve too.<sup>5</sup> If so, some opine that our test tube burger should be considered not only kosher, but pareve as well, due to this *halachic* precedent.

However, even according to this theory, in order for the burger to receive this *halachic* status, the cow that the stem cells were harvested from would need to have had a proper *shechita*, precluding a biopsy from a live cow. As although meat created utilizing the “*Sefer Yetzira*” should not technically need ritual slaughter, as it was not truly alive,<sup>6</sup> nevertheless, *shechita* still would be mandated, due to the Rabbinic injunction of *Maris*

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*b'dieved* for *Korbanos*. Several contemporary authorities, including the Kozoglover Gaon (*Shu”t Eretz Tzvi* vol. 2: 9), Rav Betzalel Stern (*Shu”t Betzeil HaChochma* vol. 6: 99 s.v. *v’acharon*), and Rav Nosson Gestetner (*Shu”t Lehoros Nosson* vol. 7: 11, 9) explain that when the item in question is a result of a *Neis* from Hashem, then it maintains all the attributes of a natural item of the same, as technically speaking, ‘nature’ is also a G-d given miracle. Yet, if it was a man-made item, then it would be exempt from all natural attributes and obligations of a similar natural item. Hence, meat that came down from the Heavens and man-made meat via “*Sefer Yetzira*” may not necessarily share the exact *Halachos*. This author has seen a recent discussion by Rabbi Avraham Maimon in *Kovetz Ohr Torah* (*Teves* 5759; 32, ppg. 268 - 279) regarding what the proper *bracha* would be, and whether a *bracha* is even mandated, regarding this “magical meat”, based on the famous discussion regarding the *munn*, manna that came down from Heaven. The *Rem”a M’Fano* is even quoted as mandating “*Hamotzi lechem min hashamayim*” for *munn*. Certainly, as per *Gemara Brachos* (48b), *Birkas HaMazon* was mandated for eating the *munn*. [See Rav Nissan Kaplan’s *Shalmei Nissan* (on *Perek Keitzad Mevorchin* pg. 304 - 305; who cites many *shittos* on topic) at length.] Rabbi Maimon opines that the same should apply to meat created via *Sefer Yetzira*, as by eating it one is still receiving ‘*han’a’ah min ha’olam*’ as per *Gemara Brachos* (35b), and therefore a *bracha* would be required, presumably *shehakol*. This question was also briefly addressed, with no compelling rationale either way, in *Shu”t Vaya’an Shaul* (Y”D end 8). Thanks are due to R’ Eliezer Freimark for pointing out these interesting sources.

<sup>4</sup> *Malbim* (*HaTorah V’HaMitzva*, *Parshas Vayera* Ch. 18: verse 8). A similar explanation can also be found in the *Pirkei D’R’ Eliezer* (cited in *Yalkut Reuveini* on *Parshas Vayera*) and by the *Chessed L’Avraham* (ancestor of the *Chida*; *Ein Mishpat*, *Nahar* 51). The *Pardes Yosef* cites this as well (*Parshas Vayera* Ch. 18, pg. 115, end 1<sup>st</sup> paragraph and *Parshas Vayeishev* Ch. 37, pg. 268, end 1<sup>st</sup> paragraph). See also *Darchei Teshuva* (87: 29). There are many other interpretations of how to understand Avraham Avinu’s actions. Several were listed in a previous article titled “[Ma’aseh Avos = Halacha L’Ma’aseh](http://ohr.edu/this_week/insights_into_halacha/4953)” (Yated Ne’eman 17 Cheshvan 5776 | October 30, 2015; [http://ohr.edu/this\\_week/insights\\_into\\_halacha/4953](http://ohr.edu/this_week/insights_into_halacha/4953)).

<sup>5</sup> *Cheshek Shlomo* (end Y”D 98, s.v. *v’da*). He is attempting to resolve the *Kreisi U’Pleisi*’s question (81: 7; at length) on the *Gemara Bechoros* (6b), why it did not cite Avraham Avinu’s serving of milk as proof that milk is not considered ‘*Aver Min HaChai*’ (see *Shulchan Aruch* Y”D 81: 5), which would be prohibited even for non-Jews as it is one of the Seven Mitzvos of *Bnei Noach* (see *Rambam Hilchos Melachim* Ch. 9: 10 and *Aruch Hashulchan* Y”D 62: 4 & 5). A similar solution is offered by Rav Yitzchok HaLevi Horowitz of Hamburg in his ‘*Metaamei Yitzchak*’ (glosses on the *Kreisi U’Pleisi*, ad loc). On the topic of the Seven Mitzvos of *Bnei Noach*, see Rabbi Yirmiyohu Kaganoff’s fascinating treatment titled “[Noahide Halacha 101](#) or Meet the Adams Family”, found in his recent *sefer* “From Buffalo Burgers to Monetary Mysteries”.

<sup>6</sup> *Shlah* (*Shnei Luchos HaBris* vol. 2, *Torah Shebeksav*, *Parshas Vayeishev*), explaining that this was what the *Shevatim* were eating that Yosef *HaTzaddik* wrongly assumed was *Aver Min HaChai*. See also *Shu”t Lehoros Nosson* (vol. 7: 11) who cites this *Shlah l’maaseh*, that an animal created via “*Sefer Yetzira*” would be exempt from many related Mitzvos. Interestingly, the *Shlah* continues that when Yosef suspected his brothers of *Giluy Arayos*, it was really a female *Golem* they created ‘*letayel imah*’. Even more interesting (at least in this author’s opinion), is that the *Chofetz Chaim*, in his *sefer Shemiras Halashon* (vol. 2, Ch. 11, end s.v. *vayavei Yosef*) cites this as the *pashut pshat*.

*Ayin*.<sup>7</sup> The basic definition of this law is the prohibition of taking actions which strictly speaking, are permitted according to *halacha*, but nevertheless give onlookers **the impression** that we are doing something *halachically* forbidden.<sup>8</sup> Accordingly, the same would apply to our home grown hamburger, and *shechita* would be required.

## Gelling Together

Another possible precedent posited was to compare the lab burger's status to that of gelatin, which is a whole separate discussion in itself. Already controversial when cited in *halachic* literature over a century ago, gelatin's kashrus status is still being debated.

Gelatin is a translucent, colorless, and flavorless solid protein-based substance, derived from collagen obtained from various animal by-products, mainly the bones and skin of cows and/or pigs. It is the gelling agent that makes marshmallows and 'gummy bears' gummy.

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<sup>7</sup> *Pischei Teshuva* (Y"D 62: 2). A similar assessment is given in *Mili D'Abba* (on *Sanhedrin* 65b), that *me'ikar hadin* such an animal would not need *shechita*, and only does due to *Maris Ayin*. See also *Darchei Teshuva* (ad loc. 6). However, see *Shu"t Rivevos Efraim* (vol. 7: 385; in a *teshuva* from Rav Yosef Binyamin Tzarfati of Antwerp) at length, who posits that such an animal created with '*Sefer Yetzira*' would have the full status of a real animal and would need *shechita m'dina*. He explains that the main reason why a man-made Golem would not be able to be counted for a *minyan*, according to the majority consensus, is that it lacks the ability of speech. In order to be considered having a *neshama*, a creation needs to have the potential for speech [see, for example the *Ramban's* commentary to *Parshas Bereishis* (Ch. 2: 7; based on *Targum Onkelus* ad loc.)], an attribute a *Golem* sorely lacks. See *Shu"t Sheilas Yaavetz* (vol. 2: 82) *Maharsha* (*Sanhedrin* 65b, *Chiddushei Aggados* s.v. v'lo), *Shu"t Yehuda Yaaleh* (vol. 1: O.C. 26), *Shu"t Afraksta D'Anyah* (vol. 4: 388 s.v. *puk*), the Radzhiner Rebbe's *Seder Taharos* on *Maseches Ohalos* (pg. 5a, *Pirush Ha'aruch*) and *Chazon Ish* (Y"D 116: 1). Accordingly, in layman's terms, a *Golem* is technically considered 'an animal in human form' and therefore *lemaaseh* cannot be counted for a *minyan*. [This was discussed at length in an article titled "Of Elul, L'Dovid, and Golems" (Yated Ne'eman 10 Elul 5774 | September 5, 2014; [http://ohr.edu/this\\_week/insights\\_into\\_halacha/4886](http://ohr.edu/this_week/insights_into_halacha/4886)). However, conversely, an animal never has the potential for speech, and therefore a man-made animal should intrinsically have the same status of a regular animal; ergo, *shechita* would be mandated. Obviously, this logic would not be in concurrence with the *Shlah* and those who rule like him (see previous footnote). For more on issues related to animals created via "*Sefer Yetzira*", see *Pardes Yosef* at length (*Parshas Vayeishev* Ch. 37, ppg. 267 - 269), as well as *Shu"t Lehoros Nossan* (vol. 7: 11), *Chashukei Chemed* (*Sanhedrin* 65b), and *Kovetz Ohr Torah* (*Teves* 5759; 32, *ibid.*).

<sup>8</sup> This will be further addressed at length. The *Mishnah* in *Shekalim* (8a, Ch. 3: *Halacha* 2) regarding the emptying of the *Kupos* in the Beis Hamikdash treasury, bases the prohibition on the *pasuk* in *Parshas Mattos* (Ch. 32: verse 22) "*V'hiyisem Nekiyim MeiHashem U'meiYisrael*", "And you shall appear clean (sinless) before G-d and before the people of Israel". This *issur* is cited several times throughout *Shas*, including: *Shabbos* 61b, 64b, and 146b, *Bava Basra* 8b, *Avodah Zarah* 12a, *Kerisus* 21b, and *Bechoros* 43b - 44a. The *Chasam Sofer* (*Shu"t* vol. 6: 59) stressed the importance of this *pasuk*, and lamented that he is not sure if anyone could possibly fulfill it properly! Although some commentators describe this prohibition using the terms *Chashad* and *Maris Ayin* interchangeably, Rav Moshe Feinstein (*Shu"t Igros Moshe* O.C. vol. 4: 82) explains that *chashad* is a Biblical prohibition while *Maris Ayin* is Rabbinic in nature, and explains the subtle differences between them. See also *Shu"t Minchas Asher* (vol. 1: 65 & 66), who defines them a bit differently. The *Divrei Malkiel* (*Shu"t* vol. 4: 61), however, explains at length that *Maris Ayin* actually contains six different classifications. For further treatment on the *klalim* of the *issur(im)* see the commentary of the *Talmidei Rabbeinu Yonah* (*Brachos* 3b), and *Encyclopedia Talmudis* (*Erech - Chashad - Maris Ayin*).



