



Keeping Kosher in the U.S.A.

Citation

Keeping Kosher in the U.S.A. (2002 Third Year Paper)

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Introduction

Every waking moment should be governed by the laws of the Torah. Every action must accord with Torah principles. Torah law dictates which shoe one should put on first.¹ There are also various laws relating to the bathroom.² The Torah also teaches not only that one must pray three times a day, but also that the three prayers must each be recited during their respective specific time periods, as laid out by Abraham, Isaac, and Jacob.³ With this in mind, it should come as no surprise that the Torah regulates what a Jew may eat and drink.

Upon completing one of its renditions of the Jewish dietary laws, the Torah states that Jews have an obligation “to distinguish,” or “l’havdil” (in the original Hebrew) “between the contaminated and the pure, and between the animal that may eaten and the animal that may not be eaten.”⁴ Rashi⁵ explains that the obligation goes beyond merely reading through the Torah passages that discuss these laws; rather one must learn the laws until he knows them, recognizes them, and is an expert in them.⁶ It is with this in mind that I now begin to scratch the surface of the Jewish dietary laws.

¹Shulchan Aruch, Orach Chaim 2:4. One should put on his right shoe without tying it, then put on his left shoe and tie it, and only then tie the right shoe. The reasons for this order are spelled out in Mishnah Berurah commentary to Shulchan Aruch.

Rav Yosef Karo wrote the Shulchan Aruch (a compilation of practical Jewish law that is still heavily relied upon), the Beis Yosef (a commentary on the Tur Shulchan Aruch, which was a compilation of practical Jewish law that predated the Shulchan Aruch), and the Kesef Mishnah (a commentary on Maimonides’ Mishneh Torah, which was a compilation of all Jewish law); Israel, 1488-1575.

Rabbi Yisrael Meir Kagan, also known as the Chafetz Chaim, lived in Poland, 1839-1933. His commentary Mishnah Berurah on the Shulchan Aruch is a notebook containing many relevant opinions regarding innumerable Jewish law issues.

²Chapter 3 of Shulchan Aruch, Orach Chaim is entirely devoted to appropriate bathroom behavior.

³Talmud Bavli (the Babylonian Talmud), Tractate Berachos 26b.

⁴Leviticus 11:47.

⁵Rabbi Solomon Yitzchaki (ben Isaac, son of Isaac); born in Troyes, France in 1040, died in Worms, Germany in 1105.

⁶Rashi in his commentary on Leviticus 11:47.

What does “kosher” mean?

The word ‘kosher’ means ‘to be right, pleasing, [or] fit.’⁷ Kashrus, then, is the study or determination of what is and what is not kosher. (Some substitute the word kashrus with its alternative spelling ‘kashruth.’) The Torah states which foods are ‘fit’ for eating by a Jew in three different chapters. Specifically, for example, the Torah states that fish are only kosher if they have fins and scales.⁸ The requirements for fish and for other animals, which will be laid out below, spark an obvious question. Why keep kosher? What is the reason behind the seemingly inane laws? Many laymen, both Jews and non-Jews, think that the source of the laws of kashrus relate to nutritional and health concerns dating back to the revelation on Mount Sinai in the year 1273 B.C.E. Most orthodox Jews, though, look to the supposed effect that non-kosher food has on one’s spiritual being as the reason to keep kosher. The truth is that both theories have proponents of great historical stature as Jewish law authorities.

What is the purpose of the Jewish dietary laws?

Rabbi Aharon Halevi⁹ (RA’AH), who expounds extensively on each of the 613 commandments in his book, *Sefer Hachinuch*, describes the essence of the kashrus laws in terms of their positive effects on the physical health of the human body. He states, though, that he will not attempt

⁷Marcus Jastrow, *Dictionary of the Targumim, Talmud Babli, Yerushalmi and Midrashic Literature*, p.677.

⁸Leviticus 11:9-10: “This may you eat from everything that is in the water: everything that has fins and scales in the water, in the seas, and in the streams, those may you eat, And everything that does not have fins and scales in the seas and in the streams – from all that teems in the water, and from all living creatures in the water – they are an abomination to you.”

⁹Rabbi Aharon Halevi (c.1215-1293), also known as RA”AH, was born in Gerona, Spain and died in Provence, France.

to explain any connections between specific dietary commandments and their actual effect on the human body. He bases this refusal on a fear that if humans were told the connections, then they might reject one of these commandments if the science of the day rejects the supposed connection. RA''AH explains that if the science of any time period leads to the conclusion that any of these dietary laws has no effect on physical health, this will only be the case because the scientists lack information on some critical factor. G-d, on the other hand, has perfect information, so He recognizes health effects that scientists may never comprehend. Even RA''AH, though, concedes that emphasis is placed on protecting the human body only because the physical body is the vessel that houses one's spiritual being.¹⁰ While Maimonides¹¹ doesn't state his opinion on the reason to keep kosher, he, too, explains that it is important to protect one's physical health at all times, because one's mind is only free to delve into Torah study if he is free from physical ailments and distractions.¹²

On the other hand, Nachmanides¹³ sees spiritual health, the health of one's soul, as the reason for the dietary laws. He notes that when the Torah begins its discussion of prohibited food consumption, it introduces the relevant law with the phrase, 'And you [the children of Israel] shall be holy people before Me.' Nachmanides explains that this statement introduces the dietary laws because these laws are relevant to spirituality, not to physical health. He states that 'it should be acceptable for man to eat all that sustains him, and prohibited foods relate only to purity of the soul.'¹⁴ Similarly, Don Isaac Abarbanel¹⁵ writes that the essence of kashrus laws speaks to spiritual health. He states that it is wrong to think of these laws

¹⁰Sefer Hachinuch, commandments 73 and 147.

¹¹Rabbi Moses ben Maimon (Maimonides, Rambam); born in Cordova, Spain in 1138, died in Egypt in 1204. His major philosophical work is called Moreh Nevuchim, and he compiled all of Jewish law into a treatise called Mishnah Torah (literally meaning a review of the Torah).

¹²Maimonides, Mishnah Torah, Hilchos De'os 3:3, 4:1

¹³Rabbi Moses ben Nachman (Nachmanides, Ramban); born in Gerona, Spain in 1194, dies in Israel in 1270.

¹⁴Exodus 22:30 and Nachmanides' commentary on that verse.

¹⁵Rabbi Don Isaac Abarbanel; Spain, 1437-1508.

as prescriptions for good physical health because, he continues, this would place the Torah ‘‘at a level equal any other small treatise on medical health.’’ Rather, eating kosher prevents non-kosher food from contaminating the soul.¹⁶

The distinction between kosher and non-kosher land animals

Despite the debate about the purpose of kashrus, all agree that Jews must eat only kosher foods. So, I now turn to an analysis of some of the more basic kashrus laws. The first reference to the distinction between kosher and non-kosher animals can be found in the story of Noah and the great flood. G-d commanded Noah to bring with him onto the ark seven of every species of kosher animal and two of every species of non-kosher animal.¹⁷ But how did Noah know which animals were kosher and which were not kosher? The revelation at Sinai had not yet taken place!? Did Noah know the laws of the Torah before the giving thereof? There are two most common answers to this question. Some commentaries explain that Noah actually learned Torah before it was received at Sinai.¹⁸ Noah is actually not the only person to have supposedly learned Torah before the revelation at Sinai.¹⁹ How this is possible is explained by some commentaries but

¹⁶Abarbanel’s commentary on Leviticus 11:13.

¹⁷Genesis 7:1-3: “Then G-d said to Noah, ‘Come to the ark, you and all your household, for it is you that I have seen to be righteous before Me in this generation. Of every clean animal taken unto you seven, a male with its mate, and of the animal that is not clean, two, a male with its mate; of the birds of the heavens also, seven, male and female, to keep seed alive upon the face of all the earth’”

¹⁸Rashi commentary on Genesis 7:2. Regarding the Torah’s reference to “every clean animal,” Rashi states, “Those animals that, in the future, will be considered clean and kosher for the Jews. We see from here that Noah learned Torah.”

¹⁹Other examples of people who learned the Torah many years before the revelation at Sinai include Abraham and Jacob. While discussing the story of Abraham circumcising himself and his son Yishmael, Sifsei Chachamim (Rabbi Shabsai Bass, 1641-1718), the most widely used commentary on Rashi’s commentary on the Torah, writes that Abraham fulfilled all of the laws of the Torah. Additionally, the Talmud in Tractate Megillah 17a explains that Jacob suffered 22 years of anguish when he did not know that his son Joseph was indeed alive in Egypt. The Talmud explains that the 22 years were a punishment, measure for measure, for the 22 years that Jacob lived with Laban. Just as Jacob didn’t serve and honor his father, Isaac, for

is beyond the scope of this essay. The basic law with meat animals is that they are kosher only if they both chew their cud and have split hooves. The Torah also enumerates animals that have only one of these characteristics but not the other one.²⁰ In fact, the way in which the Torah explains this issue sheds some light on why everyone (i.e. religious Jews, non-religious Jews, and non-Jews) seems to know that Jews are prohibited from eating pork. The pig is the only animal listed as having split hooves but not chewing its cud.²¹ Some commentaries explain that the pig tries to show its hooves so that Jews will incorrectly eat it. The split hooves are readily visible whereas the pig's lack of a double stomach is not externally visible. Consequently the Torah explicitly enumerated the pig as its own class of non-kosher animal.²² Perhaps this explicit reference created the worldwide awareness. Of course it is also possible that the universal knowledge of the pork prohibition is due to the simple fact that pork is a very popular food; thus, the rejection thereof by Jews has occurred often enough to strengthen knowledge of its prohibited status. While the Torah provides the two guidelines for kosher land animals, this does not mean that a Jew can eat any food that conforms to these two regulations. As will be elaborated below, there are a host of other issues that can arise that will bring even these meats into the prohibited group.

Poultry

22 years, so too Joseph did not serve and honor his father, Jacob, for 22 years. Based on many verses in the Torah, the Talmud concludes, though, that Jacob had in fact not been with his father for 36 years. The Talmud explains the apparent discrepancy by saying that Jacob was not punished for 14 of the 36 years because for those 14 years he studied Torah in the house of Shem and Ever. Thus, we see that both Abraham and Jacob studied Torah hundreds of years before the revelation at Sinai.

²⁰Leviticus 11:4-8, Deuteronomy 14:7,8. The text in Leviticus states, "But this is what you shall not eat from among those that bring up their cud or that have split hooves: the camel, for it brings up its cud, but its hoof is not split – it is unclean to you; and the hyrax, for it brings up its cud, but its hoof is not split – it is unclean to you; and the hare, for it brings up its cud, but its hoof is not split – it is unclean to you; and the pig, for its hoof is split and its hoof is completely separated, but it does not chew its cud – is unclean to you. You shall not eat of their flesh nor shall you touch their carcass – they are unclean to you."

²¹Id.

²²Midrash Rabbah on Leviticus, Parshas Shemini, 13:5.

When it comes to poultry/birds, the Torah does not state guidelines for the determination of which are kosher. Instead, the Torah writes a list of all the kosher birds and a list of the non-kosher ones.²³ This method, though, naturally can hinder the determination of which birds are kosher. One only knows what not to eat if he knows exactly which 24 birds the Torah prohibits. While this may seem like a job for any child who can read, one must remember that the Torah was written in Hebrew more than 2500 years ago. Thus, the exact translations of each of the prohibited birds can only be based on tradition. Consequently, there is some debate regarding which birds are kosher and which are not. Rabbi Binyomin Forst summarizes kashrus law as it relates to birds:

‘‘All variations of the common chicken are accepted as kosher. Similarly, common domestic ducks, geese, and doves are considered kosher. Many Sefardic [Jews descendant from Spain, North Africa, and the Middle East] communities have a tradition that the quail is a kosher fowl. With the appearance of turkeys, rabbinic authorities questioned whether a reliable tradition exists about their kashrus. Common custom today accepts turkeys as kosher fowl. There is no definitive tradition about the status of a pheasant, peacock, guinea hen, partridge, swan, or certain species of wild ducks, geese, pigeons and doves; therefore, they should not be eaten. The eggs of any non-kosher fowl are also forbidden to be eaten.’’²⁴

Ever min hachai – No taking limbs from living animals

²³Leviticus 11:13-19, Deuteronomy 14:12-18. The text in Leviticus states, ‘‘These shall you abominate from among the birds, they may not be eaten – they are an abomination: the neshet, the peres, the ozniyah; the daah and the ayah according to its kind; every orev according to its kind; the bas hayaanah, the tachmos, the shachaf, and the netz according to its kind; the kos, the shalach, and the yanshuf; the tinshemes, the kaas, and the racham; the chasidah, the anafah according to its kind, the duchifas, and the atalef.’’

