

חלב טריפה

בענין מה שהחמירו הרבה פוסקים לאסור החלב בארה"ב לאור חשש הטריפות
בפרות שנותחו בבני מעיהן

This is an abridged version of what is written in Sefer *Chalav Treifah*, סימן י"ט.

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The *Shayla* and the *Rabbanim*

More than twenty-five years have passed since the controversy regarding the *Kashrus* of milk in the United States arose. The issue was regarding cows which had left displaced abomasum (henceforth referred to as "DA"). This occurs when the cow's abomasum rises from the lower right side of the cow's abdomen [its correct anatomical position] and moves to the left side of the abdomen. While the actual disease does not render the animal a *treifah*, most surgical procedures which repair the DA render the animal at least a *safek treifah*.

The problem, first identified on farms producing *Chalav Yisrael*, was subsequently rectified through removal of cows with surgical procedures from those farms' herds. However, the problem seemingly remains relevant for those who rely on *Rav Moshe Feinstein z"l* and consume non-*Chalav Yisrael* [*Chalav Stam*] dairy products. The milk in those products come from farms that do not remove *treifah* cows from the herd. Consequently, many *Rabbanim*¹ took a stringent position and prohibited consumption of *Chalav Stam* products, precisely for the above reason.

It is important to point out that although meat and milk² from surgically corrected cows is *אסור מדאורייתא*, the above-issue is at most an *איסור דרבנן*. This is because the number of cows

¹ **במשנה הלכות** (ח"ג סקי"ג) כתב ז"ל דכאן לא הוי ספק כלל דכל בעל העדר [הפארעם] שמחזיק בהמות לחליבה הנה יודע כמה בהמות יש לו בפארעם ויש לו תעודה מלידתה עד היום הזה וכל מה הנעשה עם בהמה זו וזה מהחיובים וחוקי הממשלה ולכן בעל המשק שיש לו אלף בהמות יודע כמה מהם עברו ניתוח וכו' ואפשר לברר כמה בהמות טריפות יש בפארעם ולא הוי כאן ספק דרבנן אלא צריך לברר כמה יש וכו' והנהיב בזה להזהיר לאותן שסמכו עד היום פיקוח המדינה ושתו חלב בלי השגחה אבל מהיום כיון שיש חשש חלב טריפה שבכל אותם הפארעם אין מוציאין הבהמות הטריפות הנ"ל ולכן לא יסמכו כלל על קנה רצוף ולשתות הם וילדיהם ח"ו חלב טריפה והשומע ישמע ותבא עליו ברכת טוב עב"ל. וכ"כ הרב חיים קאהן שליט"א ז"ל גם נוגעת השאלה למשתמשים לכתחילה בחלב עבו"ם וכו' הסומכים במדינה זו על פסקו של האג"מ וכו' המתעורר לדעתי למעשה מהדיון הנ"ל הוא שאם אכן יתברר לדינא שבהמות שנדקרו הם ספק או ודאי טריפה וידוע שבאופן כללי מצוי שמנתחים בהמות שיש להם מחלה הנ"ל ואין שיעור ביטול לחלב שנחלב שיש לרבנים מכשירים חיוב לברר האם יש במשק זה בהמה שנעשה לה ניתוח כמו בשאר חשש איסור שמקפידים מבלי לתת הכשר עב"ל. וכ"כ הרב יוחנן וואזנער שליט"א (חיי הלוי ח"ד סמ"ד אות י"ח) ז"ל עוד צריך לדעת שמעכשיו שנתוודע ענין זה דגם לאותן שמקילין בחלב עבו"ם לילדים או לחולים מעכשיו הוא חמור שיש גם חשש טריפות וכו' עב"ל. וכ"כ הרב יהושע כץ שליט"א אבד"ק מאגרוב ז"ל די חלב עבו"ם אינדוסטרי קען זיך דאך בכלל נישט קיין עצה געבען מיט די דאזיגע שאלות וכו' זיי בעסער מטשטש און מבלבל זיין דעם מציאות כדי עס זאל בכלל נישט זיין קיין שום שאלה וכו' ביי די חרדישע ערליכע רבנים אבער נאכדעם ווי זיי האבען זיך קלאר געמאכט אין דעם מציאות וכו' דער אונגענומענער סטאטיסטיק איבער דעם פערצנט וכו' איז פון 5 ביז 15 וכו' עב"ל. וכ"כ הרב יצחק שטיין שליט"א דומ"ץ דק"ק פאלטישען (דברי יצחק) ז"ל וביותר מכאוב ומצער לאור הידוע שבהיום נשתנה כל הנידון של חלב ומוצרי חלב שאינם חלב ישראל כי זה כבר כמה שנים שנודע שעושים הניתוחים על הבהמות שעושים אותם טריפה וכו' והנה הרבנים המכשירים החרדים והמדקקים לא קיבלו את ההיתרים של הרבנים מארגונים האמריקאיים וכו' מצד ס"ס או כל דפריש וכו' דלא שמיעא להו כלומר לא סבירא לן והטעם היותר פשוט דאיך שייך ספיקות או כל דפריש במקום שיש טיקעט ורעקארד על כל בהמה שנתנתחה וכו' באופן שבהיום ברור וכו' שאין נוגע עוד ההיתר של האגר"מ כי הוא לא התיר במציאות שכזה עב"ל. וכ"כ הרב בלייך שליט"א וכמ"ש להלן בפנים.