The process to make gelatin is an interesting one: the collagen in the bones and skin of the animals is converted into ossein by soaking them in hydrochloric acid. Then it is soaked in lime for about a month, followed by a wash in sulfuric acid.<sup>9</sup> (Do not try this at home!)<sup>10</sup>

Contemporary authorities debate gelatin's *halachic* status. Although Rav Chaim Ozer Grodzinsky *zt"l* and Rav Simcha Zelig Rieger *zt"l*, *Dayan* of Brisk, permitted gelatin made utilizing hard cow bones, and Rav Ovadiah Yosef *zt"l*, even allowed gelatin made from cow skins,<sup>11</sup> nevertheless, when this *sheilah* arose in the 1950s - 60s most *Gedolim* based in America, including Rav Aharon Kotler *zt"l*, Rav Eliezer Silver *zt"l*, Rav Moshe Feinstein *zt"l*, and Rav Yosef Eliyahu Henkin *zt"l*, [as did most later *Poskim* in Eretz Yisrael], all unequivocally prohibited gelatin, unless it was derived from properly *shechted* kosher animals.<sup>12</sup> Nowadays, although the

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<sup>9</sup> As per Rabbi Eliezer Eidelitz's "Is It Kosher?" pg. 122.

<sup>10</sup> I still remember the poem my high school Chemistry teacher, Mr. Ezra Roberg, drilled into us regarding the potential dangers of sulfuric acid: "Johnny was here yesterday; today he's here no more. For what he thought was H<sub>2</sub>O, was H<sub>2</sub>SO<sub>4</sub>."

<sup>11</sup> *Shu"t Achiezer* (vol. 3: 33, 5) and *Shu"t Yabea Omer* (vol. 8: Y"D 11). Rav Simcha Zelig's responsum, dated 5698, was well known, but was only first published in *Kovetz Moriah* (Elul 5775; issue 400 - 402, pg. 76 - 77). One of the primary points for permitting is that of "*panim chadashos*". The source for this leniency is the opinion of Rabbeinu Yonah, cited by the *Rosh* in *Brachos* (Ch. 6: 38) regarding the status of musk. During the process of producing gelatin, the original bones are completely destroyed by the various acids et al., and the inedible gelatinous results bear no resemblance, not even by taste nor form to the original, and would therefore be considered a completely new item. This would be similar to the rule of '*or hakeiva*' that has become as hard as wood losing its status of meat (see *Rema* Y"D 87: end 10). However, Rav Chaim Ozer's and Rav Simcha Zelig's allowance for gelatin was based on certain processes of the day (processed from hard cow bones, as they wrote, which are not intrinsically *assur*). It is highly doubtful that if they had seen gelatin produced from pig flesh they would have still maintained the same *heter* (see next footnote). The issue of "hard" versus "soft" (edible) bones is based on a *machlokes* between the *Minchas Yaakov* (*Shu"t* 15) and *Pri Megadim* (Y"D 87: S.D. 22) how to understand the *Shulchan Aruch's* choice of words (Y"D 87: 7) defining bones' *halachic* status, as well as the *Shach* and other commentaries in *Hilchos Taaruvos* (Y"D 99: 1). There were other *Poskim* who permitted gelatin over the years, including Rav Yosef Kanovitz (*Shu"t Divrei Yosef* Y"D 4), Rav Shmuel Aharon *HaLevi* Pardes (in several *teshuvos* over the years in his renowned Pardes Torah Journal and in his posthumously published *Avnei Shmuel, Birurei Halacha* 19), Rav Moshe Nossan Nota Lemberger (*Shu"t Ateres Moshe* Y"D vol. 1: 42 and 43), Rav Eliezer Yehuda Waldman (in the preface to his *Shu"t Tzitz Eliezer* vol. 4, published along with Rav Yechezkel Abramsky's original *teshuva*, and vol. 20: 34), and Rav Ben Tzion Abba Shaul (*Shu"t Ohr L'Tzion* vol. 1: O.C. 34, pg 90); yet, several of them, including Rav Dovid Tzvi Hoffman of Berlin (*Shu"t Melamed L'Hoye'el* vol. 2, Y"D 35), Rav Tzvi Pesach Frank (*Shu"t Har Tzvi* Y"D 83), and Rav Yechezkel Abramsky (*Chazon Yechezkel, Zevachim, Shu"t* 5), qualified their permissive rulings, stating that only *b'dieved* or for a *Choleh* may dispensation be given.

<sup>12</sup> Rav Aharon Kotler (*Shu"t Mishnas Rav Aharon* 16 & 17), Rav Moshe Feinstein (*Shu"t Igros Moshe* Y"D vol. 2, 27), and Rav Yosef Eliyahu Henkin (*Eidus L'Yisrael* pg. 177). Rav Silver's *shittah* is well known; aside for publicizing a letter in 1950 against a *hechsher* certifying a well known gelatin product, he has written at least two separate *teshuvos* on topic: one to Rav Zelig Reuven Bengis of the *Eidah HaChareidis* in Yerushalayim – reprinted in *Kovetz Yeshurun* (vol. 12, pg. 241), and another in *Kovetz Kerem* (Year 2, vol. 1 pg. 5, *Tishrei* 5713), where he decried the state of gelatin production in his day, averring that the process that Rav Chaim Ozer was referring to was not the actual current process of his day, but rather one that was utilizing the flesh and skins of *neveilos*, *treifos*, and even pigs, which in his opinion, partaking of such gelatin was transgressing a *safek D'Oraysa*, and asserting that certainly his *Rebbi*, Rav Chaim Ozer would have agreed. [Rav Moshe Feinstein is also quoted as asserting similarly in the recently published *Mesores Moshe* (vol. 2, pg. 186: 46): "*d'hayom gam haAchiezer yodeh, dehalo osim mei'oros im bassar*".] Rav Silver lists over 25 well known Rabbanim and *Poskim* of his day who agreed with his stringent *shittah*. Similarly, in *Sefer Avnei Shmuel*, the editor, Rav Simcha Elberg, author of *Shalmei Simcha* and long time editor of *Kovetz HaPardes*, after the founding editor Rav Shmuel Aharon *HaLevi* Pardes was *niftar*, published his original extensive *Kuntress* on Gelatin that he wrote in the 1950s, concluding that the only *heter* for granting *hashgacha* on gelatin was when the process was done exclusively hard bones, but not with skins and flesh of *neveilos* and certainly not pigs. Other *Poskim* in Eretz Yisrael who ruled this way include the *Chazon Ish* (Y"D 12:

Israeli Chief Rabbinate permits gelatin as kosher and has a distinct designation, “*kosher l’ochlei gelatin*”, on the other hand, no *Mehadrin* kashrus agency or *Badatz* in *Eretz Yisrael*, nor no mainstream certifying agency in America considers real gelatin kosher,<sup>13</sup> unless it is produced from properly *shechted* kosher animals.

Back to our test tube burger, if it can be compared with gelatin, as it is essentially a meat based product that has undergone extreme change via chemicals, its *halachic* status would depend on the above *machlokes*. According to those who rule leniently with gelatin that is not kosher based, the same dispensation could be given to our Petri dish piece of meat and the actual source of the original stem cells should not trouble us too much. Yet, according to the mainstream opinion that kosher gelatin must originate from a *shechted* kosher animal, the same should apply to our lab created burger and be mandated for it as well.

Another interesting outcome of this *machlokes* is another. Even amidst the mainstream ruling, there are differences between the opinions. For example, Rav Moshe held that real kosher gelatin made from *shechted* cows is considered completely pareve, while Rav Aharon Kotler was of the opinion that *lechatchila* one should still consider it somewhat *fleishig* and not mix it with milk. If we use gelatin as our *halachic* springboard, the same debate should also technically apply to our home grown hamburger. Accordingly, those who follow Rav Moshe’s *psak* regarding kosher gelatin being pareve (for example, the OU), should also assume that the lab burger is also. On the other hand, those who follow Rav Aharon’s *shittah* should still ensure that no milk is mixed amid the man made modified meat.