Above, I mentioned that Noah distinguished between kosher and non-kosher animals when bringing the animals into the ark. Noah did this despite the fact that the Torah was not given yet and despite the fact that he was not obligated to keep kosher (nor is there any evidence that he did). Interestingly, though, he was eventually commanded regarding one food matter. Jews believe that even before the giving of the Torah, all of the people of the world were obligated in the seven Noahide laws.²⁵ That is, after the great flood, when G-d promised that he would never destroy the planet again, he also commanded Noah and his sons, and all future generations, to conform to seven commandments. One of those commandments was a prohibition against eating ‘‘ever min hachai,’’ translated as ‘‘a limb that was taken from a living animal.’’²⁶ Jews, thus, continue to refrain from eating this type of food. Additionally, Jews should not provide this type of food to non-Jews. This law can be traced to the Biblical command, ‘‘Before a blind person, thou shalt not place a stumbling block.’’²⁷ This verse has general application to situations in which one’s action might cause another to violate a Torah commandment. Therefore, a Jew should not give any limbs originally taken from a living animal to other Jews or to non-Jews. Of course, this means that a Jew should also not cause a fellow Jew to eat any non-kosher food.

²⁵Talmud Bavli, Tractate Sanhedrin 56a: All sons of Noah (i.e. all people) are commanded regarding seven commandments. The following are the seven Noahide laws:

1) Dinin – This Aramaic word refers to the requirement incumbent on every society to set up a law code and a court system.

2) Bircas Hashem – These words literally translate to ‘‘blessing G-d.’’ While one might think that this refers to a commandment to bless G-d, it actually is a commandment to not curse G-d. It is often the way of the Sages to avoid writing anything negative next to a reference to G-d. Often the Sages will replace the word that has the negative connotation with its opposite. So when describing the commandment to not curse G-d, the Sages wrote ‘‘blessing G-d.’’

3) Avoda Zara – Idolatry is prohibited.

4) Gilui Arayos – The Torah enumerates certain close relatives whose nakedness man, both Jews and non-Jews, cannot uncover. The full list can be found in Leviticus, Chapter 18.

5) Shfichus Damim – Murder is forbidden to all people.

6) Gezel – Non-Jews are included in the Torah’s prohibition of stealing.

7) Ever min hachai – One is not permitted to eat meat from an animal while the animal remains alive.

²⁶Genesis 9:4.

²⁷Leviticus 19:14: ‘‘You shall not curse the deaf, and you shall not place a stumbling block before the blind; you shall fear your G-d – I am Hashem.’’

Gid hanashe – the sciatic nerve

Another lesser-known law, even to orthodox Jews, relates to the prohibition against eating the ‘gid hanashe,’ which most contemporary rabbis understand to be the sciatic nerve. While many orthodox Jews don’t actively think about this prohibition, this does not mean that they violate it. As will be explained below (on page 58), orthodox Jews generally buy food only if it has an approved symbol of kashrus, which can be granted by a rabbi who attests that the relevant food was prepared in total accordance with Jewish law. Thus, Jews can keep kosher without knowing all of the required kashrus laws. The basis for not eating the sciatic nerve dates back to Biblical times. The Torah states that Jacob fought with an angel of G-d, and, in the course of the fighting, the angel struck Jacob in the thigh, at the site of the ‘gid hanashe.’ The succeeding verses state that G-d then caused the sun to shine brightly on Jacob, and G-d alleviated Jacob’s pain through the sun.²⁸ RA’AH, in the aforementioned Sefer Hachinuch, explains that just as G-d eased the pain that Jacob had in his ‘gid hanashe,’ so, too, will He ease the Jews’ pain when their enemies harm them at any point in the future. RA’AH continues that in order to remind the Jews of G-d’s eternal kindness in this realm, Jews are commanded to refrain from eating the ‘gid hanashe.’²⁹

²⁸Genesis 32:25-33: “...he struck the socket of [Jacob’s] hip; so Jacob’s hip-socket was dislocated as he wrestled with him ... The sun rose for him as he passed Penuel and he was limping on his hip. Therefore the children of Israel are not to eat the displaced sinew on the hip-socket to this day, because he struck Jacob’s hip-socket on the displaced sinew.”

²⁹Sefer Hachinuch, commandment 3.

Shechitah – the slaughter of animals according to Jewish law

While the rules relating to land animals and fowl are extensive, they are certainly manageable. Does this mean that one can eat any meat from any land animal or fowl if the animal has split hooves and chews its cud and as long as the eater refrains from eating the ‘gid hanashe’ and limbs from living animals? Of course not. Jewish dietary laws are still more difficult. The animal must be killed in a specific manner in order to be kosher. The killing process is known in Hebrew as ‘shechitah.’ The animal must be killed by having its neck cut in a specific area. The fatal cut must be made using a perfectly smooth blade. Actually, there are five possible ways for the ‘shechitah’ to be invalidated.³⁰ If the animal is not killed ‘correctly,’ then the animal is not kosher, and Jews may not eat it. The carcass of an animal that was not slaughtered according to the ritual rules is called a ‘neveilah’ and may not be consumed. Likewise, even an animal that died naturally is a ‘neveilah.’³¹ Neither of these carcasses resulted from a perfect ‘shechitah.’

Before leaving the discussion of ‘shechitah,’ it is important to take note of Rabbi Forst’s reaction to some people’s concern about the alleged inhumanity of the ‘shechitah’ killing:

³⁰Rabbi Binyomin Forst describes the five invalidations on p.36, footnote 24, of *The Laws of Kashrus*: “There are five basic disqualifications of *shechitah*: 1) *Shehiyah* (hesitation): the *shechitah* must be performed in one continuous act without hesitation. 2) *Chaladah* (a covered knife): the *shechitah* knife may not be covered with skin, feathers, wool, or cloth during the *shechitah*. 3) *D’rasah* (pressing): the *shechitah* must be accomplished by the sharpness of the knife. Any undue pressure applied to the knife invalidates the *shechitah*. 4) *Hagramah* (cutting outside of the prescribed area): if the knife cuts beyond that area, the *shechitah* is invalid. 5) *Ikur* (uprooting): if the trachea and esophagus are uprooted from their place in the animal’s neck before completion of the *shechitah*, the *shechitah* is invalid.”

³¹Jastrow Dictionary p.870.

‘‘Although it is not within the framework of this [book], note should be taken of the controversy surrounding the question of dulling the animal’s senses before shechitah. It is our belief that the Torah proscribed the most humane method for slaughtering an animal. It is from the Torah itself that mankind derived the concept of avoiding tzaar baalei chaim (inflicting pain upon living creatures). It is thus peculiar that over the last hundred years many attempts, successful and unsuccessful, were made to prohibit shechitah as inhumane to animals ...In some of these countries, shechitah was permitted providing the animal was stunned (either electrically or through a blow to the head) beforehand. Halachic authorities, however, were unanimous in their refusal to permit shechitah under these circumstances. Several reasons were cited: to require stunning of the animal would constitute acknowledgment that shechitah itself is inhumane. Acknowledgment of this untruth would constitute a grave chilul Hashem³² (desecration of Divine honor). In addition, stunning the animal may render it a treifah. [I will discuss the law of treifah on page 17] See collected letters of Rabbi Chaim Ozer Grodzinsky vol. II p. 732, Responsa Sridei Eish vol. I.’’

The consumption of blood and salting kosher meat

Another rule states that Jews may not eat the blood of even a kosher animal or fowl.³³ In order to ensure that there will be no blood in kosher food, the meat of the properly slaughtered animal must be heavily salted before it is cooked. The salt must be sufficient to soak up all the blood. The salt must then be washed away before it (and the blood) redissolves into the meat. The liver is so permeated with blood that only broiling can remove that blood. Fish blood is permitted because it is conspicuously missing from the prohibiting verse.³⁴ Even fish blood, however, is prohibited if it is gathered in a vessel. This rule is a rabbinic decree that was enacted in order to prevent confusion that would otherwise arise if one has

³³Leviticus 19:26: “You shall not eat over the blood ...” The prohibition is repeated in other verses in the Torah, such as Leviticus 7:26 and Leviticus 17:12.

³⁴Leviticus 7:26: “You shall not consume any blood, in any of your dwelling places, whether from fowl or from animals.”

many vessels filled with blood. In this case, he might forget which one has the kosher fish blood and accidentally eat non-kosher blood. However, even fish blood that is gathered in a vessel is permitted if it is recognizable as fish blood, for example if it contains fish scales.³⁵

Interestingly, the Torah does shed some light on the reason for the blood prohibition. The Torah states, ''For the soul of the flesh is in the blood; and I have assigned it for you upon the altar to provide atonement for your souls; for it is the blood that atones for the soul. Therefore I have said to the children of Israel, 'Any person among you may not consume blood; and the proselyte who dwells among you may not consume blood.'''³⁶ It would certainly be inappropriate for one to consume that which atones for him.

Meat from animals with mortal wounds and glatt kosher

Finally, the Torah also dictates that Jews may not eat meat from a ''treifah.''³⁷ The word ''treifah'' is defined as torn.³⁸ In relation to animals, the word is used to describe ''an animal with any of a specific group of physical defects that are in the Talmud and the law codes. Examples of these ''defects,''' which often go far beyond the health inspection of the

³⁵Shulchan Aruch, Yoreh Deah 66:9.

³⁶Leviticus 17:11-12.

³⁷Exodus 22:30: "People of holiness shall you be to Me; you shall not eat flesh of an animal that was torn in the field; to the dog shall you throw it."

³⁸Jastrow Dictionary pp.555-56.

USDA, include certain lesions, lacerations, broken limbs, missing or punctured organs, or the result of an attack by a larger animal.’’³⁹ Thankfully, though, because most of these defects are rare, it may be assumed that most animals are healthy.⁴⁰ There is, therefore, no requirement to inspect every animal for them. An exception is the lung of an animal, on which adhesions, called ‘‘sirchot,’’ may develop. While these problems also cannot be considered common, their relative prevalence led past Torah scholars to mandate that the lungs of every animal be examined, both manually while still in its natural position in the animal, and visually following its removal from the thoracic cavity.⁴¹

A hole in the lung renders the animal a ‘‘treifah.’’ Therefore, adhesions on the lung are problematic, either because they indicate the presence of a perforation that has been insufficiently sealed (Rashi) or because they can become loosened, thereby causing a hole to develop (Tosafot).⁴² According to the kosherline.com author of a glatt kosher article, in the U.S., lung adhesions usually do not occur on fowl. So, this issue mainly affects only meat. Generally, if the lungs of the animal are smooth, or in Yiddish ‘‘glatt,’’ then the animal is accepted as a non-treifah. If the animal’s lungs are non-glatt, then the animal is assumed to not be ‘‘kosher.’’

The Ramah⁴³ concludes his discussion of the various types of lung adhesions with a description of a method of peeling and testing many types of adhesions, thereby resulting in many more animals determined to be kosher.⁴⁴ The Ramah himself, though, expressed some hesitations relating

³⁹www.kosherline.com, anonymous article on glatt kosher.

⁴⁰Id. quoting Shach commentary on Shulchan Aruch, Yoreh Deah 39:1.

⁴¹Id.

⁴²Id.

⁴³Rabbi Moses Isserles (Ramah); Cracow, Poland, 1530-1572.

⁴⁴Shulchan Aruch, Yoreh Deah 39:13.

to this leniency; however, because it had gained widespread acceptance and did have a firm basis in Jewish law, he ruled that the leniency could be followed. Of course, though, only an exceedingly G-d-fearing individual, an individual who will be intellectually honest regarding the outcome of the adhesion tests, should do the peeling and testing. It is important to note that the peeling and testing method is mentioned only by the Ramah, not by the Mechaber.⁴⁵ Therefore, Sefardic Jews, who largely adopt their Jewish law perspective from the writings of Rav Yosef Karo, are required to eat meat that has no adhesions whatsoever. As a result, when one goes to a store that sells kosher meat, he will often find that some meat is sealed in packaging that reads ‘‘Beis Yosef Shechitah,’’ indicating that the meat is acceptable even to those who follow the Beis Yosef⁴⁶, Rav Yosef Karo. For Ashkenazim, who usually follow the Ramah, there is a tradition that a small, easily removable adhesion is defined as a lower class of adhesion and that the presence of up to two such small, easily removable adhesions still qualifies the animal as glatt. That is, the meat is referred to as glatt even though it is not smooth. It should be noted that while the Ramah’s ruling creates meat that is, in theory, truly non-glatt (not smooth), if the meat is inspected properly, it is accepted even by orthodox Jews as 100% kosher and, again, it is called ‘‘glatt kosher.’’