² Milk from a *treifah* is *אסור מדאורייתא* according to most *Poskim* (*Darkei Teshuvah* 81:9).

with DA comprise only a minority of the cow population. Thus, the milk from those cows is בטל ברוב מן התורה.

The aspect of the *Shayla* I would like to analyze is the approach some *Rabbanim* took in permitting the milk. They held that even if the animal is indeed a *treifah*³, one can still permit the milk because of *בשמים*. Since the prevalence of DA is not high, it is *ספק ששים*, which is permitted per *Shulchan Aruch* (98:2).

Those that prohibited the milk disagreed with the aforementioned *Rabbanim* and held that there is no *ספק ששים*. They all quote the prevalence of DA in the United States to be as high as 10%, much above the required 1.6% (*ששים*). For example, in an article regarding this topic, Rabbi Bleich⁴ quotes a study from Dr. Steven Eicker, surveying 26 New York State farms, who found incidence of DA to be between 5-15%.

Additionally, writes Rabbi Bleich, “*if more than 1.63% of the animals are treifot or safek treifot the milk is forbidden. If, however, it is impossible to determine whether the total number of animals treated for LDA exceeds 1.63% but, as is usually the case, the number certainly does not exceed fifty percent of the herd, the milk is permissible. However, as explained by Taz, Yoreh De’ah 98:6, this rule applies only if it is entirely impossible for any person to make such a determination. Mere inconvenience entailed in making such a determination or inability of an individual or a group of individuals to make such a determination does not render the milk permissible. In practice, the number of animals that have been surgically treated for DA is readily determinable⁵ by visual examination; hence the number of treifot or safek treifot is indeed determinable...The incident has, however, highlighted a problem with regard to unsupervised milk. Many have relied upon the opinion of those rabbinic scholars who have ruled that, for purposes of the rabbinic prohibition attendant upon milk milked by a non-Jew, fear of penalties imposed by governmental authorities for adulteration of milk substitutes for the presence of a Jew at the milking of the cow. If, as appears to be the case, the records maintained by most dairymen will readily yield the information that more than 1.63% of dairy cows on farms from which such milk is collected have been treated for LDA such milk may well be prohibited for an entirely different reason.*”

The Metzius

I would like to present an approach, one not dealt with by the *Rabbanim*, to permit *Chalav Stam*. The *Rabbanim* who prohibited the milk took a one-size-fits-all approach and presumed that what they determined through their research was actually occurring on all farms across the USA. They made three assumptions: **1)** The percentage of DA on farms is above 1.6%, **2)** Cows

³ רב ישראל הלוי בעלסקי ז"ל התיר החלב, וטעמו מפני שלא נטרפו ע"י הניתוחים. וז"ל (שלחן הלוי סו"ס ט"ו) נראה פשוט יותר מביעתא בכותחא שאין דין טריפה על אותן הבהמות שנותחו בניתוח הנ"ל באיזה אופן שיהיה וכו' ועל כן כל החלב הגבינה ושאר התוצרות וכו' מותרים הם לכתחילה ע"פ דין וכו' עכ"ל. והרבה פוסקים חלקו עליו.

⁴ *The Milk Contretemps*, page 69 (Tradition 1995).

⁵ ובעי"ז כתב הרב יצחק שטיין שליט"א (שם) וז"ל והנה הרבנים המכשירים החרדים והמדקקים לא קבלו את ההיתרים של הרבנים מארגונים האמריקאיים וכו' מצד ס"ס וכו' דאיך שייך ספיקות וכו' במקום שיש טיקעט ורעקארד על כל בהמה שנתנתח עכ"ל.

with DA are repaired in a way that makes them into a *treifah*, and **3**) One can readily determine the number of animals treated for DA, and therefore it is אפשר לברורי.

The basic idea that I would like to demonstrate is that any bottle of milk (or dairy product) should be treated as a genuine ספק and should be permitted because ספק דרבנן לקולא.

To begin, it does not seem that what the *Rabbanim* assumed was the *metzius* is the actual case. For example, Rabbi Bleich quotes only one study done by Dr. Eicker in the early 1990s. The study was performed on 26 dairy farms in New York, consisting of a total of 13,000 dairy cows. In 1992, there were over 11,000 dairy farms in New York State alone, and more than 720,000 dairy cows. That means that Dr. Eicker surveyed 0.2% of NYS dairy farms and 1.8% of NYS cows. In the broader picture, in 1992, the USA had over 150,000 dairy farms with about 9.7 million dairy cows. This means that Dr. Eicker's study of the cows represented only .1% of dairy cows in the United States and .01% of dairy farms. It seems irrational to draw conclusions about dairy farms across the United States based on such a small and localized sample-size. (Some *Rabbanim* seem to be quoting the exact numbers⁶ of Dr. Eicker⁷.)