#### Permitted Patties ?

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7), the *Minchas Yitzchok* (*Shu”t* vol. 5: 5), Rav Yosef Shalom Elyashiv (*Kovetz Teshuvos* vol. 1: 73, 3), Rav Shmuel HaLevi Wosner (*Shu”t Shevet HaLevi* vol. 7: 135), Rav Moshe Sternbuch (*Shu”t Teshuvos V’Hanhagos* vol. 2: 381), and Rav Menashe Klein (*Shu”t Mishnah Halachos* vol. 3: 111). One of their main points of contention is questioning the application of “*panim chadashos*” to gelatin, as the collagen which is the basis for the gelatin, was part and parcel of the original bones and skin the whole time [see, for example, *Shu”t Even Yikreh* (vol. 2: 140); cited in *Sha’arim Metzuyanim B’Halacha* (47: 5) who makes this distinction in the *shittos* of *Rishonim* regarding honey manufactured by a non-Jew]. Additionally, the fact that one wants to use it as a food item might make it considered “*Achshevei*”. This means that one’s intention to eat it, although currently inedible, would *halachically* return it to its original status, reconsider it a food item, and thus, in our case, be rendered *treif*. [For an example of how this might work, see *Rosh* (*Pesachim*, Ch. 2: end 1), *Taz* (*Orach Chaim* 442: 8), *Minchas Chinuch* (*Mitzvah* 261: 5), and *Shu”t Shaagas Aryeh* (75).] Moreover, nowadays pig byproducts (hides and skins etc.) are often used in making gelatin, and the *Rambam* (*Hilchos Maacholos Asuros* Ch. 4: 21) states that the hides of domesticated pigs have the *halachic* status of meat, and are considered edible and are most definitely not kosher. Thus, even those who argued that gelatin made from the hides of (non *halachically shechted*) beef or from bones is still *me’ikar hadin* kosher, nevertheless, would have a harder time defending that position as relates to porcine gelatin. It is worthwhile to read Rav Yirmiyahu Cohen, *Dayan* in Antwerp and later France’s *Shu”t Veheirim HaKohen* (vol. 2: 31), who details at length the processes of both types of dedicated gelatin lines from a plant in Belgium; one using only dried-out bones and the other utilizing skins and fresh bones etc. from *neveilos*. He concludes that although “we personally do not rely on either one” as kosher gelatin, nevertheless, the line of gelatin processed exclusively out of dried out bones is exactly as Rav Chaim Ozer described in his *teshuvah*, and one who is “*somech atzmo al hetter hana”l B’Taaruvos, yesh lo al mi l’smoch*”. This heavily implies that other common types of processed gelatin, would not fit under Rav Chaim Ozer’s *hetter*.

<sup>13</sup> I used the term “real gelatin”, as nowadays kosher “gelatin” made from agar agar (seaweed) or from fish is quite commonplace, and do not have these same *halachic* issues as true gelatin made from possible *neveilos u’treifos*.

Recently, there have been those who would categorize all stem cell meat as non-problematic from a *halachic* standpoint due to several interesting precedents.<sup>14</sup> *Chazal* (see *Mishnah* in *Nida* 30a and accompanying Gemara and *Gemara Yevamos* 69b) regarding pregnancy, refer to a fetus prior to reaching forty days after conception, as “*maya b’alma*”, just plain water; meaning it has not yet reached a stage where it is actually considered a living person. There are various *halachos* based on this, mainly relevant to a *Korban Yoledes*, miscarriages, and whether a *Bas Kohen* may partake of *Terumah*.

It stands to reason, they maintain, that the same should apply with the stem cell burger. At the time of removing the actual stem cell, it is still microscopic. Aside for the fact that *halachically* speaking, anything non-visible to the naked eye is not considered substantial or even as existing on a level to be able to cause prohibition,<sup>15</sup> a microscopic stem cell would certainly not be consider any more of an issue than a fetus at the first stages of pregnancy, which according to *Chazal* is deemed “*maya b’alma*”. Yet, even at that early stage a fetus contains stem cells. Additionally, even if we would consider the actual stem cell if it was taken from a living cow as non-kosher, shouldn’t that minuscule cell be nullified in the final product - which has well more than the standard 60 times *issur* needed? Therefore, they opine, that the source of the stem cell should be irrelevant, and the lab grown hamburger intrinsically kosher, and even pareve.

## Meaty Possibilities

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<sup>14</sup> See R’ Zvi Ryzman’s original *ma’amar* in *Techumin* vol. 34 (5774) at length, as well as his responses to both this author’s and Rav Yaakov Ariel’s refutations in *Techumin* vol. 35 (5775) and vol. 36 (5776).

<sup>15</sup> See *Shu”t Tuv Ta’am V’Daas* (*Tinyana, Kuntress Acharon*, 53), *Binas Adam* (34; on *Chochmas Adam* 38), *Tiferes Yisroel* (*Avoda Zarah* Ch. 2: *Mishnah* 6, *Boaz* 3), and *Aruch Hashulchan* (Y”D 84: 36). This ruling, that anything non-visible to the human eye has no *halachic* bearing, was almost-universally accepted by later and contemporary authorities, including Rav Chaim Soloveitchik of Brisk (cited in *Shu”t Igros Moshe*, Y”D vol. 2: 146 s.v. *umah*), the Butchacher Rav (*Daas Kedoshim* O.C. 32: 50), the Kozoglover Gaon (*Shu”t Eretz Tzvi* 12: 13), the *Even Yikra* (*Shu”t* vol. 2: 33), the *Mayim Chaim* (*Shu”t* O.C. 259), the *Melamed Lehoeyeel* (*Shu”t* vol. 2 Y”D27), the *Chazon Ish* (cited in many *sefarim* including *Orchos Rabbeinu* vol. 3: *Haghos* to O.C., *Hilchos Tefillin* 12; *Maaseh Ish* vol. 1: pg. 20 and *Nezer Chaim* pg. 375: *Klalim Nifradim* 1), the Steipler Gaon (*Krainia D’Igrisa* vol. 2: 77), Rav Yosef Eliyahu Henkin (*Shu”t Gevuros Eliyahu* vol. 1, O.C. 99: end 1), Rav Moshe Feinstein (ibid. and *Shu”t Igros Moshe, Even Ha’ezer* vol. 3: 33 s.v. *aval* and Y”D vol. 4: 2), the Tchebiner Rav (*Shu”t Dovev Meisharim* vol. 1: 1), Rav Shlomo Zalman Auerbach (*Shu”t Minchas Shlomo, Tinyana* 63: 2 s.v. *ume’attah*; *Halichos Shlomo* on *Tefillah* Ch. 4: footnote 78 and *Halichos Shlomo* on *Moadim* vol. 2, *Pesach* Ch. 7: 25), the Debreciner Rav (*Shu”t Ba’er Moshe* vol. 5: 16), Rav Yosef Shalom Elyashiv (cited in *Ashrei Ha’Ish* O.C. vol. 3: pg. 211 end 13), Rav Shmuel Halevi Wosner (*Shu”t Shevet Halevi* vol. 7: 2, 10), Rav Moshe Sternbuch (*Shu”t Teshuvos V’Hanhagos* vol. 1: 628 & vol. 3: 323), Rav Ovadiah Yosef (*Shu”t Yabea Omer* vol. 4, Y”D 21: 7 & *Shu”t Yechaveh Daas* vol. 6: 47), Rav Ben Tzion Abba Shaul (*Shu”t Ohr Letzion* vol. 1: 4), Rav Menashe Klein (*Shu”t Mishnah Halachos* vol. 4: 128 & 129 & vol. 5: 157), Rav Asher Weiss (*Shu”t Minchas Asher* vol. 1: 41 at length), the *Pri Chaim* (*Shu”t* Y”D 43), the *Bais Avi* (*Shu”t* vol. 1 O.C. 64), the *She’arim Metzuyanim B’Halacha* (46: 16 & 20), and the *Yalkut Yosef* (*Issur VeHetter* vol. 2: 84, 6). See also *Shu”t Vedibarta Bam* (vol. 1: 208 and vol. 2: 238: 8). Although the *Shearis Yisrael* (*Shu”t* vol. 1, O.C. 11 & 12) argues on the *Dovev Mesharim* and *Chazon Ish* by a certain specific case, see *Shu”t Lehoros Nossan* (vol. 5: 2, 2) who explains that he only disagrees by that specific case but the rule nevertheless hold true. Similarly, although Rav David Baharan (brought in the *Kuntress Bein Hashmashos* of the *Even Ha’Ezel*) cites a proof from the *Gemara* in *Bechoros* 52b that the Torah can be referring to supernatural eyesight, the *Even Ha’Ezel* himself (vol. 8, *Hilchos Krias Shema* Ch. 1: 3 s.v. *v’henei harav*) dispels his proof, and maintains that this ruling holds true. The few *Poskim* who seem to hold that checking via magnifying glass is mandated include Rav Yaakov Emden (*Shu”t She’ilas Yaavetz* (vol. 2: 124) and *Shu”t Pri HaSadeh* (vol. 3: 80, end s.v. *a”d*). This topic was addressed at length in recent articles titled “Leeuwenhoek’s Halachic Legacy: Microscopes and Magnifying Glasses in Halachah” (*Yated Ne’eman* 10 Shevat 5775 | January 30, 2015); [http://ohr.edu/this\\_week/insights\\_into\\_halacha/5043](http://ohr.edu/this_week/insights_into_halacha/5043) and “Bubby Didn’t Eat Bugs!” (*Ami Living* 10 Av 5771 | August 10, 2011; [http://ohr.edu/this\\_week/insights\\_into\\_halacha/5032](http://ohr.edu/this_week/insights_into_halacha/5032)), at length.

On the other hand, although it would seem tenuous at best to consider microscopic cells removed from a cow's shoulder and undergoing chemical treatment as a potential violation of the Biblical prohibition of eating actual '*Aver Min HaChai*', 'a limb from a live animal',<sup>16</sup> nonetheless, there still seems to be strong basis to consider our homegrown hamburger meaty.

The *Mishnah* in *Bechoros* (5b) teaches us that '*hayotzei min hatamei, tamei, v'hayotzei min hatahor, tahor*' - anything that comes out from a non-kosher animal is deemed non-kosher and anything that comes out of a kosher animal is deemed kosher. This is the reason why milk that comes from an animal that is rendered non-kosher is also *halachically* non-kosher. Although many might mistakenly assume that this *halacha* is only referring to actual secretions, such as milk and brine,<sup>17</sup> actually, the case the *Mishnah* began with was a kosher animal that was born from a non-kosher one - that its own meat is still rendered non-kosher.

If so, there certainly seems like there is room to classify this stem cell grown meat, that was extracted from an actual cow, as a '*Yotzei*'. Consequently, if it was taken from a live or even a dead, but not *shechted* cow, it should be considered non-kosher.

