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Kosher - But Not Quite

The Torah provides clear criteria for determining which animals are kosher and permitted for consumption. An animal must be of a kosher species and must be properly slaughtered in accordance with the laws of *shechitah*. However, even if both of these conditions are met, there are still cases in which the animal may not be eaten.

How so? When the kosher animal is a *treifa*—an animal afflicted with a physical defect that renders it *halachically* terminal.

The Torah forbids the consumption of an animal that is a *treifa*. The Mishnah (*Chullin*, Chapter 3) enumerates eighteen categories of such defects. These include conditions such as a punctured esophagus or a severed trachea, and others that would prevent the animal from surviving for an extended period—specifically, for a year. It is irrelevant whether the defect was sustained through external trauma, such as an animal attack, or whether it was present from birth. In either case, the animal is rendered non-kosher—even if it is from a kosher species and even if it is properly slaughtered.

THE STATUS OF HIND-LEG INJURIES

The Mishnah and Gemara (*Chullin* 76a) discuss *treifa* defects located in the hindlegs of an animal. The Gemara makes a distinction based on the location of the injury: if the injury is below a certain joint,

the animal is deemed capable of surviving and thus remains kosher when slaughtered; if the injury is above that joint, the animal is considered terminal and is therefore classified as a *treifa*. The precise joint being referred to is a matter debated in the Gemara.

As well, they discuss the permissibility of an animal when its sinews are severed.

The Gemara reaches an odd conclusion that it finds unattainable. It seems that if the shank bone is severed at the bottom the animal is *treifa* but if it's severed higher up it is still kosher. The Gemara answers: There is no comparing different types of defects.

Therefore, in one place when it's severed it will be considered incapable of surviving and therefore a *treifa*, while in another place – even if we consider it a more precarious location – we assume it can survive and is kosher for slaughtering.

RAMBAN

The Rosh cites the view of the Ramban, who learns from this Gemara a novel *halachic* conclusion: there are situations in which an animal's leg may be amputated in a manner that renders it a *treifa*, yet if it is then amputated *again* from a point *higher* up on the limb, this second amputation can restore its kosher status. According to the Ramban, the initial defect is thereby corrected, and the animal becomes fit for slaughter.



However, the Rosh and other Rishonim dispute this conclusion. In their view, once an animal is rendered a *treifa*, it cannot revert to being kosher, regardless of any subsequent procedures.

POTENTIAL PROOF

The *achronim* try and find proofs for and against the Ramban.

The Mishnah (*Baba Kama* 41a) discuss the details of an ox that kills a human. An ox that kills is liable to be put to death (stoning) after its first fatal goring. However, an ox becomes classified as *mu'ad*—a habitual killer—only after it has gored three times, at which point its owner becomes financially liable for future damage.

The Gemara raises an obvious question: how could an ox ever reach the status of *mu'ad*, if it is put to death after its first killing?

The Amudei Ohr (*Siman* 48) asks why the Gemara does not use the Ramban's view to construct a hypothetical case. Rav Ashi rules that an animal that is a *treifa* that kills is not

liable to be put to death just like a human who is a *treifa* and kills would not be liable to be put to death (*Sanhedrin* 78a). According to the Ramban, an animal that is a *treifa* can, in certain cases, become non-*treifa* through a second amputation. Theoretically, then, the ox could have been a *treifa* at the time of its first three killings—thus exempt from execution, as per the ruling of Rav Ashi—and then have undergone a *second* amputation that restored its kosher status, making it subject to the *halachah* that an ox that kills is liable to be put to death (stoning), which in this scenario will only occur after its fourth fatal goring.

Why, then, does the Gemara not propose this scenario?

Fascinatingly, Rav Shlomo Heiman (*Chulin siman* 11) offers two different answers! He writes that he was delighted to discover that the first answer was also written by Rav Chaim Ozer Grodzinski in *Achiezer* (*Siman* 12). Rav Shlomo then writes that when he discussed his second answer with Rav Chaim Ozer, Rav Chaim Ozer agreed! Rav Heiman refers to that second approach as a wonderfully great *chidush* (חדוש גדול ונפלא).