I have personally contacted 380 farmers across the United States and it seems that the statistics vary from farm to farm⁸. I divided the farms into 3 categories:

⁶ ואחוז זה מצוטט גם **במשנה הלכות** (שם) וז"ל אמנם לאחרונה יצא קול אשר בין הבהמות הכשרות יש אחוז מסוים [בין חמש לחמש עשרה אחוזים] בהמות אשר לסיבת מחלה עשו להם ניתוח ע"י רופא בהמות עכ"ל. וכ"כ **הרב יצחק שטיין** (שם) וז"ל וכפי שהמומחים אז קבעו נעשים על הרבה בהמות דהיינו בין 5 ל-15 אחוז וכהיום הרבנים הנוחים והיותר מתונים אומרים שהוא מ-3 עד 8 אחוז אך בכל אופן ברור שאין ששים נגד הבהמות הטריפות ברפתות החלב וכו' עכ"ל. וכ"כ **במאזני צדק** (ח"ג יו"ד ס"א) וז"ל בענין האחוזים שעושים עליהם הניתוחים לפי דברי הינויווערסיטי עושים ניתוחים כאלו על בין חמשה לחמשה עשר אחוזים מהפרות וכו' עכ"ל. **והרב חיים קאהן שליט"א** כתב וז"ל בארה"ב המחלה הוא לפחות בשבעה אחוז מכלל הבהמות החולבות ואחוז הבהמות שנתחו הוא בלי ספק יותר משיעור ביטול עכ"ל. **והרב יחזקאל ראטה שליט"א** (עמק התשובה ח"ה ס"ס) כתב וז"ל בדבר מה שנהוג כהיום ברפתים של פרות שמצוי ביניהן שהקיבה של הפרה מתהפך או נעשה נפוח וכו' אף שאין זה רק בגדר מיעוט מ"מ ליכא ס' נגד המיעוט ולח בלח הא בעינן ס' אפי' מין במינו עכ"ל.

⁷ אולם, הרב חיים קאהן שליט"א כתב מה שראה בעצמו וז"ל הנה עצם ההנחה שיש ס' כנגד בהמות שודאי נטרפו הוא לדעתי אינו ברור כלל ולא ניחא לי להתווכח על מציאות כי זה יאמר בכה וזה בכה וכו' ורק אוכל לומר שבמקומות שלא מקפידים להוציא הבהמות יכול להיות בקל שאחוז הבהמות שנחלו ונתחו יהיה לפחות חמישה אחוז ואינו רואה האיך אפשר לקרות לזה ספק ס' ולאחרונה הייתי בפארם שהאחוז היה יותר מעשרה אחוז עכ"ל.

⁸ The farms track DA with an annual percentage, not cumulative. This makes it difficult to determine how many cows on any given farm have [or had a] DA. For even if annually a farm has only 1%, if the number of DA's are more or less the same [year after year] there would be 2% of cows on a farm with DA's.

The Orthodox Union had a roundtable discussion with *Rabbanim* in 2012 about the issue of DA. While they determined that the milk is permitted, they dismissed the reasoning of those who permitted the milk based on ספק ששים for precisely this reason. They write "Overall, the number of cows that have surgery for DA appears to be more than an amount that would be *batel b'shishim* but not so much as to prevent *bitul b'rov*. Most statistics are for percentages per year, and most cows continue to give milk for approximately 3 years after their first lactation (which is when DA often occurs) such that there is a "buildup" of DA cows in the farm."

When I attempted to verify what they wrote it became clear that there isn't necessarily an accumulation of cows with DA on a farm. To demonstrate this, I will provide a brief description of the average life of a dairy cow: At about 15 months of age a heifer is mated with a bull or is artificially inseminated, with calving normally at 24 months. Milk is produced when the calf is delivered (freshening), with the average lactation lasting 10 months. While a cow is

- 1. Farms with DA prevalence ABOVE 1.6%:** Some farms indeed have DA prevalence's of over 1.6% and do perform surgeries that make the animals *treifos*. For example, I was in contact with a farmer that has 9% annual rate and another with 6%. Both perform surgical procedures that would render the cow a *treifah*.

There were other farmers that I contacted, however, that despite having over 1.6% DA prevalence rate, repaired the DA in ways that does not render the cow a *treifah*. Some farmers roll the cow, which moves the abomasum back to its correct location. Other farmers told me that they fix the DA's by feeding the cows coffee or hay, or by pumping the stomach with probiotics. Some use vitamins and other medical therapies. Additionally, many farmers that had high prevalence on their farms cull those suffering from DA.⁹

- 2. Farms with DA prevalence UNDER 1.6%:** There were many farmers that I spoke with that have under 1.6% DA prevalence rate. Examples of the prevalence rates on the farms I contacted: 1.5%, 1%, 0.8%, 0.5%, 0.4%, 0.3%.

most fertile 60 days after birth, the normal length between births is 12 months. Cows are mated about three months after calving, during their lactation. Two months prior to the second calving (about 7 months after mating) the cow is put onto a dry period, at which time her lactation cycle ends. After her [second] calf is delivered, the lactation cycle begins again and the whole process is repeated. Most cows will have an average productive lifespan of three lactations (5 years old). The risk of developing a DA increases with age and is highest in dairy cows between 4 and 7 years of age. The majority of DAs occur in the first month of lactation (see footnote 10).