The above explanation makes clear any reference to fish, dairy products, or chicken, as ‘‘glatt’’ would be a misuse of the term. Additionally, even when referring to meat, it is only a description of the status of the lung, but makes no statement regarding the standards of other kashrus aspects, such as the shechitah.

⁴⁵Rav Yosef Karo is sometimes referred to as the Mechaber.

⁴⁶See footnote 1.

Interestingly, misconceptions about the term ‘‘glatt’’ are so widespread that the word has been used on chicken, fish, and even vegetables. Sometimes the word is used in order to mislead the unthinking, the ignorant, and the credulous. Often, though, the term is thrown in not to mislead, but, instead, to imply that the product was produced under a higher kosher standard, or under a more watchful eye.

Cheilev – prohibited fats

An additional prohibition that applies to land animals, albeit not to their meat, relates to ‘‘cheilev,’’ or fats. The fats on certain internal organs must be removed from kosher, properly slaughtered cattle, sheep, or goats before the meat may be eaten. According to the Torah, this prohibition applies only to commonly domesticated animals, not to fowl or wild animals. Even of the commonly domesticated animals, the Torah further limits this prohibition to those that are listed elsewhere in the Torah as animals that are, at various times, sacrificed to G-d. Thus, the commandment only applies to the ‘‘cheilev’’ of cattle, sheep, and goats.⁴⁷ As far removing these forbidden fats, Rabbi Forst writes: ‘‘Removal of the forbidden fats is a difficult task and must be done by a skilled expert. This process is called nikur. Thus,

⁴⁷Leviticus 7:23-25: ‘‘Speak to the children of Israel, saying: Any fat of oxen, sheep, or goats – you shall not eat. The fat of an animal that died and the fat of an animal that had been torn to death may be put to any use; but you shall not eat it. For anyone who eats the fat of animal species from which one may bring a fire-offering to G-d – the soul that eats will be cut off from its people.’’

Also, see Mishnah Torah, Hilchos Maachalos Asuros 7:1; Talmud Bavli, Mishnah Tractate Kerisus 2a; Shulchan Aruch, Yoreh Deah 64:1.

it is not sufficient to merely obtain meat with a proper slaughtering supervision; one must also determine that the butcher is a skilled, knowledgeable and G-d fearing individual who does nikur under proper Rabbinical supervision.’’⁴⁸

Milk products and the question of cholov yisrael

Dairy products can be eaten only if they are derived from kosher animals. Thus, for example, cows' milk and goats' milk are kosher. The same is true of butter, cream cheese, ice cream, and other products that are derived from the milk of kosher animals, albeit, of course, only if no non-kosher product is included in the ingredients. But what does this mean for Jews today? It might have been commonplace to milk one's own cows hundreds of years ago. In fact, even those who did not own cows or goats surely bought their milk from people they knew. Fewer than 100 years ago, many orthodox Jews in Europe still lived in towns consisting of only their relatives and orthodox friends, some of whom owned kosher milk-producing animals. Thus, acquiring kosher milk and knowing the source of that milk was relatively easy. Today, on the other hand, orthodox Jews live in almost every part of the globe. Furthermore, orthodox Jews no longer live in small, rural areas. Clearly, though, even orthodox Jews who reside in New York City do drink milk. That is, they drink milk even though they have not personally verified the source of the milk.

Most mainstream orthodox Jews drink milk every day despite their personal lack of information

⁴⁸Rabbi Forst, The Laws of Kashrus, p.40.

regarding the source of their milk. Some orthodox Jews, though, actually do know where their milk comes from. As a safeguard for the prohibition against drinking milk from a non-kosher animal, Jewish law dictates that one may only drink milk that has been ‘‘watched’’ by a Jew from the time of milking straight through until the time of ingestion. Milk that has been watched in this manner is known as ‘‘cholov yisrael,’’ literally the milk of an Israelite (a Jew). The Sages enacted this rule because of their fear that kosher milk might be mixed with non-kosher milk, unbeknownst to the eventual drinker.⁴⁹ These rules go into extreme detail regarding the required supervision of the milk. For example, the Shulchan Aruch states that if a Jew is sitting outside of a building in which a non-Jew is milking a kosher animal, then the milk is still kosher as long as the building has a window through which the Jew could theoretically check to make sure that the non-Jew isn’t tainting the milk.⁵⁰

But what about everyone else? Those who drink milk that is not labeled ‘‘cholov yisrael’’ rely on responsa from Rabbi Moshe Feinstein.⁵¹ Rabbi Feinstein wrote that government inspection is a valid substitute for Jewish supervision. He reasons that something that a person is quite certain has happened is considered by Jewish law as if it had indeed happened. He maintains that something that is known is on the same level as that which is seen. Therefore, since we are quite sure that dairy producers are fearful of government penalties if they adulterate their product, it is considered as if a Jew actually watched the milking process. We can assume that there is definitely no non-kosher milk in the mixture. That is, Rabbi Feinstein considers the milk completely acceptable. This is because the United States government heavily regulates food processing, and the threat of a possible fine or even a factory shutdown prevents adulteration

⁴⁹Tur Shulchan Aruch, Yoreh Deah 115.

⁵⁰Id.

⁵¹Rav Moshe Feinstein was born in Europe in 1895. He settled in the United States in 1937. Before he died in 1986, he was accepted as the foremost rabbinic authority in the world.

of milk. Even Rabbi Feinstein, though, concluded his ruling with the following: ‘‘Yet, for one who is a ‘spiritual’ person it is appropriate to be strict ...and I myself am strict in this regard ...’’⁵² Rabbi Feinstein, though, was not the first to rely on government inspection as a permissive factor for ‘‘cholov yisrael.’’ The Chazon Ish⁵³ wrote that ‘‘...since there is government supervision for milk to assure that non-kosher milk is not added, and [the producers] are subject to punishment for falsification ...it is like the case [in the Gemara] of a Jew’s (sic) sitting nearby, and if he were to get up he would see [and therefore we consider it equivalent to his actually seeing] ...and Pri Chadash⁵⁴ wrote that if non-kosher milk is more expensive, then we ought to be lenient ...’’⁵⁵

Fish

The next major food product is fish. The Torah permits only those fish that have fins and scales; all other fish are prohibited.⁵⁶ Fish that have very small scales are kosher as long as the scales are visible to the naked eye, even if only under optimal conditions, such as very strong sunlight. Fish that lose their scales upon being removed from the water are permitted.⁵⁷ Likewise, fish that have no scales currently but will develop them in the future are permitted. Of extreme practical significance is the fact that any fish that has scales certainly has fins. Thus, if one finds a piece of fish that has scales, one may assume that it had fins as well,

⁵²www.kosherline.com/articles/chalav_yisrael.html contains Rabbi Alfred Cohen’s translation of Rabbi Feinstein’s ruling.

⁵³Rabbi Avraham Yeshayahu Karelitz; 1878-1953, died in Israel.

⁵⁴Rabbi Chizkiyah ben David da Silva; born in Leghorn, Italy in 1659; died in Jerusalem in 1698.

⁵⁵www.kosherline.com/articles/chalav_yisrael.html contains Rabbi Cohen’s translation of Chazon Ish’s ruling.

⁵⁶Leviticus 11:9-10.

⁵⁷Shulchan Aruch, Yoreh Deah 83:1.

even though he does not see the fins.⁵⁸

Grain products

The discussion of grains again touches on an area of Jewish law that the vast majority of even orthodox Jews either does not adhere to or adheres to unknowingly. Torah law proscribes the consumption of ‘‘chadash.’’ The word chadash, which means ‘‘new,’’ refers to new grains. The Torah defines ‘‘new’’ in this context as any grain that took root after the sixteenth of Nissan⁵⁹ until the following sixteenth of Nissan.⁶⁰ The Torah prohibited one from eating new grains until that year’s grains were, in a certain sense, redeemed by offering the first of the grains to G-d in the Holy Temple. The message is clear: One must thank his provider before he can receive any benefit from the provider. Today there is no Temple. Interestingly, though, the commandment not to eat chadash still applies. While in Temple times grains became permitted after the offering, today grains are permitted after the date on the Jewish calendar when the offering was brought to the Temple.⁶¹ From some of the intricacies of the chadash laws⁶², one can conclude that the commandment applies today, even though there is no Temple in which to

⁵⁸Rabbi Forst, The Laws of Kashrus, p.39, quoting Shulchan Aruch, Yoreh Deah 83:3.

⁵⁹Nissan is the seventh month in the Jewish calendar. This calendar still exists today in the form arranged by Hillel II, who was the nassi of the Sanhedrin at the time (the president of the Great Court), between the years 359 and 361.

⁶⁰Leviticus 23:9-14: “G-d spoke to Moses, saying: Speak to the children of Israel and say to them: When you shall enter the land that I give you and you reap its harvest, you shall bring an “omer” offering from your first harvest to the kohen (i.e. the Jewish priest). He shall wave the “omer” before G-d to gain favor for you; on the morrow of the rest day (i.e. on the second day of Passover, the sixteenth of Nissan) the kohen shall wave it . . . You shall not eat bread or roasted kernels or plump kernels until this very day, until you bring the offering of your G-d; it is an eternal decree for your generations in all your dwelling places.”

⁶¹Talmud Bavli, Mishnah Tractate Menachos 88a; Shulchan Aruch, Orach Chaim 489:10 and Mishnah Berurah 489:45.

⁶²For example, Rabbi Pinchas Kehati’s explanation of the Mishnah in Menachos 88a states that the fact that we don’t permit chadash to be eaten from the moment the sun rises on the 16th is because of our worry that when 3rd Temple people might still think they can eat chadash from the moment the sun rises; we want to ensure that everyone remembers how to perform the mitzvah correctly.

offer the grain offering of thanks, so that the Jews remember the procedure after the future rebuilding of the Third Temple. There is a difference of opinion regarding the applicability of the Biblical prohibition to grains grown outside of Israel. Consequently, there is much controversy as to whether or not one must refrain from eating grain foods even outside of Israel. Certainly, though, all agree that if one is sure that a food product was made from grains that took root before the sixteenth of Nissan, then he is permitted to eat that food. Because there is so much debate on the application of this commandment today, I will not attempt to state a consensus opinion. One must consult his local, orthodox rabbi for a statement of how to act today. Nonetheless, because this law applies currently in Israel according to many opinions, and because some adhere to this law even outside of Israel, one can often find Hebrew writing on kosher grain products that says ‘‘Pas Yashan,’’ meaning ‘‘old bread.’’ This marking indicates that the grain product was produced from grains that took root before the previous sixteenth of Nissan; that is, the marking indicates that the relevant product does not contain ‘‘chadash.’’

Fruits and vegetables and the consumption of insects

Generally, fruits and vegetables are kosher. Even many fruits and vegetables, though, require a sort of koshering process before they can be eaten. Some fruits and vegetables require ‘‘bedikah,’’ checking or searching. These foods must be checked for ‘‘shratzim,’’ swarming insects. The Torah prohibits Jews from eating any rodents, worms, amphibians, or creeping, swimming, or flying insects.⁶³ Jews are also forbidden to eat entire creatures, entire ‘‘beryah’’s. If

⁶³The Torah lists the prohibitions against eating swimming, flying, and creeping land insects in three different sections:

1) Swimming insects - Leviticus 11:10-11: ‘‘And everything that does not have fins and scales in the seas and in the streams – from all that teems in the water, and from all living creatures in the water – they are an abomination to you. And

one were to eat unchecked lettuce, it is quite possible that he will unintentionally also consume an entire ant. Consequently, one who eats fruits or vegetables in which worms, ants, or mites are commonly found should wash the produce thoroughly and must also examine the fruit carefully before eating.⁶⁴ As an aside, it is interesting to note that there is one type of insect that is permitted. The Torah describes the features of certain species of locust that are permitted.⁶⁵ Today, though, most Jews do not eat locust because most Jews reside in the vast majority of communities that do not have a tradition as to which species are the permitted ones.⁶⁶

Does this mean that vegetables or even any food must be checked with a microscope? Is a bacterium that is invisible to the naked eye a prohibited ‘beryah,’ or whole creature? Insects that are visible only through a microscope are not prohibited.⁶⁷

they shall remain abominated to you; you shall not eat of their flesh and you shall abominate their carcass.”

2) Flying insects – Leviticus 11:23: “Every flying teeming thing that has four legs – it is an abomination to you.” As explained in the text, four species of locust are excluded from this prohibition.