ANSWER ONE

Both answers will differentiate between the *halachos* of *treifos* regarding what has a kosher status and the *halachos* of capital punishment.

The first approach is that even though the animal may be considered a *treifa* for purposes of kashrus, if its condition is potentially correctable through a second amputation, it is not considered a *treifa* in the context of liability for execution.

The logic is as follows: a *treifa*—whether human or animal—is *halachically* regarded as already dead, and thus not subject to execution (*Sanhedrin* 78a). However, if the condition is reversible (through a *second* amputation), the status of *treifa* does not take effect for purposes of capital law. Therefore, the ox would be liable for execution even after its first kill, making it impossible for it to reach the status of *mu'ad*, and hence the Gemara did not entertain the Ramban's scenario.

Regarding the classification of *treifos*, we cited the Gemara, “There is no comparing different types of

defects.” The laws of *treifos* are Halachah LiMoshe MiSinai. And therefore, an animal that can potentially be healed can still have the *treifa*-status, right now.

ANSWER TWO

Rav Shlomo Heiman in his second answer reaches an opposite conclusion!

He explains that although the Ramban ruled that when the second amputation occurs it will rectify the *treifa* status and return the animal to being kosher, the Ramban did not mean that the animal would be considered healthy and can now survive for more than a year. The Ramban only meant that the animal—after the second amputation—is no longer a *treifa* but in the category of a *goses* or “close to death *מסוכנת*” which does not have the *treifa* status.

The Mishnah in *Chullin* (37a) teaches that a non-*treifa* animal that is terminally ill may still be slaughtered and eaten. The Ramban maintains that this is the category into which the animal falls after the second amputation—it is no longer a *treifa*, but a *goses*.

However, there is a crucial distinction when it comes to capital punishment. The Gemara (*Sanhedrin* 78a) rules that a *goses bidei adam*—one who becomes mortally ill through human intervention—is equated with a *treifa* and is therefore exempt from execution. Since the second amputation is performed by human hands, the animal is now a *goses bidei adam* and retains the *halachic* exemption from the death penalty.

According to this approach, then, the scenario offered by the Ramban would not help the Gemara's question. Even after the fourth killing, the animal would still be exempt from execution due to its *goses* status.

ADDITION

The Gemara stated: There is no comparing different types of defects. This was within the *halachos* of what is a defect and what is not.

Rav Shlomo Heiman noted that according to the Ramban, that an animal rendered non-kosher due to a defect, may regain its kosher status through further amputation, there is no comparing the *halachos* of defects and the *halachos* of capital punishment. [The specific distinction can result in different conclusions.]

ה' שלמה היימן

R' Shlomo Heiman (1892-17 Kislev 1944) was born in Paritsh near Minsk and became known as the *illuy* of Paritsh. He was a close *talmid* of R' Baruch Ber Leibowitz who said upon him, “All of my mother's birth-pains were worth producing a *talmid* like you.” In 1918 he married the daughter of R' Avraham Rudensky of Volozhin (whose other daughters married R' Simchah Zissel Riger, R' Eliezer Yitzchak Berman of Kremenchuk, and R' Nechemia ABD of Boitzlov). In 1923 he became a Rebbe in Baronovitch, and in 1927, at the request of R' Chaim Ozer he became the Rosh Yeshivah of Ramailles in Vilna. In 1935 he arrived in Torah Vadaas.

ר' חיים עוזר גרוזזנסקי

R' Chaim Ozer Grodzinsky was born in 1863 in Ivey, a small town near Vilna where his father (a *talmid* of Rav Yisrael Salanter) was Rav for forty years, preceded by his grandfather who had also served as Rav there for forty years, Rav Chaim Ozer was gifted with an infallible memory - never experiencing “forgetting,” as he himself remarked, until his old age. He was a star student of Reb Chaim Brisker. He married the daughter of the Vilna dayan, Reb Lazer, son-in-law of Reb Yisrael Salanter at the age of 20. Two years later, he became a *dayan* in Vilna, and unofficial Rav of Vilna for the next 55 years. His only child, Malka, passed away at 20 years old.