All the farmers that I spoke with said that whether the cow (that was surgically repaired) remains on the farm the following year is case dependent. Each cow is analyzed according to its production and health. At least some of those cows live a normal lifespan, for that is the point of surgery. However, cows that had a DA often are culled because of other health or reproductive issues. Additionally, many farmers have confirmed that most of their DA's occur during the third or fourth lactation of the cow. Since DA's are more frequent when the cow ages, the chances of a cow with a repaired DA remaining in the herd is lower. (See USDA Dairy 2014 report that quotes that 75% of all cows removed from herds (not necessarily due to DA) were in their 2nd lactation.) Additionally, cows that get a DA are less likely to get pregnant due to the rough start of their lactation and often get culled at the end of the lactation.

To demonstrate the above, I obtained the survival rate of cows with DA's from a few different farms:

	Total # of cows	# of cows with DA	# of cows with DA which remained in the herd after a year
Farm #1	3754	47	3
Farm #2	1065	19	7
Farm #3	1001	41	11
Farm #4	472	5	4

⁹ Often due to financial considerations- see footnote 21.

3. Farms without DAs: Lastly, there are farms that have DAs very infrequently. (Some did not have DA's for 30-40 years). Since the majority of DA cases occur soon after calving¹⁰ during the transition¹¹ period, many farmers focus on prevention during that time. The following are some of the successful methods that farmers use:

- 1) Special management that specialize feed (TMR) to prevent DA's from occurring and are especially watchful of transition stage cows.
- 2) Designated corrals specifically for transition stage cows, easing the transition.
- 3) Care is taken not to push the cows too hard for milk production.
- 4) Feeding hay to the cows. Since it is hard to digest, it helps prevents the abomasum from displacing.
- 5) Various medications and vitamins.

¹⁰ The majority of DA's in dairy cows occur in the first month of lactation. The high prevalence during the early stages of lactation presumably reflects the simultaneous occurrence of a number of factors that set the stage for displacement to the left. Common periparturient (the period immediately before & after calving) events, such as rapid changes in diet (decreased fiber and increased concentrates), decreased exercise, hypocalcemia, ketosis, fatty liver, and conditions such as mastitis, retained placenta, stillbirth, and metritis are among the factors that potentially lead to decreased gastrointestinal motility and gas build-up in the abomasum. Rapid changes in abdominal area in the periparturient period may also favor left displacement. In the late stage of pregnancy, the distended uterus can elevate the rumen off the ventral body wall and push the abomasum into a more cranial position. As the uterine volume suddenly decreases with parturition and the rumen is allowed to fill, the abomasum may become trapped on the left. Delivery of twins and large maternal body size have been implicated as risk factors in some studies and may act by further increasing the room for abomasal displacement to the left.

Abomasal displacement is believed to occur secondarily to abnormally high fatty acid levels and excessive fermentation that lead to gas accumulation and distention. As a result of the gas, the abomasum may float up the abdominal wall.

¹¹ The term "transition" refers to the process of a dry cow (not producing milk) transitioning to calving and producing milk. This occurs 60 days before calving and continues until 30 days after calving. The cow makes a transition between not being milked, to producing very high volumes of milk and to a high energy ration. Managing cows correctly during the transition period is one of the most important factors for overall farm success. The calorie needs of a milking cow are massive, especially compared to a dry cow. Within the two days after a cow calves, the energy needs of that cow more than double. The metabolic stress associated with the increased energy demand can be dramatic. How the cow handles this stress and moves through the transition period influences her production, health, ability to become pregnant again and ability to remain in the herd. Dairy cows are at greatest risk of developing diseases and conditions leading to involuntary culling during this time. Monitoring transition dairy cows is important in order to recognize changes in performance.

The main goal of transition cow management is to decrease the amount of time the cow spends in a negative energy balance. Negative energy balance occurs when a cow burns more calories than it consumes. Since the calorie needs of a recently calved cow (fresh cow) are significant, most dairy cows do not initially eat enough to make up for the calories they are burning. The more time a fresh cow spends in a negative energy balance, the higher the probability it will have a health challenge.

Additionally, pasture-based dairies rarely have DAs.¹² It has been suggested that (in addition to the actual grass vs. grain) pasturing helps prevent DAs by requiring the cow to exercise.

Furthermore, milk from farms that have *treifos* above 1.6% does not necessarily result in it being non-kosher. If the number of *treifos* are within the range of 1.6%, it seems that it can qualify as a *safek* for the following considerations¹³:

1) Often, a sizeable percentage of cows (usually 10%+ of the herd) on a farm are not giving milk because they are between pregnancies. A cow that was rendered a *treifah* from the surgery could very well not be giving milk on any given day.

2) Cows are milked twice a day. Sometimes cows are milked twice as often as the others, such as if they are mature (first 35 days after calving) or in the first 45-55 days of their first lactation. In these instances, some cows are giving more milk than others.¹⁴

3) There may be another 1-2% of cows on a farm that might need antibiotics. The milk from those cows is discarded.¹⁵

It seems that there is neither a consistent prevalence of DA nor a consistent method of repair. While my survey of dairy farms is only 1% of dairy farms in the USA¹⁶ and obviously may not represent the entire USA, I think it's reasonable to infer that the situation is that of a *safek*. This is because the number of farms I contacted surpasses the number of farms surveyed by the *Rabbanim* and more than half¹⁷ of them did not have *treifos* issues. Since many did not have DA

¹² It's important to point out that the organic dairies I contacted practically had no DA's. This was confirmed by a study (contrasting organic vs. conventional farms) that put organic farms prevalence at less than 1%. Accordingly, there should not be any *Halachic* issue with organic dairy products.