3) Creeping insects – Leviticus 11:29-31,41-43: “These are the contaminated ones among the teeming animals that teem upon the earth: the choled, the achbar, and the tzav according to its variety; the anakah, the koach, and the letaah; and the chomet and the tinshemes. Only these are contaminated to you among all the teeming animals . . . Every teeming creature that teems upon the ground – it is an abomination, it shall not be eaten. Everything that creeps on its belly, and everything that walks on four legs, up to those with numerous legs, among all the teeming things that teem upon the earth, you may not eat them, for they are an abomination. Do not make yourselves abominable by means of any teeming thing; do not contaminate yourselves through them lest you become contaminated through them.”

⁶⁴Shulchan Aruch, Yoreh Deah 84:8.

⁶⁵Leviticus 11:21; Shulchan Aruch, Yoreh Deah 85:1.

⁶⁶Rashi’s commentary on Leviticus 11:21; Tur Shulchan Aruch, Yoreh Deah 85.

⁶⁷Responsa of Yechaveh Daas 6:47. Interestingly, Yechaveh Daas quotes Tiferes Yisrael’s discussion of Talmud Bavli, Tractate Avodah Zarah regarding consistency in Jewish law in that just like the microscope is ignored, thus permitting tiny organisms to be consumed, so too the microscope is ignored in that fish whose scales are only visible through a microscope are not considered kosher.

Yechaveh Daas is Rabbi Ovadiah Yosef, the foremost Jewish law authority in Israel today. Tiferes Yisrael is Rabbi Yisrael Lipshutz, who lived in Danzig, Poland, 1782-1860.

In his responsa, Yoreh Deah II, chapter 146, Rabbi Moses Feinstein also wrote that insects that are invisible to the naked eye are not prohibited.

Required tithing of produce grown in Israel

Fruits and vegetables are further restricted in that Jews may not eat any produce grown in Israel unless the required ‘‘terumos’’ and ‘‘maasros’’ were set aside.⁶⁸ Any produce from which these tithes were not removed are called ‘‘tevel.’’ The Biblical prohibition only applies in Israel and the rabbinic extension of the prohibition only includes some lands that border Israel. Thus, Jews in the United States, who can eat fruits and vegetables grown by either Jews or non-Jews, are generally unaffected by this prohibition. However, if an American Jew desires to eat fruits and vegetables from Israel or even juice derived from Israel’s far lands, he must be sure that the tithes were properly removed. Interestingly, even in Israel it is possible to eat from untithed produce. If a non-Jew owns land in Israel and grows fruits and vegetables until they are completely ready for consumption, then there is no tithing requirement on that produce.⁶⁹ (Essentially, in order for this exemption to apply, the only step remaining in the production process must be shipment of the food.)

Fruits from new trees

Additionally, one who plants a fruit tree, whether in Israel or outside of Israel, may not

⁶⁸Maaser (plural maasros) is the name given to the percentage of one’s produce that he is obligated to give to a levi. Terumah (plural terumos) refers to the portion that one is required to give to a kohen, a Jewish priest. The Torah obligated all levi’im (levites) to do work that was required for the upkeep of the Tabernacle and, eventually, the Holy Temple. The kohanim (the priests) actually performed the Temple services. Because neither of these groups was allotted a portion in the land of Israel, the Torah commanded all Jews to provide them with a share of their crops in order to sustain them. (The kohanim also received various other gifts.) The Torah did not state the amount that the kohanim are to receive, but the rabbis expounded that the minimum portion is 1/60 of one’s crop, the maximum is 1/40, and 1/50 is an intermediate portion. (Mishnah Terumos 4:3) The Torah states explicitly that levi’im are to receive 1/10 of one’s crop.

⁶⁹Mishnah Torah, Hilchos Terumos 1:11.

eat any produce of the first three years' growth; nor may he benefit from the produce. One who replants a tree may also be required to wait three years before eating any of the fruits. For the first three years of the tree's fruit production, the prohibited produce is called 'orlah.'⁷⁰ In the fourth year, the food is called 'netah r'vaei,' literally the plant of the fourth [year]. The fourth year produce is also prohibited.⁷¹ However, unlike 'orlah,' 'netah r'vaei' may be eaten (while still in the fourth year) if it is redeemed. During Temple times, one was required to bring 'netah r'vaei' to Jerusalem; only in Jerusalem could he consume this food. If he did not want to carry the food to Jerusalem, he could redeem the food for its full monetary value, bring the money to Jerusalem, and use the money to buy food that would be eaten in Jerusalem. Today, the redemption process is quite different. After gathering the fruit, one recites a special blessing for the redemption of fourth year produce. He then verbally declares, 'These [foods] are redeemed in exchange for this 'perutah.''' One should take note of the fact that while in Temple times the redemption required an exchange of full monetary value, today a perutah (The perutah was a coin of trivial value. While it functioned as a penny, being the coin of lowest denomination, it is more comparable to either a dime or a quarter today) suffices. He then takes the 'perutah' and throws it into the Dead Sea.⁷²

The explanation for the easier redemption process today, when there is no Temple, might be that the original requirement related to the fact that because the food is holy even in the fourth year, G-d wants Jews to eat it in the holy city of Jerusalem. Because of the destruction

⁷⁰Leviticus 19:23: "When you shall come to the land and you shall plant any food tree, you shall treat its fruit as forbidden; for three years they shall be forbidden to you, they shall not be eaten."

⁷¹Leviticus 19:24-25: "In the fourth year, all its fruit shall be sanctified to laud Hashem. And in the fifth year you may eat its fruit – so that it will increase its crop to you – I am Hashem, your G-d." This law is stated, as well, in Mishnah Torah, Hilchos Netah R'vaei 9:1.

⁷²Mishnah Torah, Hilchos Maachalos Asuros 10:9-18.

of the Temple, perhaps all of Jerusalem lost some of its holiness. Consequently, I propose, because the process that truly relates the holy food to the holy city cannot be implemented, today's redemption process serves as a mere reminder of both the original redemption process that cannot be performed and of all that was lost when the Temple was destroyed.

Amazingly, the laws of "orlah" apply even outside of Israel and even to trees owned by non-Jews. Obviously, though, non-Jews whose lives are not guided by the Torah will not refrain from eating the fruits of their trees for several years. The law must be directed to Jews. The Torah is commanding Jews to treat all fruit of any tree's first three/four years as holy, even if the owner does not. Jews must not eat from these fruits. Does this mean that fruits require kosher symbols indicating that they are from the fifth year of the tree's production years or that they are from the fourth year but have been properly redeemed? In fact, fruits do not require any kosher symbols. An orthodox Jew violates no Jewish laws when he walks into any fruit store in Cambridge and buys an apple. According to Rabbi Yaacov Baal Haturim⁷³, the reason for this is that cases of doubt must be decided harshly in instances of trees of Israel, whereas cases of doubt are decided leniently for trees outside of Israel. At first glance, this ruling is based on the idea of "s'feika d'oraisa l'chumrah, s'feika d'rabbanan l'kula." Literally, this means that cases of doubt regarding laws of the Torah must be decided stringently, and cases of doubt regarding laws of rabbinic origin are decided leniently. This idea applies to "orlah" in cases where one is not sure if the fruit in the supermarket is from its tree's first years of fruit or from its tree's tenth year of fruit. That is, one is not sure how many years the relevant tree has been bearing fruit. Also, I strongly discourage

⁷³Rabbi Jacob ben Asher (son of Rabbi Asher ben Yechiel, the Rosh) also authored the Tur Shulchan Aruch (also referred to simply as the Tur). He was born in Germany c.1270 and died c.1340 in Spain.

trying to ask a supermarket clerk if he knows the exact tree that a specific apple came from, let alone how many years that tree has been producing fruit. If we are required to rule stringently in this case, we would not eat the questionably ‘‘orlah’’ fruit. So why do we treat cases of doubt stringently in Israel but leniently outside of Israel? Regarding trees in Israel, for which the ‘‘orlah’’ commandment is written explicitly in the Torah, we strictly prohibit eating fruits of questionable status. Regarding trees outside of Israel, the Tur Shulchan Aruch writes that cases of doubt are to be ruled leniently so that one may eat the questionable fruits. At first glance, this implies that the law of ‘‘orlah’’ as applied outside of Israel is only of rabbinic nature. In fact, though, the Tur explicitly writes in the previous sentence that ‘‘orlah’’ applies outside of Israel as a ‘‘halacha l’Moshe mi’Sinai,’’ as a law taught to Moses on Mount Sinai. Generally, laws taught to Moses at Sinai are considered as genuine Torah laws, albeit not explicitly stated in the Torah. If they are not considered Rabbinic in nature and assuming ‘‘orlah’’ applies outside of Israel as a ‘‘halacha l’Moshe mi’Sinai,’’ then why have the Sages ruled that cases of doubt should be decided leniently outside of Israel? Rav Yosef Karo explains this apparent inconsistency in his commentary on the Tur. He writes that as part of His instructions to Moses, specifically regarding the commandment of ‘‘orlah’’ outside of Israel, G-d stated that cases of doubt should be decided leniently.⁷⁴ Returning to the American Jew buying fruit in Cambridge, we now understand why he can eat the fruit without worrying about violating the ‘‘orlah’’ laws. Because he has no way to trace each and every fruit back to its specific tree, and because he is outside of Israel, it is a case of doubt that can be treated leniently.

⁷⁴Tur Shulchan Aruch, Yoreh Deah 294:8-10; Beis Yosef on Tur, Yoreh Deah 294:8-10; Perishah (Rabbi Yehoshua Falk HaKohen Katz, c.1540-1614) in Yoreh Deah 294:20; Talmud Bavli, Tractate Kiddushin 37a.

The sabbatical and jubilee years

Another group of laws that deal with produce grown in Israel are the laws of ‘‘shemittah’’ and ‘‘yovel.’’ The word ‘‘shemittah’’ is used in the Torah to refer to the seventh year in a continuously repeating seven-year cycle. The seventh year is called the ‘‘shemittah’’ year because the word ‘‘shemittah’’ comes from the root meaning to slip or to release.⁷⁵ In this context, the Torah uses the word in reference to a landowner’s temporary release or relinquishment of the benefits of ownership of his property. The Torah states:

‘‘Hashem spoke to Moses on Mount Sinai saying: Speak to the children of Israel and say to them, ‘When you come to the land that I give you, the land shall observe a Sabbath rest for Hashem. For six years you may sow your field and for six years you may prune your vineyard; and you may gather in its crop. But the seventh year shall be a complete rest for the land, a Sabbath for Hashem; your field you shall not sow and your vineyard you shall not prune. The aftergrowth of your harvest you shall not reap and the grapes you had set aside for yourself you shall not pick; it shall be a year of rest for the land. The Sabbath produce of the land shall be yours to eat, for you, for your slave, and for your maidservant; and for your laborer and for your resident who dwell with you. And for your animal and for the beast that is in your land shall all its crop be to eat.’’’⁷⁶

In this paragraph, G-d commands Jews to release their hold on their lands in every seventh year. In the seventh year, these landowners will not starve. They are allowed to collect as much produce as they need to sustain their households. They cannot, however, collect additional produce in the hope of selling whatever their family does not consume. Instead, the owners must give everyone, from themselves to gentile laborers to wild animals, equal access to the produce. The produce is to be used for food, but it may not be used

⁷⁵Jastrow Dictionary pp.1594-95.

for commerce.⁷⁷ As far as where and when these laws apply, Maimonides writes, ‘‘The laws of the seventh year apply only in the land of Israel as the verse states, ‘When you come into the land that I give you etc.’ And these laws apply whether or not the Holy Temple is standing.’’⁷⁸ The Rambam makes clear that the laws do apply even in our times, but he states that these laws are limited to Israel. Kesef Mishnah⁷⁹ explains that there is debate regarding whether ‘‘shemittah’’ applies today on a Biblical level or on only a rabbinic level.⁸⁰ Most interestingly, Maimonides actually writes that the Sages decreed that Jews cannot work the land in Suria during the seventh year. Maimonides, himself, explains that the Sages were concerned that Jews who lacked the faith that G-d would provide enough in the crop of the sixth year to cover the ‘‘shemittah’’ year might travel to Suria during the seventh year.⁸¹ The Sages enacted this decree in order to quash this potential desire of observant Jews. Because of the ‘‘shemittah’’ laws, the food situation for the seventh and eighth (i.e. the first year of the next cycle) years is affected. There are two ways for one to feed his family, though, even during those years. On one hand, the Torah itself states ‘‘I will ordain My blessing for you in the sixth year and it will yield a crop sufficient for the three-year period. You will sow in the eighth year, but you will eat from the old crop; until the ninth year, until the arrival of its crop, you will eat the old.’’⁸² Thus, G-d will provide those abiding by the ‘‘shemittah’’ laws with sufficient produce to feed their families. Another possible source of food is the produce of non-Jews. There is no prohibition against a Jew buying the produce of a non-Jew during the ‘‘shemittah’’ year, even if the non-Jew grew and harvested this produce in the land of Israel. The laws of ‘‘shemittah’’

⁷⁷Rashi’s commentary on Leviticus 25:5.

