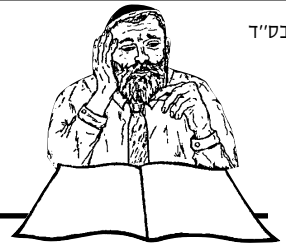


THE Daf HaKASHRUS



A MONTHLY NEWSLETTER FOR THE  RABBINIC FIELD REPRESENTATIVE

DAF NOTES: On May 2nd of this year a historic ASK[®] conference took place concerning the Mesorah of Kosher Birds and Animals. At the conference a sourcebook was distributed which detailed the various Halachic opinions concerning the Kashruth of numerous questionable birds and animals. This sourcebook is available free of charge by contacting Avigail Klein at 212-613-8279 or email kleina@ou.org.

The Daf HaKashrus is pleased to reprint at this time the following [©] Document B-65 which appears in *The Mesorah of Kosher Birds and Animals Sourcebook* on page 3. In it Rabbi Dovid Cohen compiles the Halachic underpinnings of the OU's position on the Kashruth of various birds based on Teshuvos from Rav Yisroel Belsky and Rav Hershel Schachter. Based on this compilation a future issue of *The Daf* will BS"D detail in a "Halachic Highlights" column the Kashruth status of specific birds. Rav Schachter's Teshuva will appear in that issue as well.

TRANSFERRING MESORAH OF BIRDS

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COMPILED BY RABBI DOVID COHEN



In order to transfer a *mesorah* from one community to another that a specific bird is kosher, the following issues must be considered:

1. Should one follow *Shulchan Aruch* or *Shach* as relates to accepting a *mesorah* from another community?

Rashba says that a community that doesn't eat a specific bird cannot begin eating it based on another community's *mesorah* that it is kosher. *Rosh* says that one community may eat based on another community's *mesorah*. *Shulchan Aruch* 82:5 cites both opinions, understands that these *Rishonim* disagree, and rules that one should be *machmir*. *Shach* 82:11 argues that *Rosh* and *Rashba* agree that a community with no known *mesorah* may begin eating a bird based on another community's *mesorah* (and offers a different explanation for *Rashba*).¹

2. Which type of person, if any, is qualified to testify that a specific bird is kosher?

Shulchan Aruch 82:2 rules that one may only accept testimony that a specific bird is kosher from one who is both a *chacham* and a *baki*. *Chochmas Adam* 36:9 and others² say that there isn't anyone around nowadays who meets this qualification, which would appear to limit the menu of kosher birds to those well known to be kosher. However, in a different context, *Darchoi Teshuvah* cites examples of relatively recent *Poskim* who considered accepting a *mesorah* from another community. Related questions are

whether there are specific requirements for the size or stature of the community giving the *mesorah*,³ whether the *mesorah* must be transferred in person or can be done in writing etc.,⁴ and what to do if there is a contradiction.⁵

3. Can one accept a *mesorah* if it may be based on a *psak* that our community doesn't accept?

In most cases, the people with a *mesorah* that a bird is kosher, don't remember exactly who established that *mesorah* and what *psikei halacha* (if any) were involved in that decision. [Some examples are cited below]. If so, can people from another community accept their *mesorah* if it may have been based on one of the many positions that aren't generally accepted (or aren't accepted in the "new" community)? *Darchoi Teshuvah* 82:36 cites *Tzemach Tzedek* who is *machmir* on this issue and *Beis Yitzchok* and *Maharam Schick* who are lenient.⁶

Although the lenient position seems implicit in *Shulchan Aruch/Shach* cited above and other discussions in the *Poskim* regarding transferring of *mesorah*, *Beis Yosef* cites *Rosh*⁷ (i.e. the lenient opinion in #1 above) who is wary of accepting another community's *mesorah* and recommends investigating the source of a *mesorah* because it may have been improperly established.