¹³ While the most common surgical procedure (right flank omentopexy) possibly only renders the cow a *safek treifah*, I did not include it in the list of *safek* considerations for two reasons. Firstly, since the abomasum is usually deflated [which does render the cow a *treifah*], many *Rabbanim* assumed that all veterinarians deflate and considered a cow that underwent omentopexy a *treifah*. (Most vets and farmers I have spoken with indeed deflate, though there was a decent amount that did not.) Secondly, even if we were to assume that it is only ספק טריפה, the *Shach* says that לא אמרי' ספק דרבנן לקולא ע"י גלגול.

¹⁴ While the *Shach* (81:7) says that each cow is assumed to give the same amount of milk, this is not relevant to this consideration. The *Shach* is referring to a case where we know that a certain number of cows were milked. There, we don't assume that one cow gave more milk than the other. However, if we are in doubt if the cows were *milked at all*, we cannot say that each cow is assumed to give the same amount of milk.

¹⁵ Cows are often put on antibiotics for certain diseases (occasionally after a DA surgery). Mastitis, a potentially fatal mammary gland infection, is a very common disease (average prevalence rate is 25%). Treatment is possible and common with antibiotics. I have seen statistics that between 40-60% of of cows with DA's have concurrent diseases, such as mastitis. This indicates that cows with DA's can possibly not be producing milk due to antibiotics.

¹⁶ In 2019 around 3,300 farms closed, with approximately 34,000 farms remaining.

¹⁷ The following chart presents the total number of farms I contacted divided up by their *kashrus* status. I separated farms that had *Treifos* but were Kosher (because they were בטל ששים) and those farms that had no *Treifos* issues at all:

issues, one cannot say there is *איסור*. It is at most a *safek*, and since the farms were בחזקת ביתר there is no reason to assume that their status changed.¹⁸

Large farms vs. Small/Medium farms

There is another relevant consideration that is not dealt with by the *Rabbanim*. In 1992, there were 150,000+ farms with 9.7 million dairy cows. In 2017¹⁹, there were 9.6 million dairy cows (-1%), yet there were only 40,000+ dairy farms (-73%).

The discrepancy is due to the decline of the small/medium dairy farms. Small/medium farms are farms with less than 500 dairy cows. Large dairy farms (>500 cows) have continued to flourish since the early 1990s. Larger farms utilize modern genetics and intensive management practices to capitalize on improved cow performance and economics of scale in order to be profitable. In 1992, 1% of total dairy farms (1,694) in the USA were classified as large farms. Currently, the number (3,464) is close to 10%²⁰. The average herd size has quadrupled since the early 1990s.

The reason this is relevant to our *shayla* is as follows: In 2014, the USDA released a report on incidence of different cow diseases. The survey was conducted on 3% of large farms (114) and 0.7% of small/medium farms (151) in the United States. **The survey found that small farms (30-99 cows) had a 2.8% incidence rate for DA, medium farms (100-499) 3.4%, while large farms only had an incidence rate of 1.8%.**²¹ The report indicates that about 25% of cows with DA were culled.

Farm Total	Treif	Kosher/Bitul	Kosher/Cull or No DA's at all
380	100	87	193

Based on my finding more than 50% of farms I contacted had no *Treifos* issues, and if one includes those farms that had *ביטול בששים* it follows that almost 75% were Kosher.

¹⁸ בשו"ת אג"מ (יו"ד ח"א ס"כ) דן בענין דקירת הכרס וכתב וז"ל הוא דבר שלא שכיח במדינתנו שיהיה בשביל זה ספק על הבשר שאנו אוכלים ממה שנשחטו בבתי המטבחים ואין לחוש כלל עב"ל. ובנוגע לנידון דידן [של ניקב הקיבה - DA] כתב במשנה הלכות (חי"ג סימן קי"ג) וז"ל אבל הניתוחים שעושים כהיום שהסטאטיסטיקא מוכחת שיש בין עשר לחמש עשרה אחוז מהני טריפות בכל המדינה וכו' לפי פסקו של הגאון [אגר"מ] ז"ל שפסק דאסור אפי' לקנות היבא דידיעין שיש שם בהמה שדקרו צלעותיה לכן בעת שנתברר במדינה זו שהוא שכיח מאד לכאורה יש לחוש אפי' בסתמא וכו' עב"ל. ולפי מה שבררתי לא נראה כדברי המשנה הלכות, וא"צ לחוש לזה בסתמא. ועל המחמירים להביא ראיה שהמצב בכל המדינה הוא של *איסור*, ואינו מצב של ספק.

¹⁹ USDA NASS 2017 Census of Agriculture. (All statistics quoted from 2017 are from this report.)

²⁰ For example, in 1990 New York State had 11,000 dairy farms and 700,000 dairy cows. Today NYS has 630,000 dairy cows on only 3,900 farms. In 1997 there were 20 farms in NYS with 1,000+ cows. By 2012, there were more than 100 [+500%].