⁷⁸Mishnah Torah, Hilchos Shemittah v’Yovel (The Laws of the Sabbatical and Jubilee Years) 4:25.

⁷⁹Rav Yosef Karo’s commentary on Maimonides’ Mishneh Torah.

⁸⁰Kesef Mishnah to Mishnah Torah, Hilchos Shmittah v’Yovel 4:25.

⁸¹Mishnah Torah, Hilchos Shemittah v’Yovel 4:27.

⁸²Leviticus 25:21,22.

do not apply to non-Jews residing in Israel.⁸³

After seven seven-year cycles, there is a ‘yovel’ year. The Torah lists special rules that apply to the fiftieth year in what can now be called fifty-year cycles:

‘‘You shall count for yourself seven cycles of sabbatical years, seven years seven times; the years of the seven cycles of sabbatical years shall be for you forty-nine years. You shall sound a broken blast on the shofar, in the seventh month, on the tenth of the month; on the Day of Atonement you shall sound the shofar throughout your land. You shall sanctify the fiftieth year and proclaim freedom throughout the land for all its inhabitants; it shall be the Jubilee Year for you, each of you shall return to his ancestral heritage and each of you shall return to his family. It shall be a Jubilee year for you -- this fiftieth year -- you shall not sow, you shall not harvest its aftergrowth and you shall not pick what was set aside of it for yourself. For it is a Jubilee Year, it shall be holy to you; from the field you may eat its crop. In this Jubilee Year each of you shall return to his ancestral heritage.’’⁸⁴

Thus, assuming we are now in year 1, six years from now will be year 7, a ‘shemittah’ year. We will then have six regular years until year 14, which will be the second ‘shemittah’ in our fifty-year cycle. Years 21, 28, 35, 42, and 49 are also ‘shemittah’ years. Year 50, however, does not begin the next seven-year cycle. Instead, year 50 is the ‘yovel’ year. Year 51 begins both a new seven-year ‘shemittah’ cycle and a new fifty-year ‘yovel’ cycle.⁸⁵ Any work that one is forbidden to perform on his land during the ‘shemittah’ year is likewise prohibited during the ‘yovel’ year.⁸⁶ Unlike ‘shemittah,’ though, ‘yovel’ does not apply today. Jewish law authorities cite the words of the Torah as the source for the inapplicability of ‘yovel’ today.⁸⁷ The verse in Leviticus 25:10 states, ‘‘You shall ...proclaim freedom

⁸³Mishnah Torah, Hilchos Shemittah v’Yovel 4:29.

⁸⁵Mishnah Torah, Hilchos Shemittah v’Yovel 10:7.

⁸⁶Mishnah Torah, Hilchos Shemittah v’Yovel 10:15.

⁸⁷Mishnah Torah, Hilchos Shemittah v’Yovel 10:8.

throughout the land for all its inhabitants ...’ The Sages had a tradition that this verse teaches that ‘yovel’ only applies when all of the tribes of Israel reside in the land according to their tribes; ‘yovel’ is moot as long as the tribes remain mixed together. Today, because the vast majority of Jews do not know what tribe they descend from, they can’t reside in groups arranged according to tribe and, consequently, ‘yovel’ cannot apply today. Also, there is no rabbinic decree to perform the ‘yovel’ mandates today. ‘Yovel’ can be distinguished from ‘shemittah’ as well in that the ‘yovel’ laws must be adhered to even outside of Israel when ‘yovel’ does apply, whereas the ‘shemittah’ laws apply only in Israel and Suria. The Sages learned this rule from the words in Leviticus 25:10 where it is written, ‘it shall be the Jubilee Year ...’ The Sages derive from these words that the Jubilee Year, the ‘yovel’ year shall be. The Torah states that the ‘yovel’ year ‘shall be,’ and the Torah states no restrictions regarding time or place.⁸⁸ We do, as previously stated, restrict the application as to time because the tradition from Sinai was that a different verse restricted the time of this commandment.

Food combinations: (1) milk and meat, and (2) in planting

There are two Biblical food prohibitions that deal with combinations of two or more foods. These are ‘basar b’cholov’ and ‘kilayim.’ Although one is permitted to eat meat or milk of kosher animals, a cooked combination of milk and meat is prohibited. In fact, one may not even derive benefit from such a combination. The prohibition of ‘basar b’cholov,’ or ‘meat with milk,’ is alluded to three times in the Torah.⁸⁹ All three times the Torah relates the

⁸⁸Id. at 10:8.

⁸⁹The Torah states the prohibition in Exodus 23:19, Exodus 34:26, and Deuteronomy 14:21.

commandment with the statement, ‘‘You shall not cook a kid in the milk of its mother.’’ At first glance, the prohibition would seem to only apply to kids and to the milk of each respective kid’s mother. Also, the prohibition is stated only in reference to cooking. Rashi explains that the Torah states the verse three times in order to teach three different laws regarding the milk and meat combination: 1) the prohibition of eating the combination; 2) the prohibition of benefiting from the combination; and 3) the prohibition of cooking the combination.⁹⁰ The Tur writes that the prohibition is not limited to a kid as the word is used today, that is to refer to a young goat.⁹¹ This opinion is taken from the Talmud, which takes note of the fact that the Torah specifies the phrase ‘‘kid of the goats’’ when it refers to a young goat.⁹² Because the Torah uses the phrase ‘‘kid of goats’’ when referring to young goats, the Talmud views the use of the word ‘‘kid’’ as a generic representative of all kosher animals.⁹³ The Tur also explains that the prohibition is not limited to an animal with its mother’s milk; rather, Scripture spoke in common terms.’’ By this the Tur means that it is common that when an animal that is killed is young, its mother is at her peak in milk production as the young animal has likely been receiving nourishment from the mother’s milk. Because ‘‘milk of its mother’’ was commonplace, the Torah used that as an example.⁹⁴ The Talmud actually goes further than this basic explanation. The Talmud explains that the Torah specifically used ‘‘milk of its mother’’ in order to teach a series of a fortiori derivations regarding the laws of milk in relation to its forbidden combination with milk.⁹⁵ The Tur continues by stating that there is a set of Rabbinic extensions of the prohibition to non-kosher animals, non-kosher animals’

⁹⁰Rashi’s commentary on Exodus 23:19.

⁹¹Tur Shulchan Aruch, Yoreh Deah 87:2.

⁹²Genesis 38:20, 27:16.

⁹³Talmud Bavli, Tractate Chullin, pp.113a-b.

⁹⁴Perishah commentary on Tur Shulchan Aruch, Yoreh Deah 87:2.

⁹⁵Id. at 114a.

milk, and fowl.⁹⁶

The law of ‘‘kilayim’’ states that one may not plant vegetables or grains near one another: this is called ‘‘kilaei zeraim.’’ The Torah commands, ‘‘You shall not plant your field with mixed seed.’’⁹⁷ One also may not plant any vegetable or grain near a grape vine: this is called ‘‘kilaei hakerem.’’ This law is stated separately in the Torah, ‘‘You shall not sow your field with a mixture, lest the growth of the seed that you plant and the produce of the vineyard become forbidden.’’⁹⁸ Nachmanides and RA’’AH both propose the same reason for this mitzvah. They explain that G-d created the world in its complete form. G-d fashioned all living creatures, man, animal, and all living organisms, so that they will sustain themselves for all time, or for as long as G-d desires the existence of this world. This is alluded to in the verses describing the creation of the world. The verses state that each organism was created ‘‘according to its kind.’’⁹⁹ If we mixed two species, we would in effect be declaring that G-d didn’t create the world perfectly. We would be declaring that we think that we can improve on G-d’s creation of the world.¹⁰⁰ It is important to note that this commandment only prohibits the mixtures stated in the Torah. For example, one is permitted to combine chemicals in order to create medicines or cleaners. While the policy justification asserted by Nachmanides might lead to the conclusion that one should not mix anything in nature, the Torah only prohibited certain mixtures, those of animals and those of plants. Of course, one may question Nachmanides as to why G-d created living organisms in their perfect, complete state whereas He didn’t create

⁹⁶Tur Shulchan Aruch, Yoreh Deah 87:3.

⁹⁷Leviticus 19:19. The verse actually discusses three types of forbidden mixtures: ‘‘You shall observe my decrees; you shall not mate your animal into another species, you shall not plant your field with mixed seed; and a garment that is a mixture of combined fibers shall not come upon you.’’

⁹⁸Deuteronomy 22:9.

⁹⁹Genesis 1:12, 1:21, 1:24, 1:25.

¹⁰⁰Nachmanides commentary to Leviticus 19:19; Sefer Hachinuch, commandments 244, 245.

all of the necessary chemical compounds. Were Nachmanides alive today, he would likely respond that the reason for this distinction is hidden from us. In fact, the reasons for many laws of the Torah are beyond human comprehension.¹⁰¹

Bitul: nullification of non-kosher food

Another fundamental issue that affects practical kashrus law is the potential for nullification of forbidden foods. When non-kosher food becomes mixed into a larger amount of kosher food, it is possible that a ‘‘bitul,’’ or nullification, process will be effected so that Jews can consume some or all of the food mixture. Nullification of non-kosher foods takes place either by ‘‘bitul b’rov’’ -- nullification in a simple majority - or by ‘‘bitul b’shishim’’ -- nullification in a ratio of sixty to one. A discussion regarding the application of these two possibilities follows.

Bitul b’rov: nullification in a simple majority

Generally speaking, when two similar tasting foods become mixed, the non-kosher food may become ‘‘batel’’ (nullified) in a simple majority of kosher food. Actually, ‘‘bitul b’rov’’ is possible

¹⁰¹The quintessential example of a ‘‘chok,’’ translated as an unexplainable law, is the law of the ‘‘parah adumah,’’ the red cow. If a man becomes impure through contact with a human carcass, he must undergo purification through the red cow. The seven-day process involves sprinkling the cow’s ashes on the impure person. After the process, the impure person is purified and the kohen (i.e. a Jewish priest) who prepared the ashes becomes impure until nightfall. Why is it that the same ashes that purify one person serve to contaminate another? Even King Solomon, who understood the meaning of every commandment, did not understand the law of the red cow.

even if the non-kosher food remains intact. For example, if one has four pieces of meat in his refrigerator -- three kosher pieces and one non-kosher piece -- the non-kosher piece is nullified by the kosher majority. In fact, “the foods need not even be mixed together or even close to one another. Indeed, even three unrecognizable pieces of meat in three different rooms or stories of a house are batel b’rov.”¹⁰² Clearly, this means that one may eat a piece of meat from the refrigerator. Does this mean, though, that he can eat all four pieces of meat, whereby he will surely have consumed the meat that was originally non-kosher? In other words, does the ‘bitul’ process work to actually transform the status of the entire mixture into kosher meat or does it only permit a Jew to play the odds? If some of the food remains prohibited to him, what can he do with that food? The answers to these questions should become clear as I flesh out how the ‘bitul’ process actually works.

The Sages derived the idea of ‘bitul b’rov’ from the Torah law that one must follow the majority opinion in a court of law. The Torah states, ‘Do not be a follower of the majority for evil; and do not respond to a grievance by yielding to the majority to pervert [the law].’¹⁰³ The commentators explain that the Torah mandate to not follow the majority for evil implies a positive commandment to follow the majority for good, that is to follow the majority opinion in a court when the judges are ruling fairly.¹⁰⁴ Just as a court verdict follows the majority opinion, so too the status of the mixture follows that of the majority ingredient. It is important to understand that while the application of this concept to food mixtures, which are obviously

¹⁰²Rabbi Forst, The Laws of Kashrus, p.53, footnote 8, quoting Mishbetzos Zahav 109:1 and Darcei Teshuvah 109:4. Mishbetzos Zahav is Rabbi Yosef Teomim (also known as Pri Megadim) who lived in Lvov and then Frankfurt, 1727-1792. Darcei Teshuvah is Rabbi Tzvi Shapira who lived in Munkatch, Hungary, 1850-1913.

¹⁰³Exodus 23:2.