The following examples highlight this issue:⁸

- Shulchan Aruch* 82:3 rules that any bird with a wide beak and webbed feet may be eaten since it cannot (physically) be a *dores*; *Rema* is *machmir*.⁹ Thus, any *mesorah* on such a bird from a Sephardic community may be based on a position that Ashkenazim don't accept.
- Rema*¹⁰ rules that one can only eat a bird which has a *mesorah*. *Maharshal* and *Pri Chadash*¹¹ argue that a bird with 3 *simanei kashrus* can be eaten even if there is no *mesorah* and even if there is no proof that it isn't a *dores*. Others say that after a "long" time of observing a bird, one can establish that it isn't a *dores*.¹² Others, suggest that one can rely on *שכן ונדמה* to permit a bird without a *mesorah*, even though *Rambam*, *Shulchan Aruch* and the other *Poskim* don't record this.¹³ A community that accepted any of these opinions, might "create a *mesorah*" that a bird is kosher, where no *mesorah* truly exists.
- Gemara*, *Bechoros* 7a says that kosher and non-kosher animals cannot interbreed and produce viable offspring. As such, an animal of questionable kosher status that successfully breeds with a kosher animal can be assumed to be kosher. *Avnei Nezer* and *Chasam Sofer*¹⁴ disagree as to whether the same rule applies to birds. Furthermore, assuming kosher and non-kosher birds can interbreed, the *Acharonim* debate whether the offspring should be permitted based on the principle of *zeh v'zeh gorem*.¹⁵ A community that is *machmir* on both of these points, wouldn't want to eat birds whose *mesorah* is based on either of these lines of reasoning.

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BIRDS

continued from page 3

Darchei Teshuvah cites quite a number of different standards that were used to decide if a bird is similar enough to a known kosher bird, that no specific *mesorah* is required for the “new” bird (see the footnote).¹⁶ Maybe the community presenting the “*mesorah*” actually began eating this type of bird based on an erroneous decision that it is an innocuous variation of a kosher bird?

Due to the issues noted above, the OU will not certify birds as kosher based on the testimony of individuals that those birds are or were eaten in their communities. Rather, the OU will only certify those birds that have been eaten as kosher in the United States for generations.

ביסוד אני מסכים לכל הנ"ל וכן אחזנו פה, אולם כמוכב, באופנים בודדים יתכן להוסיף על רשימת המינים הנהוגים פה אחרי בירור יסודי לשלול כל צד שאלה וספק ואחרי עיון ארוך ומספיק, ובלבד אחרי שקלא וטריא עם פוסקים וגופים המקובלים על רוב ישראל.

ג' ניסן תשס"ד לפ"ק
ישראל הלוי בעלסקי

¹ Iggeros Moshe Y.D. I:34 cites a number of other Acharonim who accept Shach's ruling, and Iggeros Moshe seems to personally favor this approach as well. See also Pri Megadim S.D. 82:11, who lists four situations regarding the transfer of *mesorah*, and Chochmas Adam 36:8-9.

² See Responsa Mahari 95 cited in Pri Megadim S.D. 82:1, and see Responsa Rosh cited below.

³ See Darchei Teshuvah 82:37.

⁴ See Darchei Teshuvah 82:34 and Iggeros Moshe Y.D. I:34.

⁵ See Darchei Teshuvah 82:34 & 40 and Responsa Rosh cited below.

⁶ Beis Yitzchok is cited as holding that one can be lenient based on a *sfek sfekah*—*safek* if that community's *mesorah* is based on the debatable *psak*

and *safek* if their *psak* may be correct. Maharam Schick is cited as holding that there is no need to be concerned that the other community based themselves on a debatable/incorrect opinion. See also Karnei Chagavim (Rav Chaim Kanievsky) Chapter 7 who discusses a similar question regarding *mesorah* on grasshoppers.

⁷ Beis Yosef (82 page 129a) citing Responsa Rosh 20:20; both of these are referenced in Chochmas Adam 36:9.

⁸ In addition to the examples cited in the text, Darchei Teshuvah in Siman 82 discusses many debates regarding the status of many “new” birds. Communities that followed the “lenient” Rav presumably began eating the “new” bird.