²¹ This is clearly demonstrated when one examines the data on farms in the western region of the USA. California, the largest dairy producing state in the USA, is the "king" of large dairy farms. It has 884 large farms and 395

This means that the total amount of cows [with DA] that remained on the large farms, on average, seem to be below ששים (1.3%).

I attempted to corroborate the finding in the report. A dairy expert at Cornell [who has much experience with large dairy farms] told me that indeed “most large herds in NYS have a DA prevalence rate well below 2%”. He explained that this is due to management. Large farms have greater resources and the ability to specifically tailor feed to each cow. (Other dairy experts, around the USA, have also confirmed this trend in their locations.)

Likewise, a veterinarian in Minnesota sent me his numbers for 4 large dairies he services (2,300-9,000 cow). Three of them of them were under 1%. The vet told me (from personal experience) that the low prevalence rate was simply because large farms underdiagnose their DA’s. (While under-diagnosing is to the detriment of the cows, it is not a problem from a *treifah* aspect, for (as mentioned above) the disease itself does not render the animal a *treifah*.)

Another reason that apparently accounts for the low incidence on large farms is simply lack of record. Since some large farms automatically²² cull cows with DAs, they do not record them as such. (The DA is recorded as “sold for beef” or “other”.)

I was able to contact around 60 large farms myself²³. Many of those farms had especially low percentages.²⁴ Examples of percentages from large farms: 1.6%, 1.5%, 0.8%, 0.6%, 0.5%, 0.3%, 0.1%. Of those farms, however, 16 had prevalence above 1.6%.

Although large farms represented only 8.5% of total dairy farms in the USA in 2017, they accounted for 68% of the milk sales in the USA. The other 91.5% of dairy farms accounted for the remaining 32%. If, as it appears, large farms usually have a low percentage of DA’s (under 1.6%) and that they produce most of the milk in the USA, while opining that we should go after the

small/medium farms. The 884 large farms have an **average herd size of 1,000+ cows**, and produced 94% of CA’s milk. The 2014 USDA report (quoted above) put the prevalence of DA in the western region (CA,CO,ID,TX,WA) at 0.6%. (This rate was calculated based on the total amount of cows surveyed in the western region, 42 large farms and 8 small/medium farms were surveyed.) Based on this, however, the eastern region (IN,IO,KY,MI,MN,MO,NY,OH,PA,VT,VA,WI) had a 3% prevalence rate for large farms. While this is much above 1.6%, my point in quoting the USDA report is just as a starting point to illustrate that the prevalence of large farms is seemingly lower than the small/medium farms.

²² In 2017 Utah had over 40 large dairy farms (the state total of all farms is approximately 250). A dairy expert from Utah who has been on about ¼ of the states farms told me the following: “Very few large farms that I am familiar with have done any DA surgeries for the past 10 years or so. Cows diagnosed with a DA simply leave on the next beef truck. When beef prices went up to where one or a couple of cull cows could buy a springer (cow close to calving), most large dairies went that route with ambulatory, metabolic-disease cows.”

²³ 1.7% of large farms in the USA (based on 2017).

²⁴ I wrote earlier that I contacted farms that had under 1.6% or no DAs at all. This included many farms that are categorized as small/medium. What I am pointing out here is that large farms seem to have a **particularly** low percentages, as indicated by the USDA in 2014. For the sake of the argument here, I am assuming that small/medium farms are more prone to DA’s than large farms.

majority and deem all milk kosher may be *halachically* debatable²⁵, it definitely should at least qualify as a *safek*.

Different States in the USA

Although the amount of milk that large farms produce nationally is 68%, this varies from state to state. 57% of milk sales in NYS are from large farms, and over 90% in California. In Pennsylvania, however, 80% of milk sales come from small/medium farms.²⁶

Even if we assume that small/medium farms have a higher percentage of DA's (see footnote 15), this would not render the milk from a state producing most of their milk from small/medium farms (i.e. Pennsylvania) to have *halachic* issue of DA's. The reason: Milk produced in one state is not confined to that states border. Very often milk travels from state to state.

Example #1: Around 10% of milk produced on farms in New York State in 2018²⁷ was shipped to New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut) to be processed and bottled. Pennsylvania also received around 10%, with another 2% going to various other states.²⁸ This means that more than 20% of milk produced on [1,000+] NYS farms gets shipped out-of-state. In turn, NYS receives 5% of its milk from other states, such as Vermont and Pennsylvania.²⁹

Example #2: Many states (such as Virginia & Maryland) are dairy deficient. This means that the farms in those states do not produce enough milk to provide for all their citizens (per-capita³⁰). Much of the southeastern³¹ region of the USA is dairy deficient as well. In contrast, New York produces enough milk per-capita, while Vermont and Wisconsin produce more than 6

²⁵ It can also be debated from a factual aspect, inasmuch as my survey of large farms was only a small sample size. The USDA report, as well, was only on 3% of large farms. Also, as noted above, the eastern region of the US had a higher prevalence rate for large farms.