However, even classifying a stem cell as a '*Yotzei*' might not be significant enough to rule that if it was extracted from a properly *shechted* animal that it be deemed actual meat. For example, the *Rambam* codifies that although it is forbidden to eat extraneous parts of a non-kosher animal (such as skin, bones, horns and hoofs), nevertheless, these same parts (of a kosher animal), even when cooked in milk, are not considered actual *Bassar B'Chalav*, as they are not considered actual meat.<sup>18</sup> Accordingly, and as opposed to one who eats actual non-kosher meat, one who eats a non-kosher '*Yotzei*' is not *chayav malkus*.

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<sup>16</sup> See *Tur* and *Shulchan Aruch* (Y"D 62 & 81) at length. See also footnote 5. Although there is some debate whether a limb that does not contain actual '*Bassar*' can be considered '*Aver Min HaChai*' [see *Rambam* (*Hilchos Maachalos Asuros* Ch. 5: 2) and *Darchei Teshuva* (62: 2 s.v. v'gam)], nonetheless, it seems that either way, it would still not be applicable to our case of stem cells. The reason why it cannot be considered as such is that in order to be considered an '*Aver*' or even '*Bassar Min HaChai*', it would need to physically constitute at least a minimal *shiur*. In fact, to be *chayav malkus* it would need to be at least a *kezayis*, [see *Rambam* (ad loc. 3 & 4) and *Sefer HaChinuch* (*Parshas Re'eh* Mitzvah 452; see also *Minchas Chinuch* at length)] and although for the *issur* itself even far less would still be considered '*Aver Min HaChai*' [see *Tur* and *Beis Yosef* (Y"D 62)], nevertheless, it still would need to have an actual physical presence. A microscopic stem cell would certainly not be considered any more of an '*Aver*' than a fetus at the first stages of pregnancy, which according to the Gemara is not considered as such, but rather '*Maya B'Alama*'. Yet, even at that early stage a fetus contains stem cells. Therefore, it seems abundantly clear that it would be quite a stretch to label our stem cell burger as actual '*Aver Min HaChai*'. For more on this, see R' Zvi Ryzman's recent *ma'amar* in *Techumin* vol. 34 (5774) '*Bassar M'ta'i Geza*' (pg. 103).

<sup>17</sup> See *Gemara Bechoros* (6b – 7a) and *Chullin* (112b, *Mishnah* -116b, 120a), and *Tur* and *Shulchan Aruch* (Y"D 81: 1).

<sup>18</sup> See *Rambam* (*Hilchos Maachalos Asuros* Ch. 3: 6; 4: 18, and 9:7) and *Shulchan Aruch* (Y"D 87, 7). Accordingly, and as opposed to one who eats actual non-kosher meat, one who eats a non-kosher '*Yotzei*' is not *chayav malkus*. In fact, several *Acharonim* explicitly differentiate between a '*Yotzei*' and actual meat, including Rav Yonason Eibeshutz (*Kreisi U'Pleisi*, Y"D 81: 1; who explains that for a '*Yotzei*' to be *assur* it must be normally edible), the *Chelkas Yoav* (*Shu"t* Y"D 15), Rav Chaim Soloveitchik (cited in *Chiddushei HaGri"z* on *Nazir* 50a; see also *Chiddushei HaGri"z*, Stencils on *Bechoros* ad loc.), the *Ohr Somayach* (on *Hilchos Maachalos Asuros* Ch. 4: 20), Rav Aharon Kotler (*Shu"t Mishnas Rav Aharon* 16, 17 & 18), and the *Chazon Ish* (Y"D 12: 3). Interestingly, *Tosafos* (*Chullin* 64a s.v. *she'im rikma*) does not seem to agree to this distinction and implies that one who eats a '*Yotzei min haIssur*' would be liable to *malkus*. However, as cited above, that does not seem to be the normative *halacha*. Yet, even so, the *halachos* of a '*Yotzei*' are not necessarily uniform and certain

On the other hand, Rav Chaim Soloveitchik of Brisk *zt"l*<sup>19</sup> makes an important distinction. He explains that although the *Rambam* distinguished between a 'Yotzei' and actual meat, that rule applied exclusively when said 'Yotzei' was not actual meat (i.e. eggs, milk, skin, bones etc.). Yet, he avers, in a case such as the *Mishnah's*, a kosher animal that was born from a non-kosher one, where its meat is rendered non-kosher akin to the mother animal, certainly one who partakes of its meat would be liable *malkus*, as it is still a '*min bassar*', a type of actual meat, and is considered '*issur machmas atzmo*', inherently prohibited. Similarly, and although not expressing this exact distinction, several other *Acharonim* who explain the *Rambam's* differentiation between a 'Yotzei' and actual meat, including the *Chelkas Yoav* and *Chazon Ish*, would seemingly agree to this understanding.<sup>20</sup>

In light of this theory, it stands to logic that by a harvested stem cell hamburger which was extracted and developed from the meat itself, and has the same physical and chemical properties as meat, these *Acharonim* would be of the opinion that this 'Yotzei' would not be considered a standard 'Yotzei', but rather still a '*min bassar*'. If so, even if it originated from a *shechted* kosher animal, and would be deemed kosher, it would still be considered *fleishig* and forbidden to be eaten or cooked with dairy products.

Moreover, regarding scientists grafting plants on a microscopic, genetic level, Rav Shlomo Zalman Auerbach *zt"l* avers that it still violates the prohibition of '*Kilayim*'. He explains that although the cells cannot be seen by the human eye, nevertheless, as to these scientists that fact is negligible as they are still able to graft under these conditions, it is clear that in this case it is still *halachically* considered '*Nireh L'Anayim*'. A similar sentiment can be expressed by our lab grown meat, which although started from a microscopic stem cell, the

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'Yotzei's may have different *halachos*. We find that by the '*Mei Raglayim*' of a donkey, the *Gemara* (*Bechoros* 7a - b) cites two *lashonos*, whether it is permissible or not. The *Rosh* (*Bechoros* Ch. 1: 7) and *Tur* (Y"D 81), maintain that drinking it is an *Issur D'Oraysa*, while the *Rambam* (*Hilchos Maachalos Asuros* Ch. 4: 20) rules it is permissible. Although in his *Beis Yosef* commentary (ad loc.) he seems to side with the *Rosh*, when he codified the *halacha* in the *Shulchan Aruch* (Y"D 81: 1), he cites both opinions without a definitive ruling. The *Bach* (ad loc. s.v. *u'mash d'mei*) and *Kreisi U'Pleisi* (ad loc. 1) rule like the *Rambam*, however, the *Maharshal* (*Issur V'Hetter* 65), *Shach* (ad loc. 2), *Chaguras Shmuel* (ad loc. 2), and *Aruch Hashulchan* (ad loc. 8; however in the next *se'if kattan* he offers an explanation for the *Rambam's shittah*), strongly argue, that certainly it is *assur*. The *BeHa"K* (*Shu"t Halachos Ketanos* 207; cited in *Ba'er Heitiv* ad loc. 1) makes an allowance exclusively for a "*Choleh Mesukan*", yet the *Knesses Yechezkel* (*Shu"t* 29; cited in *Pischei Teshuva* ad loc. 2) and *Pri Megadim* (ad loc. S.D. 2) maintain that even for "*choleh she'ain bo sakana*" we may be *meikil*. Interestingly, the *Pri Megadim* later seems to retract his lenient position (Y"D 103: S.D. 2 s.v. *v'da*), concluding '*tzarich iyun*'. Additionally, there are those [see *Pri Chadash* (ad loc. 2), *Pri Toar* (ad loc. 1, s.v. *ul'inyan*), and *Chochmas Adam* (37: 1)] who differentiate between the '*Mei Raglayim*' of a donkey and that of other animals; regarding a donkey must be stringent due to the strength of the *Rosh's* arguments, however by other animals one may be more lenient, possibly even for a "*choleh she'ain bo sakana*". For more on this, see R' Zvi Ryzman's *ma'amar* in *Techumin* vol. 34, '*Bassar M'ta'i Geza*' (pg. 101 - 102), the recent book '*Headlines*' (vol. 1, pg. 390 - 391), and this author's recent *ma'amar* in *Techumin* vol. 35 (5775), '*Bassar M'ta'i Geza*'.

<sup>19</sup> *Chiddushei Rabbeinu Chaim HaLevi* on the *Rambam* (*Hilchos Maachalos Asuros* Ch. 3: 11).

<sup>20</sup> Both the *Chelkas Yoav* (*Shu"t* Y"D 15) and the *Chazon Ish* (Y"D 12: 3) when explaining the *Rambam's shittah* write that a standard 'Yotzei' is more lenient as it is not "*shayach l'guf habriya*" and is not "*bassar gamur*". Therefore, it seems that they would both agree to Rav Chaim's distinction by a 'Yotzei' that is actual meat, that it would be *Assur D'Oraysa* and *chayav malkus*.

scientists are nonetheless able to eventually form a complete hamburger.<sup>21</sup> Accordingly, the origin of the harvested stem cell should determine its final *Kashrus* status.

### Growth spurts ?

Additionally, we find an enlightening rule regarding growths from *issur*. The *Mishnah* in *Terumos* (Ch. 9: *Mishnah* 6) and elucidated by the *Yerushalmi* (ad loc. *Halacha* 2), teaches that growths from actual *issur*, such as produce that is *Tevel*, *Terumah*, *Maasar*, or *Sheviis*, are intrinsically permitted, as they are not considered part and parcel of the original prohibited produce. Yet, there is an important exception: when referring to produce that is '*Aino Zaro Kala*', when the original prohibited item's essence is still extant in some form or another, then even "*Gidulei Gedolim*", the growths of the growths, are nevertheless prohibited.