¹⁰⁴Rashi’s commentary on Exodus 23:2.

not the explicit subject of the Torah verse, seems all too convenient, the Sages would never enact a law that causes Jews to violate the Torah. The Rabbis could not cause a violation of Torah law simply because they want to save some money. That is, because the rules of ‘bitul’ can cause someone to eat non-kosher food, the Sages must have promulgated this rule only because they had a tradition that G-d desired kashrus law to include this notion. For an in-depth analysis of the relationship between the concepts of following the majority in the courts and following the majority in food mixtures, Rabbi Binyomin Forst directs the reader to Shaarei Yosher 3:4.¹⁰⁵

Early scholars disagree about the underlying principle of ‘bitul b’rov.’ Most authorities believe that the idea is based on the simple probability that each piece of food, as it is consumed, is one of the original kosher pieces. Others assert that ‘bitul b’rov’ is based on the unique principle by which the non-kosher food completely loses its identity and becomes permitted matter. Rashba¹⁰⁶ goes with the former understanding. Logically, one who uses the former reasoning should probably prohibit the consumption of the entire mixture, because when one eats the entire mixture he certainly has eaten what was originally known to be non-kosher food. Yet Rashba permits the same person to eat even the last piece of the mixture.¹⁰⁷ He does, however, state that one should not eat the entire mixture at once (i.e. in one sitting).¹⁰⁸ Eating the entire mixture at once would leave no alternative other than to assume that non-kosher

¹⁰⁵Rabbi Forst, The Laws of Kashrus, p.54, footnote 11.

¹⁰⁶Rabbi Solomon ben Abraham Aderet; born in Barcelona, Spain in 1235, died in 1310.

¹⁰⁷Rabbi Forst cites Beis Yosef 109 citing Maharam (Rabbi Meir ben Baruch Halevi of Rothenburg, Germany. Rabbi Forst states that Maharam lived in the years 1320-1390; however, Rabbi Mattis Kantor, in The Jewish Time Line Encyclopedia, writes that Maharam lived in the years c.1215-1293.) as saying that there is a reason for one who is punctilious to avoid eating, or even giving to another Jew, the last piece.

¹⁰⁸This prohibition is Rabbinical, not Biblical.

food is now being eaten.¹⁰⁹ This is the position that is most accepted by Jewish law authorities.¹¹⁰ Some early scholars rule that one may eat the mixture only in the amount that excludes the size of the original non-kosher food. Anyone else, even another Jew, can eat the excluded piece.¹¹¹ Although authorities on Jewish law rule according to Rashba, many state that one should adhere to this view *ex ante*.¹¹² Others rule even more stringently, requiring that one of the pieces not be eaten by any Jew, but instead that piece should be discarded or sold to a non-Jew.¹¹³ They reason that one may assume that this leftover piece was the prohibited piece and they, consequently, rule that once this piece is set aside one may eat the remaining pieces even at once. Authorities on Jewish law rule that while following this position is a meritorious act, it is not a requirement.¹¹⁴ The fourth opinion is that of the Rosh¹¹⁵, who takes a radically

¹⁰⁹At first glance, it seems strange that Rashba allows one to eat the entire mixture yet he prohibits one from eating the entire mixture in one sitting. Can one fool G-d by waiting an hour before finishing the mixture?! Obviously not. Why, then, can even the last piece be consumed as long as one eats it at a different sitting? The author of this paper suggests a possible reconciliation of the apparent discrepancy: While the Sages taught that we must follow the majority, even as this idea relates to food, they lacked the power to permit one to perform an “act” that certainly violates a Torah precept. Using this framework, let us assume that eating a meal is a complete “act.” Thus, eating a steak in ten bites is not ten distinct “acts,” but is, instead, only one “act.” This idea is consistent with the requirement to recite a blessing before consuming any food. When one eats a large steak, he recites the appropriate blessing before commencing his meal. This one blessing covers all of the pieces. He will not say another blessing unless he has a “hesech hada’as,” a lapse in his mental intent. Thus, the laws of blessings view all of the consumption in one sitting as only one act. If one eats an entire mixture of kosher and non-kosher food in one sitting, he guarantees an “act” that violates kashrus law. When he breaks up the eating into two or more sittings, however, each individual sitting, that is each individual “act,” likely involves no violation. For example, Joe has 10 hamburgers, nine of which are kosher and one of which is not kosher. When he eats all 10 burgers in one sitting, there is a 100% chance that he has eaten the non-kosher burger during this “act.” If he eats five burgers in each of two sittings, then there is a 50% ($9/10 * 8/9 * 7/8 * 6/7 * 5/6$) chance in each of the respective sittings that he will eat only kosher burgers. Thus, Rashba allows one to eat the entire mixture only if he breaks up the consumption into two or more sittings.

¹¹⁰Rabbi Forst, explaining that this is the first opinion cited in Yoreh Deah 109:1.

¹¹¹The reason for why someone else may finish eating the mixture while one person cannot eat the entire mixture himself might relate to the rationale proposed in footnote 109.

¹¹²Rabbi Forst, quoting Shulchan Aruch, Yoreh Deah Ramah 109:1.

¹¹³Rav Yosef Karo writes that the Tur wrote that one need not discard one piece equal to the prohibited piece. Rav Karo explains that the Tur does not usually state what one does not need to do. He continues, saying that the Tur was trying to be explicit about his disagreement with Rashi’s opinion in Talmud Bavli Tractate Avodah Zarah 74a, where Rashi says that one should throw one piece to the dogs.

¹¹⁴Rav Yosef Karo, in his composition *Beis Yosef*, brings an example of one who followed this stringent position. Instead of saying that this person may have believed the stringent position to be the law, Rav Karo writes that perhaps this person was a learned and pious man. The implication is clearly that Rav Karo might expect certain scrupulous people to accord with the stringent position. Rav Karo must consider this meritorious for if he didn’t he would have stated his disapproval. In fact, Jewish law texts are rife with instances where the rabbis disapprove of one following a stringent position, because they are worried that some might do so because of sheer arrogance.

¹¹⁵Rabbi Asher ben Yechiel; born c.1250 in Germany, died in 1327 in Toledo, Spain.

different and more lenient position regarding ‘‘bitul b’rov.’’ Rosh uses the latter understanding of the underlying principle. He believes that ‘‘bitul b’rov’’ involves a transformation of non-kosher food into actual kosher food, so that each individual piece is now 100% kosher, having nothing to do with probabilities. He, therefore, allows one person to eat the entire mixture, even in one sitting.¹¹⁶ Rosh’s opinion is generally not followed.

Although according to Torah law all prohibited foods that are mixed with similar tasting kosher foods are subject to ‘‘bitul b’rov,’’ nullification in a mere majority, the Sages required a greater ratio for certain prohibited foods when they are mixed with their own type of food. ‘‘Terumah,’’ ‘‘challah,’’ and ‘‘bikurim’’ require a ratio of one hundred parts permitted food to one part of the ‘‘terumah,’’ ‘‘challah,’’ or ‘‘bikurim.’’¹¹⁷ Additionally, a part corresponding to the original ‘‘terumah’’ etc. must be given to a kohen (i.e. a Jewish priest).¹¹⁸ ‘‘Orlah’’ and ‘‘kilaei hakerem’’ require a ratio of two hundred parts permitted food to one part prohibited food.¹¹⁹

¹¹⁶Rosh commentary on Talmud Bavli, Tractate Chullin 7:37.

¹¹⁷‘‘Terumah,’’ as explained earlier on page 29 (footnote 68), refers to the portion of produce that one is required to give to a kohen. ‘‘Challah’’ refers to the portion of the dough that one is obligated to set aside for a kohen whenever he bakes bread. Finally, ‘‘bikurim’’ are the first of each type of seven fruits that one grows, which he is obligated to give to a kohen. The seven fruits of which one is obligated to bring the first to a kohen are wheat, barley, grapes, figs, pomegranates, olives, and dates.

¹¹⁸The reason that one must give a part to a kohen is because all Jewish priests, as a class, have a claim on the amount of food that should have been given to them, whether or not the producer of the food is permitted to eat the food because of a ‘‘bitul’’ process. While prohibited matter may become nullified through ‘‘bitul b’rov,’’ thus allowing a non-kohen to eat what may have originally been ‘‘terumah,’’ monetary claims are not extinguished by the ‘‘bitul.’’ Were the non-kohen to use the entire mixture himself, he would be liable for stealing. This point is important because if we did not recognize the specific issue of the monetary claim, then we might assume that this rule proves that the Rosh’s theory for the underlying principle of ‘‘bitul’’ must be incorrect. That is, if we assume, as the Rosh does, that the ‘‘bitul’’ process actually transforms the food into permitted matter, then there is no reason for the requirement give any part of this new mixture to a kohen. The mixture is now composed of only permitted matter. One might think that the fact that one is nevertheless required to give a part to a kohen disproves the Rosh’s position. Once we see the Rambam’s explanation that the requirement to give to a kohen is only because of a de facto monetary claim whenever food is grown, the Rosh’s position again becomes tenable. Mishnah Torah, Hilchos Maachalos Asuros 15:13.

¹¹⁹Mishnah Torah, Hilchos Maachalos Asuros 15:14.

Bitul b'shishim: nullification in a super-majority

Once the ‘bitul’ idea is stated in the ‘bitul b'rov’ context, the extra stringency of ‘bitul b'shishim’ is easily understood. ‘Bitul b'rov’ applies only to mixtures in which the taste of the non-kosher food is not noticeable. If it is noticeable, however, then we encounter the problem of ‘ta'am k'ikar,’ literally translated as ‘the taste is important.’ This idea means that if the taste of the non-kosher food is noticeable, then that taste is considered as non-kosher food itself. Thus, even the kosher food (which has absorbed some of the non-kosher taste) assumes the status of non-kosher food is Biblically prohibited. Consequently, mere nullification of the food is insufficient. We need ‘bitul’ of the non-kosher taste also; we need ‘bitul b'shishim.’

Biblically, ‘bitul b'shishim’ is only required if the mixture has both of the following characteristics:

1) The kosher and non-kosher foods are dissimilar in taste. If they were similar in taste, then ‘bitul b'rov’ would suffice because we would not be able to distinguish the taste of the non-kosher food from the taste of the kosher food. We would, thus, not face the problem of ‘ta'am k'ikar.’

2) The foods are solids that are blended or cooked together or the foods are liquids. On the other hand, uncooked and unblended solids don't impart taste to one another.

While Biblically the extra stringency of ‘bitul b'shishim’ (as opposed to the more lenient

rule of ‘bitul b’rov’) is required if both of the aforementioned qualities exist, the Sages extended the requirement of ‘bitul b’shishim’ to cases that have either one of the two characteristics. The Sages were concerned that one might confuse some of these laws and end up violating a Biblical prohibition. However, uncooked (and unblended), similar tasting foods do not resemble the Biblical case in any manner. Because there is no resemblance to the Biblical case, and there is thus no chance of confusion, ‘bitul b’rov’ suffices for uncooked, similar tasting solids.

As clear as the ‘bitul’ rules should now be, they have yet another complication in that certain prohibited foods cannot be nullified even if mixed with an enormously larger amount of kosher food. There are three categories of such foods, the first being foods that cannot be nullified due to the nature of their prohibition. ‘Bitul’ only applies to food that is absolutely prohibited. Thus, foods whose prohibitions will disappear at the close of a specified time period and foods that are not prohibited, but whose consumption is merely restricted, cannot be nullified. Likewise, some foods may not be subject to the laws of ‘bitul’ because of the severity of their prohibition.

A ‘davar sheyesh lo matirim,’ a food that will in time become permitted, cannot be nullified in a food of similar type. For example, ‘chadash’ (described above on page 25) cannot become ‘batel’ since it will eventually become permitted on the sixteenth of Nissan, or today on the seventeenth of Nissan. It can, however, become ‘batel b’shishim’ when mixed with food of a different type.¹²⁰ ‘Tevel’ (discussed on page 29) is an example of a ‘davar sheyesh lo matirim,’ because the prohibition can be eliminated as soon as the required tithes are

¹²⁰Rabbi Forst, *The Laws of Kashrus*, p.62, footnote 43, citing Shach 102:3, 98:6 (Shach is Rabbi Shabsai HaKohen of Vilna, 1622-1663), explains that similarity of foods for these purposes is determined by name not by taste. This is different from most of the laws of “bitul” which determine similarity of foods based on taste.

separated.¹²¹

Fruits of the ‘‘shemittah’’ year (discussed above on page 34) also cannot be nullified in any amount of similar tasting food. This is due to the fact that they are essentially not prohibited; their use and consumption are merely subject to certain restrictions. However, they can become ‘‘batel b’shishim’’ when mixed with non-similar foods.¹²²

‘‘Chametz’’ also cannot be nullified.¹²³ The Torah forbids Jews from eating leavened bread products during the holiday of Passover.¹²⁴ In fact, Jews are not even allowed to possess leavened bread products, which the Torah calls ‘‘chametz,’’ in their possession during Passover. This ‘‘chametz’’ cannot become ‘‘batel’’ in any amount of permitted food, regardless of whether the food is similar or dissimilar tasting. This stringency can be explained with two approaches. Firstly, ‘‘chametz’’ is not forbidden forever; it becomes permitted after Passover.¹²⁵ In this sense, it is a ‘‘davar sheyesh lo matirim.’’ Secondly, the prohibition of ‘‘chametz’’ is unusually severe in that the Torah punishes one who eats ‘‘chametz’’ during Passover with the punishment of excision and the Torah even prohibits the mere possession of ‘‘chametz’’ during the holiday¹²⁶, whereas most prohibited foods can be possessed by Jews according to Torah law.