²⁶ The reason for this is simple. The western region of the USA has more large farms and less small/medium farms than the eastern region USA. California's has more than double the number of large farms (884) than small/medium farms (395). In NYS, there are 283 large farms and 3,493 small/medium farms. The large farms account for 57% of milk sales. In Pennsylvania, however, there are 86 large dairy farms and 5,962 small/medium farms. The small/medium farms account for 82% of milk sales in PA.

²⁷ New York State Dairy Statistics 2018. See Tables 1,9,10,12,14.

²⁸ I contacted the NYS Department of Agriculture and was able to obtain information regarding which specific states received milk from New York State farms in 2018, and the amount they received. In addition to Canada, nineteen states received milk from NYS farms. Milk was shipped as far as Wisconsin and Alabama.

²⁹ It should be noted that neighboring states milk is more frequently found at dairy plants that are in closer proximity. For example, Vermont's milk would be more commonly found in dairy plants located in northeast NYS, as opposed to western NYS.

³⁰ In 2018 this was 646 pounds per capita.

³¹ All states in the southeast did not produce enough milk per-capita in 2018. Kentucky, which produced the most of those states, produced only 220 pounds. (Indiana exports 40% of their milk, mainly to the southeast.)

times the amount of milk required. The states that are dairy deficient must import milk from other states. This clearly illustrates that milk is not confined to the state border it was milked in.

There are other considerations that causes milk to travel from one state to another. While ideally a trucker looks to deliver the milk it picks up to a local processing plant, if the processing plant is at full capacity, the truck will go to another plant, even if that requires driving a long distance³².

Accordingly, to evaluate each state independently by the amount of milk produced by large farms [which we are assuming don't have *treifos* issues] as opposed to small/medium farms [which we are assuming are more prone to *treifos* issues] is not an accurate portrayal of how milk is actually produced and bottled in the United States.

This seems to be another compelling reason to classify the milk in any given bottle [in any state] as a ספק דרבנן.

אם אפשר לברר

Rabbi Bleich and others (quoted above) write that even if there is a possibility that DA prevalence rate is under 1.6%, this does not qualify as a *safek*. Since one can readily determine which animals underwent the procedures, one must expend the effort. Based on this they prohibited *Chalav Stam*.

I do not understand what they are referring to. This is only possible where a farm produces and bottles their own milk, which is rare, as most milk is not sold from individual farms. It also is relevant when a kosher company seeks to enlist a dairy farm to provide them with milk. There it is possible to determine the number of cows that have *treifos* issues (if the owner of the farm allows the person to examine his herd or health records).

In general, however, it is nearly impossible to determine the percentage of cows that are *treifos* in any given dairy product. In order to demonstrate this, I will briefly explain the dairy process in the USA, and how milk makes its way to the store shelf:

Most milk that is sold does not come directly from the farms. Most farmers send their milk to a processing plant, where it is packaged and distributed to the stores. Most farmers³³ belong to institutions known as dairy co-ops. This is basically a partnership between farms and dairy plants, where they are all joint owners. The farmers provide the milk and the plants process it. The co-ops send the milk where it is needed. This ensures a guaranteed market for the dairy farms.

After the cows are milked, the milk is stored in the farms bulk tank. A milk truck comes and transports the milk to the processing plant. The average truck holds 7-8,000 gallons of milk.

³² The owner of a large milk trucking company (150+ trucks) in Idaho told me: "Idaho has a surplus of milk, and the surplus is shipped wherever it is needed, to Minnesota, Wisconsin, Texas, California, Utah, Arizona, Colorado, Nebraska, Washington and Oregon. It has been sent as far as New York (2,500 miles)."

³³ In 2018 more than 80% of farmers belonged to a cooperative. (There are, however, many farms that ship their milk independently to processors.)

Each truck can be filled up from any number of farms. Sometimes the farm (due to its size) has enough milk to completely fill the truck. Other times, however, trucks go to multiple farms to pick up milk. In such instances, when the trucks arrive at the processing plant, they are bringing milk that was sourced at numerous farms.

When the trucks arrive at the plants, they deposit the milk into large silos. The silos hold on average 50,000-gallon. That means that each silo can have about five trucks worth of milk. This in turn makes it possible that there are fifty different farms worth of milk in each silo. Large plants have numerous such silos, such that if there are ten silos, they *potentially* can have five hundred different farms milk in them.

At the plant, the milk is processed, bottled, and distributed to stores. Milk bottles have codes that indicate what state & bottling plant it was processed in. One can only source a bottle of milk to the processing plant, not to each specific farm. Although the plant would have records of which trucks delivered milk, and the trucks, in turn, have records of all the dairy farms they visited, it is not something that they provide if asked, as it's considered propriety information. (I personally tried numerous times.)³⁴

I would like to provide 5 examples illustrating this point:

Example #1: Tuscan Dairy Farms & Garelick Farms are both subsidiaries of Dean Foods (the largest dairy company in the USA). Dean does not own dairy farms; they receive their milk from a variety of sources. A significant amount³⁵ of their milk comes from "Dairy Farmers of America" (DFA). DFA is the largest dairy co-op in the USA and has the most milk production³⁶. DFA has over 700 dairy farm members in New York and Pennsylvania alone. All of those farms can potentially provide the milk to Tuscan & Garelick. One can only trace his milk to the Tuscan & Garelick processing plants. It is not possible, however, to find out which farm was the source. It could come from one of DFA's hundreds of dairy farms, or possibly a different co-op that also sells to Dean.