Although this *halacha* practically affects disparate types of *issur* differently, nonetheless, the rule holds true.<sup>22</sup> As such, it would seem quite tenuous to assume that the original prohibited cell (if taken from a non-kosher source) would be nullified by the end product, as those cells and all later cells are grown from the original prohibited stem cell. Ergo, it would make sense that they should instead be considered "*Gidulei Issur*" as the *Mishnah* indicates. While immersion in the chemicals may create a temporary *shishim* (60 times the original *issur* and hence render it nullified), they do not survive. The final product does not contain *shishim* of *hetter*, but rather, we seemingly simply have an *issur* that has grown thousands of times larger over the course of time, as the minuscule meat cell just kept growing, magnifying, and splitting.

Furthermore, the comparison to a fetus prior to forty days does not seem compelling vis a vis the aforementioned precedents, as *halachically*, "*maya b'alma*" is not necessarily a statement that an item is not considered 'meat'; it is a statement that said fetus is not yet considered a living person. As previously mentioned, this rule has classically been invoked regarding a *Korban Yoledes*, miscarriages, and whether a *Bas Kohen* may partake of *Terumah*. We do not find it being used to set *halachic* precedent for other issues not related to the establishment of viable human life, and not even for other creatures.

It also does not seem to preclude the possibility that a similar object may still be considered meat. More importantly, in our case, the originating cell is not a new creation created by the fusion of male and female chromosomes. It is a cell taken from a fully developed animal. As such, and in any case, even if the fetus

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<sup>21</sup> *Shu"t Minchas Shlomo* (*Tinyana* 100: 7 s.v. *b'inyan*). Rav Yaakov Ariel (in his *ma'amar* in *Techumin* 35) emphatically sets Rav Shlomo Zalman's *klal* as precedent to this case to explain why microscopic stem cells are not grounds to be lenient by the lab grown burger.

<sup>22</sup> See *Mishnah Terumos* (ibid. as well as Ch. 7: *Mishnah* 7), *Yerushalmi* (*Terumos* ibid.), *Gemara Nedarim* (57b - 58a), *Gemara Pesachim* (34a), *Rambam* (*Hilchos Maaser* Ch 6: 6), *Merkeves HaMishnah* (*Hilchos Terumos* Ch. 11: *Halacha* 22), *Pe'as Hashulchan* (Ch. 23 or *Sheviis* Ch. 4: 4 and 5), *Aruch Hashulchan HaAsid* (*Hilchos Shemittah V'Yovel* 22: 11 and *Hilchos Terumos* 83: 9 - 16), *Kuntress Tosefes Sheviis* (pg. 36 s.v. *va"p*; printed at the back of the *Beis Ridbaz* version of the *Pe'as Hashulchan*), *Chazon Ish* (*Sheviis* Ch. 8: 1 and 2; especially brackets in s.v. *hachi*), and *Derech Emunah* (vol. 2, *Hilchos Terumos* Ch. 11: 132 and *Tziyun Halalacha* 361 and 362). Although the *halacha* is more lenient regarding *Sheviis*, as such an eventuality would be rare and only regarding the Rabbinically prohibited *Sefichin*, and by *Tevel* after 3 (or 4) separate growths we are lenient, conversely, regarding *Terumah* it remains prohibited even after 100 separate individual growths.

analogy would be deemed accurate, our stem cell should certainly be considered more than 40 days after fertilization, and hence meaty.

### Catalyst Conundrum

Aside for these possibilities, there is an important additional factor to take into account which might render our in-vitro burger meaty as well.

*Halachically* speaking, as mentioned previously, something that is present in minute quantities in a mixture is generally considered nullified as long as there is at least a 60 to 1 ratio against it (*battel b'shishim*).<sup>23</sup> Although this would imply that the Petri dish patty would be considered kosher even if it was harvested from a non-kosher source, as the final patty has 20,000 muscle fibers grown from a few stem cells, on the other hand it is not so simple, as every rule has its exceptions.

One of the exceptions is a case of a '*Davar HaMaamid*', an essential ingredient in the makeup of a product that establishes its form. This catalyst impacts it tremendously, far greater than its size belies. A prime example of a '*Davar HaMaamid*' is the small amount of a calf's stomach lining (rennet) placed in a huge vat of milk that turns it to cheese<sup>24</sup>. The *halachic* status of a non-kosher '*Davar HaMaamid*' is that it cannot be nullified, no matter how infinitesimal it seems compared to the final product.<sup>25</sup>

It is entirely possible that the same rule should apply to our lab burger. Since the whole hamburger's essence, as well as the entire development of the meat, stems from those original miniscule meaty stem cells, it is highly feasible that they would have the *halachic* status of a '*Davar HaMaamid*'. If so, and they were harvested from a non-kosher animal, it might just deem the final product non-kosher as well. However, if these cells would be extracted from a properly slaughtered kosher animal, then the lab grown burger would be considered kosher and although *me'ikar hadin* should be considered pareve,<sup>26</sup> it still might possibly be deemed somewhat *fleishig* (meaning not to eat with milk) if the cells are reckoned substantial enough to be considered meat; similar to Rav Aharon Kotler's ruling regarding gelatin.

On the other hand, sometimes even the exceptions have exceptions. For example, a product produced via a non-kosher '*Davar HaMaamid*' can still sometimes be permitted. If there is another kosher catalyst involved in the production of an item, it can be considered a "*Zeh V'Zeh Gorem*". This terminology refers to a product that was not manufactured exclusively using a non-kosher '*Davar HaMaamid*', but rather utilizing it as a combination catalyst complementing another kosher one. The *halacha* in such cases deemed a "*Zeh V'Zeh*

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<sup>23</sup> This is the standard rule of nullification in *halacha*, if there is present 60 times the amount of non-kosher, then it is considered nullified. See *Shulchan Aruch* Y"D 98.

<sup>24</sup> OK, one might ask, then how did they make kosher cheese before synthetic rennet was discovered, if the real rennet is never *battel*? For a start, see *Shach* (Y"D 87: 30), *Shu"t Rabbi Akiva Eiger* (vol. 1: 207), *Shu"t Chasam Sofer* (Y"D 81), *Matteh Yonason* (glosses to Y"D 87: 9), and *Pischei Teshuva* (Y"D 87: 19).

<sup>25</sup> See *Shulchan Aruch* Y"D 87: 11 and relevant commentaries.

<sup>26</sup> See *Shulchan Aruch* Y"D 87: 11 and relevant commentaries. The basic rule is that a kosher '*Davar HaMaamid*' would indeed be *batel b'shishim* as opposed to a non-kosher one.

*Gorem*”, is that the basic rules of *battel b’shishim* are back in effect, and only 60 times the original non-kosher catalyst in its makeup is mandated in order to permit the final product.<sup>27</sup> It is possible that there are additional kosher “*Devarim HaMaamid*” used in the manufacture of the man-made burger. If so, and there is present a ratio of 60 times against the original meaty stem cells, it might be deemed pareve and possibly permitted.

Yet, to further complicate matters, many authorities maintain that in order for combination catalysts to qualify as a “*Zeh V’Zeh Gorem*”, the non-kosher catalyst must not have the strength to fully impact and establish the item’s form; only in tandem, as a ‘tag team’ of sorts, with the kosher catalyst. Otherwise, according to these decisors,<sup>28</sup> it would still maintain its ‘*Davar HaMaamid*’ status and deem the final product non kosher as well, due to its inability to be nullified. Additionally, to use a non-kosher ‘*Davar HaMaamid lechatchila*’, even if it is considered a “*Zeh V’Zeh Gorem*”, might nonetheless transgress the proscription of “*Ain Mevatlin Issur*” and be prohibited.<sup>29</sup> This refers to the concept that following the basic rules of nullification, if a non-kosher substance would accidentally fall into kosher food (as long as there was the prerequisite 60 times the amount of non-kosher that fell in) it would be permitted to drink, nonetheless, if one would add it on purpose with the express intention of nullifying it, the entire mixture becomes forbidden for the person who transgressed and for whomever he intended to benefit.

### Non-Jewish Nullification

Although some might justify the process, claiming “*Ain Mevatlin Issur*” should not be a factor, as the burger is currently being produced by non-Jews, it turns out that that is also not a simple solution. Already in the 1500s, the *Radbaz*,<sup>30</sup> made a distinction between a scenario where a non-Jew nullifies non-kosher, where he holds that a Jew is allowed to eat of the mixture, as opposed to where a non-Jew is **selling** non-kosher, where he

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<sup>27</sup> See *Shulchan Aruch* (Y”D 142: 11) and *Rema* (Y”D 87: 11), based on the *Mordechai* (*Chullin*, Ch. 8, 733 and 761).

<sup>28</sup> Including the *Taz* (Y”D 87: 13), *Shach* (ad loc., 36; although he concludes *tzarich iyun*), *Pri Chadash* (Y”D 87, 31), *Kreisi U’Pleisi* (ad loc. *Kreisi* 25 & *Pleisi* 21), *Ba’er HaGolah* (ad loc.), *Pri Megadim* (M.Z. ad loc., 13), *Mishnah Berurah* (442: 25 & *Shaar HaTziyun* ad loc. 45), and *Aruch Hashulchan* (Y”D 87: 42), citing *Tosafos* in *Avoda Zara* (68b s.v. *l’Rebi Shimon*) as proof. However, the *Yad Yehuda* (ad loc., *piha”k* 54 & *pih”a* 26) argues that “*Zeh V’Zeh Gorem*” applies even when the non-kosher catalyst has enough strength by itself to affect the required change. He maintains that since the whole issue of ‘*Davar HaMaamid*’ not being nullified is not so clear cut in the earlier *Poskim* [for example, Rabbeinu Tam (*Sefer HaYoshor* 53, 5), the *Ba’al HaMaor* (*Chullin* 42b), *Tur* (Y”D 87: 11), and *Rashal* (*Yam Shel Shlomo*, *Chullin* Ch. 8, 106) are all of the opinion that ‘*Davar HaMaamid*’ is *battel b’shishim*; in fact the *Yad Yehuda* (*pih”a* 25) proves that most *Rishonim* held this way, contrary to how others present their opinions], and that the *Mordechai* (who first makes this dispensation), and later the *Rema*, make no mention of such a proviso, [he also gives several other *halachic* rationales], “*Zeh V’Zeh Gorem*” will even apply when the non-kosher ‘*Davar HaMaamid*’ can impact the item sufficiently by itself, as long as a kosher ‘*Davar HaMaamid*’ is present.