⁹ See Darchei Teshuvah 82:18 & 23 who cites Poskim who discuss these opinions.

¹⁰ Rema 82:3 (and, to a lesser extent, Shulchan Aruch 82:2).

¹¹ Maharshal is cited in Shach 82:8 (who disagrees); Pri Chadash is cited in Darchei Teshuvah 82:24. See also Chochmas Adam 36:6 citing Tzemach Tzedek and Kraisi U'plaisi.

¹² See Darchei Teshuvah 82:26.

¹³ See Darchei Teshuvah 82:32 (based on Gemara, Chullin 65a).

¹⁴ Avnei Nezer Y.D. I:75 and Chasam Sofer Y.D. 74.

¹⁵ See Darchei Teshuvah 82:4 & 30, Avnei Nezer and Chasam Sofer *ibid*.

¹⁶ Darchei Teshuvah cites debates regarding the following similarities or differences—birds that hide from people, look or act similarly (82:5); different colored beak (82:6); “small” differences, overall size, one limb that is the wrong size (82:24 & 27); different in many ways (82:26); interacts nicely with kosher birds (82:30); redder, no feathers on neck, longer neck, feathers that stand erect (82:33); feathers on legs, long legs, acts differently, deeper voice (82:34); blacker legs (82:35).

In this context it is noteworthy that Gemara, Chullin 62a notes that the kosher status of *טונית* birds depend on whether they are white, green or black. Similarly, Gemara, Chullin 63a rules that the *שקיטנא* bird's status depends on whether it is wide hipped, short, red and/or green.

KASHRUTH alert!

SHOP RITE ROUND TORTILLA CHIPS (14.5 oz) produced by Wakefern Food Corp., Elizabeth, NJ are kosher certified by the Orthodox Union. During manufacture, several cases of non-certified chips were erroneously packed into the Round Tortilla bags. The non-certified product can be identified by its triangular shape, distinctive orange color, and date code of 18OCT04 Y2E2. Affected product has been withdrawn from the marketplace.

The Vaad Ha'ir of Winnipeg seeks an energetic Orthodox Rabbi to serve as the Senior Rabbinic Administrator of its Kashruth Department.

A minimum of three years of field and administrative experience as well as commercial Kashruth supervision is required. Interested candidates are invited to send a resume or letter of interest to

Vaad Ha'ir of Winnipeg, Inc.

C306-123 Doncaster St., Winnipeg, MB R3N 2B2 Canada

Fax: 204-477-7405, E-mail: wkvaad@mts.net

MAZAL TOV TO ...

RABBI MENACHEM GENACK, the OU Kashruth Dept.'s Rabbinic Administrator, AND HIS WIFE on the birth of twin grandchildren, Akiva Nochum and Shoshana Avital, and for Akiva Nochum's Bris. Best mazal tov wishes as well to the parents Rabbi and Mrs. Donny Besser.

our dedicated administrative assistant AVIVA SABOV AND HER HUSBAND on the birth of their daughter, Shayna Tzirel Eitel.

our devoted RFR in upstate NY RABBI MOSHE HEIMOWITZ AND HIS WIFE on the marriage of their daughter Chani to Gedalia Goldstein of Philadelphia, PA.

our dedicated RFR in Seattle, WA RABBI YITZCHOK GALLOR AND HIS WIFE on the engagement of their daughter Chanah Soroh to Moshe Steinberg, the grandson of the late devoted © RFR, Rabbi Aharon Steinberg Z"l.

בואכם לשלום...

to RABBI SHAUL GOLD, the Rabbi of the Young Israel of Ave. U in Brooklyn, NY who is joining the OU's Kashruth Dept. as an RC. Rabbi Gold is a Talmid of Telz Cleveland, Mir Yerushalayim as well as Mir Brooklyn from where he received Semicha. He was a Rebbi for many years at HANC, Magen David Yeshiva and Yeshiva Ritzahd. Rabbi Gold can be reached at 212-613-8207, email golds@ou.org. We wish Rabbi Gold much success at OU Kashruth.