Approximately fifteen of the farms that I contacted told me that they belong to DFA. Of those farms, only four were had issues of *treifos*³⁷. This is a clear demonstration of the *safek*, as

³⁴ In fact, it is virtually impossible for the processing plant themselves to determine which farm provided milk for any given bottle. This is clearly demonstrated when there is a recall due to contamination. If one farm has milk contamination, all milk [even those of other farms] processed on the same day as the contaminated farms milk is recalled. This is because it's extraordinarily difficult to pinpoint which farms milk is in which bottle. One expert told me that the most one can determine is that a mix of 10 specific farms could have contributed to a bottle of milk. To determine the exact farm that provided the milk, however, is impossible. (This recall complication causes tremendous amounts of unnecessary losses. IBM is developing blockchain technology to be able to trace the milk back to the farm to prevent the losses, another proof that traceability to the source farm is currently unfeasible.)

³⁵ Dean gets 60% of their milk from DFA. (In 2020 DFA purchased Dean and all their assets.)

³⁶ In 2018, 8,019 farms that were part of DFA [20% of USA farms] produced 23% of USA milk total.

³⁷ From the remaining 11, 4 had שישם, and the other 7 either had no DAs or culled.

all those farms potentially can ship milk to Dean dairy plants. Since any bottle of milk from Dean can come from these farms and it cannot be traced, it is a ספק דרבנן.

Example #2: Prairie Farms³⁸, is sold in MN, WI, NE, IA, IL, MI, IN, OH, KS, MO, KY, TN, MS, AR, OK, TX. It is sourced from 800+ farms throughout the Midwest. Prairie would not disclose which farms send them milk. I was able to contact a few farms that sell their milk to Prairie Farms. They all did not have issues of *treifos*.³⁹

Example #3: Land O' Lakes⁴⁰, the third largest dairy co-op in the USA, represents more than 1,700 farms. Hershey's, for example, receives milk from dozens of farms, some of which belong to Land O' Lakes members. Approximately eight of the farms that I contacted are part of Land O' Lakes. Only three of them had issues of *treifos*.

Example #4: In Brooklyn, a common brand of milk is "Rollin Dairy". They private-label milk from the Clover Farms Dairy. Clover Farms Dairy, the largest single independent milk processing plant in Pennsylvania, gets their milk from 170 different local farms in PA. I tried to contact them numerous times to find out which farms they source from and they did not respond.

Example #5: The Northwest Dairy Association⁴¹ (NDA), is the fifth largest dairy cooperative in the United States (based on milk volume). The co-op produces a total of 8.9 billion pounds of milk from farms in Washington, Oregon, Idaho, Northern California, Montana, and Utah. It is owned by nearly 450 dairy producers (25% of the total farms in those states). Idaho is home to 68 of those farms (Idaho NDA members ship nearly one-quarter of the total milk supply). Its marketing and processing subsidiary, Darigold, produces a full line of dairy-based products. Darigold operates 11 processing plants throughout the Northwest — including three in Idaho in Boise, Jerome, and Caldwell — to serve its dairy farmers. They would not provide any information as to the identity of those farms. One of farms that I was in contact with is part of NDA. That farm had no *treifos* issues.

המסקנא

To conclude, when one purchases milk and other dairy products, it is impossible to determine which farm was its source. This being the case, it would be permitted because ספק דרבנן לקולא. The milk is מותר לבנו"ע at least בדיעבד, so that if one finds himself with no other milk

³⁸ In 2018, 882 farms that were part of Prairie Farms produced 1.3% of USA milk total.

³⁹ One farm (1,300+ cows), which only has 0.7% prevalence, culls those cows with DA. Another farm, working with a nutritionist, hasn't had a DA in 3 years. A third farm, which has a 1.3% prevalence, operates in a way which does not render the animal a *treifah*. A fourth farm (which doesn't keep records on DA) culls due to financial considerations.

⁴⁰ In 2018, 1,851 farms that were part of Land O' Lakes produced 4% of USA milk total.

⁴¹ In 2018, 402 farms that were part of NDA produced 6% of USA milk total.

options, one can definitely purchase *Chalav Stam* milk products⁴². Additionally, it seems that that one can purchase *Chalav Stam* even when one can purchase *Chalav Yisrael* for the same price & convenience.⁴³

⁴² Based on the above it appears that, at the time of the controversy, the *Chalav Stam* consumer had a considerable advantage over those who strictly consumed *Chalav Yisrael*. When the controversy arose, the *Chalav Yisrael* farms [knowing which farms they sourced their milk from] determined that there wasn't ששים against the number of *treifah* cows. Those *Rabbanim* who permitted the milk & cheeses (and did not require הגעלת כלים) did so only בדיעבד, considering that many of the permissive reasons advanced are not accepted לכתחילה. This is in contrast to *Chalav Stam* which, as demonstrated, was not traceable to its source farm and is לקולא.

⁴³ ולא אמרי' שהקנייה נחשב לכתחילה וספק דרבנן אסור לכתחילה, דהסכמת הפוסקים הוא דקנייה הוי בדיעבד.