<sup>29</sup> It is important to note that even if the item meets the requirements of “*Zeh V’Zeh Gorem*”, it is by no means a blanket *hetter*. The *Avnei Miluim* (vol. 2, *Shu”t* 6) explains at length (see also *Darchoi Teshuva* 87: 153) that it is only a *hetter b’dieved*. To use a non-kosher ‘*Davar HaMaamid lechatchila*’, even if it is considered a “*Zeh V’Zeh Gorem*”, would nonetheless transgress the prohibition of “*Ain Mevatlin Issur*” and would be prohibited. [Even so, according to the *Imrei Binah* (*Dinei Bassar B’Chalav V’Taaruvos* end 6) a *kenass* would not be mandated, as opposed to a traditional “*Ain Mevatlin Issur*”, as a “*Zeh V’Zeh Gorem*” qualifies as **K’Mevattel Issur**.]

<sup>30</sup> *Shu”t Radbaz* (vol. 3: 978; old print 547).



holds that it is forbidden for a Jew to purchase. He maintains that when a Jew is purchasing the item, it is as if **he himself** nullified it, and therefore it becomes *assur* for him to eat.

Many *halachic* decisors concurred to his reasoning and likewise forbade a Jew from purchasing items that had non-kosher nullified inside of it.<sup>31</sup> However, the majority of *Poskim* disagreed with this rationale, concluding that it is improbable to make such a distinction,<sup>32</sup> as the *Rambam*<sup>33</sup> himself held that it is acceptable to procure such items, as long as it was done by a non-Jew, and is therefore suitable for purchase.

However, to further complicate our case, the *Tashbatz*<sup>34</sup> made a further qualification to this permissible ruling, following the precedent of the *Rashba* and *Raavad*. They aver that although one may rely upon a non-Jew's nullification for purchase in infrequent circumstances, conversely, if the non-Jew is doing it for his job, or on a frequent basis, then certainly it is considered as if the Jew himself nullified it. Several *Poskim* agreed to this decision as well.<sup>35</sup>

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<sup>31</sup> See *Chida* (*Shiyurei Bracha* Y"D 99:5), *Levushei Srad* (*Chiddushei Dinim, Hilchos Nosein Taam Lifgam* 58: 153), *Zechor L'Avraham* (vol. 3: Y"D s.v. 'Bitul'), *Beis Avraham* (Y"D vol. 2: 108, 13), *Beis Yehuda* (*Shu"t Minhagei Ar'jil* [Algiers] pg. 115, 3<sup>rd</sup> column, 68), *Shu"t HaMaharshdam* (53), and *Shu"t HaRashbash* (560). The *Bach* (*Shu"t* 123) implies this way as well, that purchasing from a non-Jew is considered 'lechatchila', and is therefore prohibited as *bitul issur* is only permitted *b'dieved*. The *Minchas Yitzchok* (*Shu"t* vol. 2: 28, 20) seems to be *choshesh* for this opinion as well.

<sup>32</sup> *Shu"t Maharam Lublin* (104), *Minchas Yaakov* (35: 2), *Shu"t Noda B'Yehuda* (*Tinyana* Y"D 56 and 57), *Shu"t Beis Yitzchok* (Y"D vol. 1: 142, 8 and *Kuntress Acharon* 31), *Shu"t Chasam Sofer* (Y"D 82), *Shu"t Ksav Sofer* (O.C. 87), *Shu"t Imrei Binah* (*Dinei Bassar Bechalav V'Taaruvos* 14; although he concludes that it is preferential to be *machmir* in both instances), *Erech Hashulchan* (Y"D 99: 8), *Zivchei Tzedek* (ad loc. 36), and *Shu"t Beis Shlomo* (O.C. 97), that whatever was produced by a non-Jew is already considered '*b'dieved*' and therefore permissible for purchase. Most contemporary authorities concur with this assessment, including Rav Eliyahu Gutmacher (*Shu"t Mahar" a Gutmacher* Y"D 32), Rav Henschel Padwa (*Shu"t Cheishev HaEifod* vol. 2: end 104, s.v. *v'ata*), Rav Moshe Feinstein (*Shu"t Igros Moshe* Y"D vol. 1: 62 s.v. *u'mdin*, and 63; Y"D vol. 2: 32 and 41), Rav Betzalel Stern (*Shu"t Betzeil HaChochma* vol. 4: 89, 13 and 14; and 104, 18), his brother, the Debreciner Rav (*Shu"t Ba'er Moshe* vol. 3: 109, 21), and Rav Ovadiah Yosef (*Shu"t Yabea Omer* vol. 7, Y"D 7).

<sup>33</sup> *Rambam* (*Hilchos Maachalos Assuros* Ch. 3: 13). This is also the ruling of his *rebbe*, the *Ri Migash* (cited by the *Ran* in *Avodah Zarah*, 13b in the *Rif's* pagination, s.v. *v'hisi'u ledavar achar*).

<sup>34</sup> *Shu"t Tashbatz* (vol. 3: 10), *Shu"t HaRashba* (vol. 3: 214; cited by the *Beis Yosef*, Y"D end 134 s.v. *chometz*, and by the *Magen Avraham* O.C. 442: end 1), *Raavad* (cited by the *Ran* and *Beis Yosef* *ibid*). A case can be made for positing that this is also the *Ran's* opinion, as he concludes his passage with the words of the *Raavad*.

<sup>35</sup> *Shulchan Aruch HaRav* (O.C. 442: 6, and *Kuntress Acharon* 5; who adds that '*...b'Yoreh Deah hiskeemu hakol l'divrei HaRashba*'), *Chida* (*Birkei Yosef, Shiyurei Bracha* Y"D 134: 4, *Din* 14 s.v. *kol hamashkim*), *Shu"t Divrei Chaim* (vol. 2: Y"D 53), *Shu"t Maharam Shick* (*Orach Chaim* 9), *Shu"t Imrei Aish* (vol. 1, Y"D 42), *Shu"t Avnei Tzedek* (O.C. 51), *Sdei Chemed* (vol. 1, *Klalim, Maareches Ha'Alef*, 360, and in *Pe'as HaSadeh* 10), *Arugas HaBosem* (*Kuntress HaTeshuvos* 15), *Shu"t Atzei Halevanon* (Y"D 43 s.v. *ach da*), and *Shu"t Tiferes Shmuel* (17). Conversely, the *Pischei Teshuva* (Y"D 134: end 8) and *Gilyon Maharsha* (ad loc. s.v. *kol*; however and quite interestingly, in the beginning of *Hilchos Taaruvos*, Y"D 98 s.v. *issur* he implies that one need be *machmir* for a non-Jew mixing in *issur* frequently) conclude that the *ikar* follows the *Noda B'Yehuda* (*ibid.* s.v. *v'annam*) who rules leniently based on the *Rambam* and *Ri Migash* over the *Rashba* and *Raavad*. The *Noda B'Yehuda* adds that the *Shulchan Aruch* himself implied this way [however, the *Minchas Yitzchok* (*Shu"t* vol. 2: 28, 9 - 18) questions this assessment, citing that the *Shulchan Aruch* in Y"D 134: 13 expressly rules like the *Rashba*; see how he deals with this difficulty at length, concluding that the *Noda B'Yehuda* was drawing a distinction between *taam* that was *nirgash* or not]. A similar assessment is given by the *Seridei Aish* (new print; vol. 2: 69 s.v. *ulam*). However, although there is undeniably what to rely upon, other contemporary authorities nonetheless advise caution, and

In fact, based on this debate, one of the most famous responsa in the annals of American history was written in 1935 by Rabbi Tuvia (Tobias) Geffen, Chief Rabbi of Atlanta Georgia in the 1930s and 1940s. He had to decide whether or not to grant Coca-Cola a *hashgacha*, as it turned out that there was a non-kosher ingredient (animal based glycerin) in its makeup, but only present in minute quantities. Therefore, although technically it would be permitted to drink, for the non-kosher ingredient was *battel b'shishim*, and therefore considered nullified, nevertheless, it was potentially a violation of "*Ain Mevatlin Issur*", as the Coca-Cola Company was obviously putting this non-kosher ingredient in the batch purposefully, since it was part and parcel of the Coke everyone knew and loved.

In the end, feeling uncomfortable by having to make such a decision, where *Gedolim* through the ages have taken stands on both sides of the matter, Rabbi Geffen did the only thing he felt he could do – he went to Coca-Cola and asked them to change their formula! Surprisingly, out of respect to him, the executives listened and the company removed the problematic ingredients, substituting them with kosher alternatives, making the soft drink kosher *lechatchila* for everyone, thus proving the adage, that "things", including *kashrus*, "go better with Coca-Cola".