Foods that are excluded from the laws of nullification

¹²¹Mishnah Torah, Hilchos Maachalos Asuros 15:6.

¹²²Id. 15:8.

¹²³Id. 15:9.

¹²⁴Exodus 12:15: “For a seven-day period shall you eat matzos, but on the previous day you shall nullify the leaven from your homes; for anyone who eats leavened food – that soul shall be cut off from Israel, from the first day to the seventh day.”

¹²⁵Id. 15:9.

¹²⁶Exodus 12:19: “For seven days, leaven may not be found in your houses . . .”

Exodus 13:7: “Matzos shall be eaten throughout the seven-day period; no chametz may be seen in your possession, nor may leaven be seen in your possession in all your borders.”

There are also certain foods that cannot be nullified because they are considered significant, either in the size or the nature of the food. While Torah law allows nullification regardless of a food's prominence, some foods are rabbinically excluded from the laws of 'bitul b'rov' and 'bitul b'shishim.'¹²⁷ Rabbi Binyomin Forst, citing various early Jewish law authorities, lists these types of foods: (1) 'beriah' -- a complete creature such as an insect, a non-kosher bird, or even a complete sciatic nerve ('gid hanashe') or a complete limb torn from a living animal (i.e. 'ever min hachai'); (2) 'chatichah ha'r'uyah l'hiscabed' -- a piece of meat of a size and condition fit to serve to one's company; (3) 'davar she'biminyan' -- an object that is sold solely by unit, such as a whole egg of a non-kosher bird that became mixed into other kosher eggs, since eggs are sold by unit (by the dozen); (4) 'davar chashuv' -- certain important or prominent types of foods.¹²⁸

Rabbi Forst also lists situations where some non-kosher foods cannot be nullified because they are somehow too noticeable: (1) If small slivers of non-kosher food fall into a majority of kosher liquid, the entire mixture is prohibited. The non-kosher slivers are noticeable to the touch and cannot be nullified even if they cannot be removed; (2) Whenever possible, the non-kosher food must be removed. This qualification extends, for example, to instances where non-kosher fat is mixed with kosher food. The non-kosher food cannot be nullified; instead, one should cool the mixture, causing the fat to jell, and then separate the non-kosher fat from the kosher food; (3) 'chazusa' -- A non-kosher food that was added to a mixture in order to give the mixture color cannot be nullified; and (4) 'davar hama'amid' -- A non-kosher food which jells or solidifies the food with which it comes into contact is not nullified in the combination. As an example, Rabbi Forst cites the instance where cheese was curdled with

¹²⁷Ramah (in his commentary Darchei Moshe) on the Tur Yoreh Deah 110:1, Mishnah Torah Hilchos Maachalos Asuros 16:9.

¹²⁸Rabbi Forst, The Laws of Kashrus, pp. 63-64.

non-kosher rennet. Even though the amount of rennet used is minimal and its taste is unnoticeable, the effect of the non-kosher rennet on the cheese is noticeable and prevents nullification.¹²⁹

Subsequent adjustments to the bitul (nullification) ratio

Now that the parameters of the ‘bitul’ process have been set, the ‘bitul’ topic is rounded out with two final topics: (1) subsequent adjustments to the ratio of kosher and non-kosher foods and (2) intentional bitul. The issue of subsequent adjustments exists in two situations. On one hand, what is the law when additional prohibited matter is added to a mixture in which non-kosher food has already been nullified? Or in the reverse case, what happens when kosher food falls into a mixture that originally lacked the requisite amount of kosher food to effect the ‘bitul’ process?

As far as the first situation, the answer should hinge on how we view the already nullified non-kosher food. Do we view the originally nullified non-kosher food as non-existent because it was nullified? Or maybe the already nullified non-kosher food was merely in a dormant state, in that it was unable to affect the status of the original mixture because of its small amount? If one takes the second approach, perhaps this already nullified food reawakens to combine with the additional non-kosher food, thus raising the amount of kosher food now needed to effect ‘bitul.’ The law is that if non-kosher food is added to a mixture after ‘bitul’ has taken effect, the original ‘bitul’ must be reevaluated. The amount of kosher food must remain enough to nullify the total amount of non-kosher food, the newly added and the original amounts

¹²⁹Id., pp. 64-65.

of non-kosher food. If there is not enough kosher food anymore, then the original nullification is no longer effective. The reawakening of the original non-kosher food is called “chozer v’neor,” literally meaning “returns reawakened.” This rule applies to cases of original “bitul b’rov” and to cases of original “bitul b’shishim.”¹³⁰

We now turn to the case of kosher food that is added to a mixture that originally lacked the requisite amount of kosher food to effect nullification of the original non-kosher food. How much additional kosher food is needed to effect “bitul” in the new mixture? Do we require additional kosher food in an amount that, in combination with the original kosher food, will nullify the non-kosher food? Or do we demand an even larger amount, an amount of additional kosher food that, by itself, will nullify the entire original mixture (because the entire original mixture was prohibited)? The answer to these questions begins with the prevailing opinion that “efshar l’sochto asur” -- the non-kosher taste cannot be extracted from the kosher part of the original mixture. Jewish law authorities have formed a consensus, as well, that in meat and milk mixtures (“basar b’cholov”) the entire original mixture assumes the status of a prohibited entity. This means that one would need additional kosher food in an amount that qualifies to nullify the entire original mixture, not only the original non-kosher food. This concept is known as “chatichah na’asais neveilah” -- the original piece (or here the entire original mixture) becomes a prohibited entity that generates non-kosher taste of its own. In other prohibited mixtures, Jews of Ashkenazic (These are Jews who are not Sephardic.

¹³⁰Rabbi Forst cites this opinion as the opinion accepted by the majority of Jewish law authorities. As an interesting aside, Rabbi Forst cites Taz 99:13 and Shach §20 as stating, however, that if the additional non-kosher food was of a different type than the original non-kosher food, the dissimilar tastes do not reinforce each other. (Taz is Rabbi David ben Shmuel Halevi, 1586-1667, who lived in Poland.) This means not only that the original “bitul” is still effective, but also that each of these non-kosher foods can be added to the volume of the kosher food when calculating the possibility of the nullification of the other non-kosher food.

Ashkenazic Jews generally descend from Russia and Europe, although not from Spain.) descent continue to hold by this more stringent position whereas Jews of Sephardic descent rule more leniently. Sephardic Jews follow the opinion that in other prohibited mixtures (besides the mixture of meat and milk), while the original mixture retains its prohibition, it can, nevertheless, combine with any additional kosher food to nullify the original non-kosher taste.¹³¹

Intentional bitul: does it work?

The Sages have ruled emphatically on this matter: ‘‘Ain m’vatlin issur l’chatchilah’’ -- one may not nullify foods *ex ante*.¹³² This rule applies equally to cases of intentionally adding non-kosher products to mixtures in the ‘‘bitul b’rov’’ and ‘‘bitul b’shishim’’ realms and to cases of intentionally adding more kosher food to a prohibited mixture in an effort to effect either type of nullification.¹³³ One who does intentionally cause the nullification of non-kosher food may not eat any of the resulting mixture. There are some exceptions to this rule: (1) One who intentionally nullified non-kosher food without realizing that it is forbidden to do so may eat the resulting mixture; and (2) We noted above that while a piece of non-kosher food can be nullified when mixed into similar tasting kosher food through a process called ‘‘bitul b’rov,’’ we added that the resulting mixture cannot be cooked. When the mixture is cooked, even a mixture of kosher and non-kosher solids can only be nullified through the more stringent

¹³¹The opinion followed by Sephardic Jews is that of Rav Yosef Karo in Shulchan Aruch, Yoreh Deah 92:4. The tradition of Ashkenazic Jews comes from the opinion of Ramah in Shulchan Aruch, Yoreh Deah 92:4.

¹³²Talmud Bavli, Tractate Beitzah 4b.

¹³³Mishnah Torah Hilchos Maachalos Asuros 15:25. Maimonides writes that the prohibition against intentional nullification applies to Biblical prohibitions and not to rabbinic prohibitions. He continues, stating his opinion that the mixture that results from intentional ‘‘bitul’’ is Biblically permissible for anyone to eat. However, the Sages enacted a fine as a punishment for the wrongdoer. The commentaries on Maimonides come to the conclusion that Maimonides would apply this fine as a prohibition of consumption of the resulting mixture by the wrongdoer and by anyone for whom the wrongdoer may have intended to make the mixture. See Kesef Mishnah 15:25. Maimonides opinion is cited by Tur, Yoreh Deah 99:5, as are the opinions of Rashba and Rosh.

‘bitul b’shishim.’’ One may, however, add more kosher food to effect ‘bitul b’shishim’ and subsequently cook the entire mixture.¹³⁴

Conclusion of the Jewish dietary laws

The preceding discussion was truly only a survey of some of the most basic aspects of the Jewish dietary laws. In reality, though, the laws go much further. One can study for a lifetime and not master all of the laws. I have, thus, limited the scope of this exposition to the kosher status of foods before they enter the Jewish kitchen, at which point many factors come into play that might negate the kosher status of the food. For example, because of the separation between not only non-kosher and kosher foods, but even milk and meat kosher foods, the Jew must maintain at least two sets of cutlery, one for dairy food and one for meat food. Knowledge of these laws is of paramount importance for anyone who prepares meals in the Jewish home or in Jewish restaurants. In recognition of the fact that it is so difficult to master the kashrus laws, most orthodox Jews only eat at restaurants that are under the ‘hashgacha’ -- the watch -- of a person or organization that is well versed in these laws. Kosher restaurants usually have a certificate that attests to the fact that they are under the supervision of a specific rabbi or rabbinical organization. Kosher food products also bear a kashrus symbol on the label that represents a statement by the organization providing the symbol that the food item meets that organization’s kashrus standards.

Can kashrus be regulated by the Unites States government?

¹³⁴Rabbi Forst, The Laws of Kashrus, p.75, citing Yoreh Deah 99:5, 109:2.

It should be clear by now that the laws of kashrus are beyond the scope of laymen. It is important to remember, too, that I have barely scratched the surface of the laws in this paper. There are thousands of pages of original Jewish law text on kashrus. It is, thus, hard to imagine entrusting any one person or group, whether under federal or state auspices, with the power to decide how Jews should rule in the many cases of rabbinic doubt regarding which of the early Sages we should follow. Perhaps, then we can get away with having a regulatory board that only allows one to hold his food out as ‘kosher’ if the preparation of that food accords with every stringent opinion on each and every small issue. This system might work theoretically; however, it would not work in practice. It is possible that there are some people who follow every stringent opinion, but according to Jewish law one is not required to abide by stringent opinions if the rabbis agree that the ‘halacha,’ the practical law, does not follow that opinion. The vast majority -- and by this I mean the super-super-majority -- of orthodox Jews do not accept every stringency of kashrus law. Thus, a regulatory scheme designed to rule most stringently would be worthless. On the other extreme, the United States or each individual state could have a law whereby one would not be allowed to hold his products out as ‘kosher’ unless he follows all of the kashrus laws minimally according to their most lenient opinions. However, this system would be impractical also because one can surely imagine that there is at least one rabbi in every jurisdiction who takes a radically flippant attitude toward kashrus. Because the proposed system would work based on the least common denominator (i.e. the standards of this rabbi), the vast majority of those who try to keep kosher would not be able to rely on the worthless ‘kosher’ stamp. What we are left with then is a system somewhere in between these two extremes. The remaining question, though, is how should a law regulating kashrus be structured? Because of the quality of the case law surrounding it, I will examine the New

York statutes that deal with labeling a food item as ‘‘kosher.’’