Rabbi Geffen later published the whole account, as well as the *halachic* reasoning behind his actions, in his responsum.<sup>36</sup> Later *halachic* authorities as well, ruled similarly to Rabbi Geffen's sound logic and reasoning,

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especially *lechatchilla*. In fact, the *Melamed L'Hoyeel* (*Shu"t* vol. 2, Y"D 29) only allows one to rely on this *b'shaas hadchak*. Others, including the *Mahar"i Assad* (*Shu"t Yehuda Yaaleh* vol. 2: 122), maintain that one who can be *machmir 'tavo alav bracha'*. Rav Yosef Eliyahu Henkin (*Eidus L'Yisrael* pg. 177; and in his recent posthumously published *Shu"t Gevuros Eliyahu* vol. 2 - Y"D end 16 s.v. *u'bvaday* and 25) advised to be *choshesh* for this as well. See also Rav Shmuel Chaim Yaakov Gruber's article in *Kovetz Ohr Yisroel* (vol. 30, pg. 123) and Rav Yisroel HaLevi Belsky's *Shu"t Shulchan HaLevi* (Ch. 22: 2 and 25:1). These issues were detailed at length in an article titled "The Coca-Cola Kashrus Controversy" (*Hamodia Magazine* 11 Tamuz 5770 | June 23, 2010; [http://ohr.edu/this\\_week/insights\\_into\\_halacha/4499](http://ohr.edu/this_week/insights_into_halacha/4499)).

<sup>36</sup> *Shu"t Karnei HaHod* (vol. 2, last responsum in the sefer, titled '*B'dvar Hamashkeh Ha-Coca-Cola*'). This *teshuva* has also been translated to English and can be found on the HebrewBooks website – <http://www.hebrewbooks.org/pdfpager.aspx?req=2379&st=&pgnum=122&hilite=>.

Interestingly, it is known that Rabbi Geffen was not actually the first to grant *hashgacha* on Coca-Cola. In certain regional markets, several *Rabbonim* had given *hashgacha* in the late 1920s and early 1930s, and the *Vaadei HaKashrus* of Buffalo, Chicago, and Rochester likewise followed. In fact, there were ads for kosher Coke published in the famed *HaPardes* Torah Journal. These ads contained a small letter from Rav Shmuel Aharon *Halevi* Pardes, the journal's editor, that he visited the Coca-Cola factory in Atlanta, and that they 'revealed to him all of their secrets, including their secret formula', and he found '*hamashkeh Coca-Cola kosher lishtoso al pi hadin*'. These *Rabbanim* included Rav Yaakov 'JB' Bienenfeld of New York, Rav Avraham Meir Franklin of Buffalo, and Rav Shmuel Aharon Pardes of Chicago, *zichronam levracha*, whom, aside for being well known *talmidei chachamim*, were not exclusively relying on the lenient precedent of many *Poskim* [such as the *Noda B'Yehuda*, *Pischei Teshuvah* and *Gilyon Maharsha*, who followed the *Ri Migash* and *Rambam's* permissive positions over that of the *Rashba*, *Raavad*, *Tashbatz*, and *Shulchan Aruch HaRav et al.*] regarding the nullification of *issur* performed by non-Jews, even on a steady basis. They also maintained that since in this case the potential non-kosher ingredients, which since added in such a miniscule amount were not being used for actual taste, originated from a laboratory that put them through a chemical change, they were no longer considered food and therefore permitted. Not only is this *shittah* supported by several *Rishonim* [such as *Rabbeinu Yonah* previously mentioned regarding gelatin, as well as the *Ran* to *Avodah Zarah* 39a (17b s.v. *misrach* in the *Rif's* pagination) regarding honey manufactured by non-Jews; see also *Mogen Avraham* (O.C. 216: 3 regarding musk); as well as the *Machatzis Hashekel* (*Orach Chaim* 427: end 45) who posits that the *shittas hamachmirim* is only applicable when the nullified product is explicitly added for taste or *ma'amid* purposes, which is seemingly not the case with Coca-Cola, as the glycerin was chemically altered and added in

and hold that although there is what to rely upon regarding purchasing, nevertheless, when it comes to granting *hashgacha*, a Rabbinic authority should not give a seal of approval to an item that contains nullified *issur*.<sup>37</sup> In fact, Rav Moshe Feinstein *zt"l*, classified doing so (if that is the only justification they are relying upon to proclaim the product kosher) as “*mechuar hadavar*”, utterly disgraceful or disgusting.

This is why the fact that the nullification is being performed by non-Jews may still not allow this man made burger to be sold publicly as kosher.

### Kosher Cheeseburgers?

However, it is important to note that even following one of the premises that lab created meat would maintain pareve status, it still would not denote a kosher cheeseburger. The permissibility of such would depend on the laws of *Maris Ayin*.

As mentioned previously, The most basic definition of this law is the prohibition of taking actions which strictly speaking, are actually permitted according to *halacha*, but nevertheless give onlookers **the impression** that we are doing something *halachically* forbidden. In other words, although an observer has an obligation to judge others favorably (*dan l'kaf zechus*)<sup>38</sup>, nevertheless we still have an obligation not to do things that might raise an observer's suspicions. The common expression might be that “looks can be deceiving”, but even so, one must make sure not to engage in questionable activities, or even questionable-looking ones.<sup>39</sup>

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such minute quantities (.09%)], but Rav Pardes wrote extensively on this topic, including a letter to the *Gadol HaDor*, Rav Chaim Ozer Grodzensky *zt"l*, who agreed that it is indeed *mutar*. [See, for example, *Shu"t Tzemach Tzedek* (Lubavitch; *Yoreh Deah* 67), *Yeshuos Yaakov* (end *Yoreh Deah* 105), *Shu"t Maharsham* (vol. 3: 234), *Shu"t Achiezer* (vol. 2 - Y"D 11: 5), *Shu"t Avnei Shmuel* (20), *Shu"t Chavalim B'Ne'imim* (vol. 5: 17), *Shu"t Tzitz Eliezer* (vol. 6: 16, 9 - 11), and *Sha'arim Metzuyanim B'Halacha* (47: 5). There is also a novel approach raised by Rav Chaim Halpern in his *maamar* (from 5742) printed in *sefer Zecher Shlomo* (*Sefer Zikaron* for Rav Shlomo Zalman Goldshtoff, ppg. 547 - 557), that perhaps the *Rashba* and *Raavad* were only referring to the *issurim* of non-Jews mass-nullifying their wine and vinegar, and not necessarily other items. However, it must be noted that the vast majority of *Acharonim* throughout the centuries did not understand their opinions this way and this remains a tremendous *chiddush*.] Certainly, combining these factors, there is and was ample support for these renowned *Rabbonim* to grant *hashgachah* to Coke. [As an aside and quite interestingly, according to historian Roger Horowitz's recent book 'Kosher USA: How Coke Became Kosher and Other Tales of Modern Food', Rabbi Geffen and Rabbi Pardes actually exchanged *halachic responsa* on whether or not to rely on such, preceding and paralleling the later *halachic* debate regarding the permissibility of gelatin (as detailed earlier in this article; see footnotes 11 and 12).] Still, Rav Tuvia Geffen's actions, unheard of for the time, persuading the Coca-Cola Company to actually change their formula, a monumental contribution in upgrading the ingredients and ensuring that Coke had zero potential *kashrus* concerns to speak of, and permitted unequivocally, set a public precedent for later *Vaadei Kashrus* to follow as well: Even if an item is deemed *halachically* kosher, to try to go above and beyond the letter of the law, making certain that there is no *sheilah* on the product in question. That encapsulated Rabbi Geffen's greatness and is perhaps the reason that he is the one most commonly and closely associated with ensuring that “Coke is it”, even for the kosher consumer.

<sup>37</sup> See Rav Moshe Feinstein's *Shu"t Igros Moshe* (Y"D vol. 2: 41 s.v. *v'im*), Rav Moshe Sternbuch's *Shu"t Teshuvos V'hanhagos* (vol. 1: 440), and Rav Menashe Klein's *Shu"t Mishnah Halachos* (vol. 7: 113, 2).

<sup>38</sup> See *Gemara Shabbos* 127b, *Gemara Shavuos* 30a, and *Rabbeinu Yonah's Sha'arei Teshuva* (*Sha'ar* 3, 218 s.v. *v'heenay*).

<sup>39</sup> See *Shu"t Igros Moshe* (O.C. vol. 1: 96) and *Shu"t Minchas Shlomo* (vol. 2: 58, 29; *Tinyana* 53: 3) how the *Gedolim* actually define the *issur*. *Maris Ayin* does not include worrying that someone might **mistakenly** think something permitted is prohibited (The example Rav Moshe gives is driving in a car on Friday afternoon after candlelighting time, that it is not

Hence, it seems that even if this lab grown burger would prove kosher, one may still not eat it with cheese, due to the proscription of *Maris Ayin*. Although practically this *halachah* depends on how common an item is,<sup>40</sup>

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*Maris Ayin*, even though some people mistakenly think that it is already considered *Shabbos* and might further assume that one would drive on *Shabbos* as well); one need not concern himself with others' mistaken notions of what is prohibited or allowed, only actual *halachic* concerns.

<sup>40</sup> See *Rosh* (commentary to *Nidda*, Ch. 9), *Tur/ Shulchan Aruch/ Rema* (Y"D 298: 1), *Bach* (ad loc. 5), *Shach* (ad loc. 2), *Aruch Hashulchan* (ad loc. 4 & 5), *Kreisi U'Pleisi* (Y"D 87: 8; who cites this as the defining *klal* in categorizing potential cases of *Maris Ayin*), *Maharsham* (*Daas Torah* on Y"D 87: 3), *Yad Yehuda* (ad loc. *Pirush Ha'aruch* end 5), *Arugas HaBosem* (Belchover; *Kuntress HaTeshuvos* 13), *Shu"t Harei Besamim* (*Mahadura Chamisha'ah* vol. 4: 33), and *Shu"t Emek Halacha* (O.C. 134 s.v. *ode*). In fact, this basis for being lenient in cases of *Maris Ayin* has been widely accepted by contemporary authorities as well; the only issue being how common that item has to be in order to be entitled to this exemption. There was a famous dispute recorded approximately a hundred years ago between the *Pe'as HaSadeh* (*Shu"t* vol. 1: 36) and the *Yigal Yaakov* (*Shu"t* Y"D 23) regarding some novel egg-based desserts served at a wedding that looked remarkably dairy-like. Although both agreed with the *Kreisi's* approach, they disagreed as to whether such desserts were considered common enough in their day to negate the rule of *Maris Ayin*. Other *Poskim* of the time who permitted their dairy-looking pareve spreads based on this *klal* include the *Mahara"sh Engel* (*Shu"t* vol. 6: 40) and the *Divrei Malkiel* (*Shu"t* vol. 5: 85). Regarding *Maris Ayin* at Jewish weddings and *Seudos Mitzvah*, see also *Kenesses HaGedolah* (Y"D 87, *Haghos on Beis Yosef* 8), *Chida* (*Machzik Bracha* ad loc 6), *Yad Efraim* (ad loc s.v. *v'nahagu*), *Zivchei Tzedek* (ad loc. 21 - 23), and *Kaf Hachaim* (ad loc. 26 - 27). In fact, nowadays, with popular and familiar daily staples such as margarine, soy schnitzel, burgers, and hot dogs, non-dairy creamers, pareve ice creams and whipped desserts so commonplace, the vast majority of contemporary authorities, including Rav Chanoch Padwa (*Shu"t Cheishev HaEfod* vol. 1: 20), Rav Moshe Stern (the *Ba'er Moshe* - cited in *Pischei Halacha* - *Kashrus* 1<sup>st</sup> edition page 113: 7), Rav Yosef Shalom Elyashiv (cited in Rabbi Yaakov Skoczylas's *Ohel Yaakov on Issur V'Hetter* - 2<sup>nd</sup> edition, 87, footnotes 42 - 44), Rav Shmuel HaLevi Wosner (*Shu"t Shevet HaLevi* vol. 9: 157), Rav Ovadiah Yosef (*Shu"t Yabea Omer* vol. 6, Y"D 8: 4 & *Shu"t Yechaveh Daas* vol. 3: 59), Rav Mordechai Eliyahu (cited in '*Kol Tzofayich*' vol. 100), Rav Menashe Klein (*Shu"t Mishnah Halachos* vol. 5: 96), Rav Levi Rabinowitz (*Shu"t Ma'adanei Melachim* 63: 3, 64, 65, 67: 2 and *Ma'adanei Hashulchan* on Y"D 87: 20), Rav Yochanon HaLevi Wosner (*Shu"t Chayei HaLevi* vol. 4: 47, 14 & 15), Rav Yisroel HaLevi Belsky (*Shu"t Shulchan HaLevi* Ch. 22: 9), the *Avnei Yashpei* (*Shu"t* vol. 6: 64, 4), the *Minchas Pri* (*Shu"t* vol. 3: 57), the *Megillas Sefer* (on *Bassar B'Chalav* 87: 7 s.v. *v'heenay*), the *Ohr Yitzchak* (*Shu"t* vol. 2 Y"D 3), the *Divrei Binayahu* (15 & 16), and the *Vayizra Yitzchak* (*Shiurei Issur V'Hetter* pg. 116), assert that *me'ikar hadin* there no longer is a *Maris Ayin* issue with these products at all. Several of these decisors are referring to margarine, others to soy schnitzel, and others pareve creamer. Who would suspect a religious Jew of using dairy butter, milk or ice cream after eating meat, instead of assuming that the pareve alternative is being used? Although some authorities maintain that it is still preferable to exercise caution since the dairy versions are presently more common, and maintain that one should keep the container or wrapper on the table at the time of eating, nevertheless, they agree to this *halachic* principle. That is why nowadays many do not even think twice about "buttering" their sandwich with margarine or having pareve "ice cream", or coffee with non-dairy "milk", even at a *fleishig* (meaty) meal. See also Rav Asher Weiss's *Shu"t Minchas Asher* (vol. 1: 66) who although agreeing in principle, nevertheless maintains that one should not rely upon this *l'chatchila* since the dairy versions are still far more common. A dissenting opinion, who apparently argues on all abovementioned authorities, is that of the *Badei Hashulchan* (Y"D 87: 48 & *Biurim* pg. 11 - 12 s.v. *mishoom*) who does not seem to accept this logic et al. to permit these items nowadays. He argues that the case of the *Rema* in Y"D 87 - chicken and almond milk, was apparently prevalent in those days and still the *Rema* considered it *Maris Ayin*. However, in this author's opinion, this issue can seemingly be answered up by a careful reading of the *Shach*, citing the *Rashal*, that this was a common delicacy **on Purim**, (as a type of '*Vinehfoch Hu*') and not the rest of the year. Therefore, it would not be considered widespread enough year round to give it a dispensation from *Maris Ayin* the rest of the year.

Regarding the permissibility of taking a drink, using the restroom, or taking part in a business meeting in a non-kosher restaurant nowadays, see *Shu"t Igros Moshe* (O.C. vol. 2: end 40 s.v. *u'vadavar*), *Emes L'Yaakov* (on *Shulchan Aruch*, C.M. 425: footnote 27 s.v. *v'nirah she'im*), and *Shu"t Minchas Asher* (vol. 1: 67). These issues were elucidated at length in a previous article titled: "Margarine, Misconceptions, and *Maris Ayin*" (Yated Ne'eman 20 Tammuz 5774 | July 18, 2014; [http://ohr.edu/this\\_week/insights\\_into\\_halacha/5080](http://ohr.edu/this_week/insights_into_halacha/5080)).

on the other hand, with a \$325,000 price tag, a potential kosher cheeseburger is still a long way off! This is because even if they manage to mass produce said burger and bring the price down 10,000 fold, it would still have to be common enough that the average Joe would not readily assume that it is a real meat hamburger served with the actual cheese; quite an unlikely eventuality for something that expensive to produce.

### Inconclusive?

So, which of these describes our lab grown burger? Although it seems the stronger of the arguments is that it retains the status of its source meat, practically, as stated previously, this whole cutting edge scientific discussion of genetically engineered beef is currently purely academic. This is due to the fact that until the whole process is made public knowledge, all we can do is conjecture as to the potential *halachic* possibilities.

It's important to realize that such technological advances were foreshadowed thousands of years ago by the wisdom of our Sages, discussing meat created via unconventional means. Time and technology have once again proven wrong those who might scoff at our Aggadic Mesorah.

One final thought. The *Gemara* in *Nida* (51b) and *Chullin* (66b) questions *Chazal's* rule that scales suffice to render a fish kosher, "Why then does the Torah mention fins altogether? The *Gemara* answers in an extremely rare fashion: "*l'hagdil Torah ulha'adirah*", to magnify and enhance the Torah. The *Magen Avraham* in his commentary on the *Yalkut Shimoni (Parshas Shemini)* takes this a step further. He writes that *l'hagdil Torah ulha'adirah* was not limited to the topic of fins and scales. Rather, it was also referring to a specific poisonous 'fish' with legs who's status was debated (the *Stincus Marinus*).<sup>41</sup>

Similar to *Rashi's* explanation to the famous last *Mishnah* in *Makkos* (23b s.v. *l'zakos*), that Hashem wishes to give *Klal Yisrael* extra reward and therefore added effortless Torah and Mitzvos, such as refraining from eating repulsive creatures that one wouldn't want to eat anyway. So too, regarding this "fish", since it is poisonous, one wouldn't have any sort of desire to eat it, thus possibly taking it out of the realm of practical *halacha*. Nevertheless, this whole issue of finding out its kashrus status was meant for us to delve into exclusively to get rewarded in the Next World, an infinitely more appealing approach. One can certainly say the same with this stem cell hamburger, as it currently remains imbedded in the realm of theory and not practical reality.

**Postscript:** After completing this article, this author was notified by noted food scientist Arlene Mathes Scharf of [Kashrut.com](http://Kashrut.com) that an additional factor in the production of the lab grown burger was made public, that growing this "meat" involved using fresh calf blood as the growth medium.<sup>42</sup> If so, it definitely might change

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41 *Zayis Raanan (Parshas Shemini, explanation on pg. 146a)*. This fascinating issue was addressed at length in a previous article titled "Fish with Legs?" (Yated Ne'eman 30 Tishrei 5775 | October 24, 2014; [http://ohr.edu/this\\_week/insights\\_into\\_halacha/4915](http://ohr.edu/this_week/insights_into_halacha/4915)).

42 <http://www.nbcnews.com/science/lab-grown-meat-here-will-vegetarians-eat-it-6C10830536>. However, Mrs. Mathes Scharf later reported that she attended a seminar by Professor Mark Post of Maastricht University himself, that as they are positioning this product as an animal cruelty free-way to produce meat as well as a way to produce meat using fewer resources, they are working on developing animal-free nutrient solutions for the cells. However, she concluded that this technology has a long way to go before it is feasible. See <http://www.kashrut.com/articles/IFT2015>.

the lab burger's potential kashrus status. First of all, if it is soaking directly in blood for more than 24 hours straight it can be considered *kavush k'mevushal* and prohibited (at least Rabbinically).<sup>43</sup>

Additionally, if blood is used as an actual growth medium it would seem to be a '*Davar HaMaamid*' and would never be *battel*. Furthermore, even if it might qualify as a "*Zeh V'Zeh Gorem*", nonetheless, if it is considered such an integral part of the growth process, presumably at no time would there be present a ratio of 60 against it. Consequently, if proven accurate, use of blood as the growth medium can complicate matters, and would seemingly make production of the Petri dish patty highly problematic.

Just another excellent reason to ascertain the actual *metzius* when viewing innovation via the lens of *halacha*.

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**This author penned a brief *maamar* on this topic in *Techumin* vol. 35 (5775). For more on this topic, as well as various *halachic* hypotheses, see *maamarim* by this author, R' Zvi Ryzman, and Rav Yaakov Ariel in *Techumin* vols. 34 - 36.**

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

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<sup>43</sup> For the parameters of the *halachos* of *kavush k'mevushal*, see *Tur / Shulchan Aruch* and main commentaries to *Yorah De'ah* 105: 1 at length.