Hygrade Provision Co. v. Sherman

The New York statute parallels the relevant statutes of other states. These statutes have recently come under fierce attack. Again, though, looking at the New York statute, the relevant case law begins with Hygrade Provision Co. v. Sherman, 45 S.Ct. 141 (1925). In Hygrade, several parties challenged the constitutionality of New York’s kosher food products law. They alleged violations of the due process, equal protection, and commerce clauses. The specific complaint was ‘‘that the word ‘kosher’ and the phrase ‘orthodox Hebrew religious requirements’ are so indefinite and uncertain as to cause the statutes to be unconstitutional for want of any ascertainable standard of guilt.’’ Id. at 142. The Supreme Court, though, upheld the statute stating that the intent to defraud requirement should preclude the alleged apprehensions: ‘‘The Appellate Division of the Supreme Court of New York, upholding the validity of a statute substantially the same as those now under review, in People v. Atlas, 183 App.Div. 595, 596, 597, 170 thus characterized it: ‘The purpose of the statute manifestly, is to prevent and punish fraud in the sale of meats [sic] or meat preparation, and it only operates on those who knowingly violate its provisions, for it is expressly provided that there must be both an intent to defraud and a false representation.’’’ Id. at 142. The Hygrade Court went on to cite other examples in the law where one is expected to use some judgment in determining how others will perceive his actions. In the statutes prohibiting the sale of intoxicating liquor and in the statutes prohibiting the transmission through the mail of obscene literature, the Court stated, we do not expect an individual to be infallible; rather we expect him to not harbor intent to defraud.

It should seem that the Supreme Court's understanding of the New York statute undermines any usefulness of the statute. If the Court interpreted the statute correctly, and it certainly did according to the simple words of the statute, no one can be prosecuted for a violation of New York's kosher food products law as long as he honestly believes that any food labeled or sold as 'kosher' is truly kosher. Prosecution is thus predicated on a perpetrator understanding the kashrus laws in a certain way and not adhering to his best understanding of the kashrus laws. While this might appear to mark the end of kashrus litigation, it was just the beginning.

National Foods, Inc. v. Rubin

As recently as 1989, in National Foods, Inc. v. Rubin, 727 F.Supp. 104 (S.D.N.Y. 1989), Hygrade and People v. Atlas were cited as sources declaring the constitutionality of the New York kosher labeling laws. In National Foods, the plaintiff argued that while the New York law was constitutional as it was written and as it was applied by the courts, it was applied in a manner that violated the establishment clause by Rabbi Schulem Rubin, the Director of the Kosher Law Enforcement Division of the Department of Agriculture and Markets of the State of New York. National Foods at 109. The court stated, "'Hygrade emphasizes that a good faith effort to follow a standard religious practice does not violate the statute.'" Id. at 109. Hebrew National (National Foods) argued that the New York law is only constitutional if the statute is construed to mean that state officials cannot impose their own definitions of "'kosher.'" Hebrew National continued by arguing that because it hires rabbis to supervise all of its meat processing and a supervising rabbi certified that all of its meat was kosher, that certification is conclusive evidence of compliance with the statute. When Rabbi Rubin charged Hebrew National

with a violation, Hebrew National claims he must have applied his own theological standard. They argued that this was unconstitutional. Because the amended complaint didn't include any facts suggesting a theological dispute or the enforcement of one form of religious orthodoxy over another, the court ruled that the complaint did not state a claim of violation of the establishment clause. The National Foods case, though, did bring the establishment clause into play for future cases. In fact, in the year 2000, Rabbi Schulem Rubin again found himself in court, this time defending New York's kosher laws against an establishment clause claim.

Commack Self-Service Kosher Meats, Inc. v. Rubin

In Commack Self-Service Kosher Meats, Inc. v. Rubin, 106 F.Supp.2d 445 (E.D.N.Y. 2000), the plaintiffs were the proprietors of a butcher shop in Commack, Long Island. While the plaintiffs described themselves as "Jewish," but "but not observant in accordance with the tents of Orthodox Judaism," they also stated at all times the store had "kosher supervision under the auspices of a duly ordained rabbi of the Jewish faith." Plaintiffs claimed, as well, that they never made any representation that they sold food koshered "in accordance with orthodox Hebrew requirements;" they say, instead, that they marketed their food as "kosher." Thus, if the statute wasn't premised on one's compliance with strictly orthodox strictures, then the plaintiffs committed no violation. Why then did Rabbi Rubin cite them several times? Rabbi Rubin must have executed his supervisory duties based on compliance with the orthodox Hebrew requirements, as opposed to the honest belief that one is keeping kosher. Indeed, in its decision, the court stated that the relevant statutory provisions were interpreted for decades as equating "kosher" with "orthodox Hebrew religious requirements." The court cited cases such as

State v. Glassman, 441 N.Y.S.2d 346 (N.Y.Co.Ct. 1981) (“The issue in this case is whether the defendants ‘with intent to defraud’ represented that their frank furthers and salami were Kosher when in fact [they were not because the were] not prepared in accordance with the Orthodox Hebrew religious requirements.’”), and People v. Johnson Kosher Meat Products, Inc., 248 N.Y.S.2d 429 (N.Y.City Civ.Ct. 1964) (“Upon failure at the trial to adduce any evidence that the meat sold as kosher was not prepared wholly in accordance with Hebrew orthodox religious requirements, the charges of fraudulent misrepresentation under Section 201-a were dismissed.’”). This interpretation of the New York statute was so accepted that it was recognized by other states in Erlich v. Municipal C 55 Cal.2d 553, 557-558 (Cal. 1961), and in Ran-Dav’s County Kosher, Inc. v. State, 129 N.J. 141 (N.J. 1992), cert denied, 507 U.S. 952 (1993). In Ran-Dav’s, former Attorney General of New York Robert Abrams filed an amicus brief wherein he wrote that the New York Kosher Laws ‘define kosher in terms of orthodox Jewish requirements.’”

Rabbi Rubin argued on behalf of the laws that the laws speak in the disjunctive, in that they refer to products represented as ‘kosher or [italics added] prepared in accordance with orthodox Hebrew religious requirements.’” Rabbi Rubin claimed that he did not enforce the law according to any particular religious standard because the statute makes clear that there is not a consensus regarding what constitutes kosher food. Commack Self-Service Meats at 452. The court, though, rejected this argument because “state courts have explicitly and continuously construed the word ‘kosher’ in the Challenged Laws to mean ‘products prepared in accordance with orthodox Hebrew religious requirements.’”

Before turning to the establishment clause it is important to point out that the court distinguished Hygrade. The court stated that it could declare the laws unconstitutional and still accord with Hygrade because Hygrade did not include a challenge based on the establishment clause; rather Hygrade was a challenge based on the due process, equal protection, and commerce clauses. The court also distinguished the result in National Foods by explaining that the establishment clause claim was only rejected in that case as it applied to the plaintiff, because of a deficiency in the complaint.

Lemon v. Kurtzman

Before the Commack case existed, other courts had already invalidated statutes similar to the challenged New York laws. The kosher fraud laws of New Jersey and of Baltimore, Maryland were invalidated under the establishment clause as violating both the effect and excessive entanglement prongs of Lemon v. Kurtzman, 403 U.S. 602 (1971). Lemon requires a challenged law (1) to have a secular purpose, (2) to have a primary effect that neither advances nor inhibits religion, and (3) not to foster excessive state entanglement with religion. Id. at 612-13. The Commack court went on to quote language from Lemon that stated “the three main evils against which the establishment clause was intended to afford protection: ‘sponsorship, financial support, and active involvement of the sovereign in religious activity.’” Lemon at 612 (quoting Walz v. Tax Comm 397 U.S. 664, 668 (1970)). The court states that the challenged New York laws violated all three of these prohibitions.

The court added that the ‘good faith’ defense, arising out of the requirement of intent to defraud, doesn’t prevent the establishment clause violation. The court stated:

An identical argument was rejected in Barghout v. Bureau of Kosher Meat and Food Control, 66 F.3d 1337 (4th Cir. 1995), in the following language: “Whether prosecution under the ordinance focuses on the subjective intent of the vendor, or the vendor’s compliance with the Orthodox standards of kashrut, the ordinance still fosters excessive entanglement between city officials and leaders of the Orthodox faith with each and every prosecution.” 66 F.3d at 1344. The same is true here, where daily enforcement of the Challenged Laws requires state officials to determine the content of religious law. Moreover, under the Challenged Laws, a vendor who believes in good faith that its products are kosher under a standard other than the orthodox standard cannot avail itself of a good faith defense because, given the statutory meaning of kosher, as authoritatively established by the New York courts, that defense requires vendors to claim that they had a good faith belief that their products were kosher in accordance with orthodox Hebrew religious requirements.

Commack Self-Service at 456. The essential arguments that swayed the court to invalidate the statute, as laid out above, seem to make sense. In a further effort to distinguish possible contradictory holdings, though, the court essentially admitted, albeit unknowingly, that there is some inconsistency in the law. This inconsistency results from the constant tug-of-war between the establishment clause and the free exercise clause. This contradiction is only exacerbated by the fact that the conflicting cases all involve kashrus law.

Turner v. Safley

The Supreme Court of the United States ruled, in Turner v. Safley, 482 U.S. 78 (1987), that prisoners have constitutional rights even while incarcerated. In Turner, which struck down a prison system’s regulation banning inmate marriages, the Court laid out a four-part test to determine whether or not a particular inmate must be afforded specific rights in each individual case. The following are the factors relevant in determining the reasonableness of prison regulations:

(1) there must be a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it, (2) whether there are alternative means of exercising the right that remain open to prison inmates, (3) the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally, and (4) the absence of ready alternatives is evidence of the reasonableness of a prison regulation. Turner at 89-91. Based on this test, various courts have ruled that government prisons must provide inmates with kosher meals. Beerheide v. Suthers, 2002 WL 535836 (C.A.10 2002); Ward v. Walsh, 1 F.3d 873 (C.A.9 1993); Kahane v. Carlson, 527 F.2d 492 (C.A.2 1975). Of course, this is based on freedom of religion.

While one would think that going out of the way to provide inmates with kosher food should be an excessive entanglement that primarily advances the Jewish religion, the court went out of its way to distinguish one of the prison cases. The court in Jackson v. Mann, 196 F.3d 316, (C.A.2 1999), reversed a grant of summary judgment to defendant prison officials who had denied an inmate a kosher diet in reliance on the prison chaplain's determination that the inmate did not meet his definition of a Jew as "one who was born Jewish or has formally converted." Rejecting an establishment clause claim on the ground that the issue was "more properly anchored in the free exercise clause," the court held that "whether Jackson's beliefs are entitled to free exercise protection turns on whether they are 'sincerely held,' not on the 'ecclesiastical question' whether he is in fact a Jew under Judaic law." 196 F.3d at 321.¹³⁵

The Commack court further distinguished the prison cases by pointing out that providing kosher

¹³⁵This argument, though, has a weakness. Because the state does not want to entangle itself with religion, it determines who is a Jew based on whether the relevant individual's belief that he is a Jew is "sincerely held." From a Jewish law perspective, this is a crucial error. One is factually, whether you want to call it a religious fact or a secular fact, not a Jew unless he is born to a Jewish mother or he properly converts. The state's attempt to investigate one's religious status (which really is a factual status like any other) is correctly analogized to an attempt to determine whether an individual is poor for income tax purposes based on whether or not his belief that he is poor is "sincerely held." An individual who tried to fleece the IRS out of money claiming that he sincerely believes that he is in the lowest tax bracket will certainly end up in jail. So, too, the government should not attempt to determine who is a Jew in an illegitimate, secular manner.

food in prisons does not create excessive entanglement simply because it uses a word of religious significance. The unconstitutional kashrus laws of New York fostered excessive entanglement and advanced religion because they demanded that the state assume ongoing obligations of enforcement of purely religious laws, inevitably requiring the state to rely on religious authority and interpretation to properly enforce them. This is in contrast to the prison cases in which the state only needs to determine who qualifies for the kosher food. I believe, though, that the issue is not so easily resolved. If the state is providing kosher food in prisons, it must be performing many actions to ensure the kashrus of the food. While these actions and expenditures might be considered de minimis in relation to the Turner four-part test, there is no denying that the government is nevertheless advancing the Jewish inmate's religious observance. Clearly, the state (and really all of the states) has chosen a certain point at which to draw the line between free exercise and the establishment clause.

Conclusion

I believe that whenever lines are drawn, they are drawn somewhat arbitrarily. Therefore, it is safe to say that we have not yet heard the last word from the courts on kashrus issues. By the same token, I am not sure that we have heard the last word from those courts that refuse to enforce penalties relating to fraudulent use of the word "kosher." Of course, though, I am not suggesting that the FDA will ever involve itself with kashrus regulation. It is surely a stretch to claim that the damage, whether physical or spiritual, that results from a Jew eating non-kosher food products will be recognized as a health risk that must be protected by the FDA.