

Studies in Halakhah
and Rabbinic History



Rabbi Eitam Henkin

STUDIES IN
HALAKHAH
AND
RABBINIC
HISTORY

Edited by
Chana Henkin

In collaboration with
Rabbi Dr. Eliezer Brodt

Maggid Books

Rabbi Eitam Henkin, *Hy"d*
Studies in Halakhah and Rabbinic History

First Edition, 2021

Maggid Books
An imprint of Koren Publishers Jerusalem Ltd.

POB 8531, New Milford, CT 06776-8531, USA
& POB 4044, Jerusalem 9104001, Israel
www.maggidbooks.com

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The publication of this book was made possible
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ISBN 978-1-59264-581-7, *hardcover*

Printed and bound in the United States

We are humbled and privileged to be partners in spreading the Torah and scholarship of Rav Eitam Henkin Hy”d.

Nicole and Raanan Agus and family
New York and Jerusalem

2021



*May the Torah in this volume
be a source of comfort to the family of
Rav Eitam and Naama Hy”d,
and of light and strength to all those privileged to study it.*

Pamela and George Rohr

Dedicated in memory of
Rabbi Eitam and Naama Henkin H"yd

&

Rabbi Yehuda Henkin ztz"l

*It is an honor and privilege
to support the continuation of their good work for future generations,
may their memory be a blessing.*

And יבדל"א in honor of

Rabbanit Chana Henkin

*whom we are proud to partner with in her remarkable vision
and appreciate our warm friendship.*

Jay and Jeanie Schottenstein

Joey and Lindsay

Jonathan and Nicole

Jeffrey

†

*The remarkable legacy of Rav Eitam and Naama Henkin
will be a light unto the world
through the publication of his writings contained in*
“STUDIES IN HALAKHAH AND RABBINIC HISTORY.”

May their memories be a blessing and comfort to all.

Amy & Bob Book

Other Books Authored by R. Eitam Henkin Hy"ד

Lakhem Yihyeh L'Okhlah, Kiryat Arba, 2011.

L'Hakot Shoresh (co-author: R. Avraham Wasserman), Jerusalem, 2012.

Esh Tamid: Hilkhoh Shabbat; H'Idushim U'Be'urei Dinim al Seder Shulḥan Arukh U'Mishnah Berurah, Jerusalem, 2015.

Ta'arokh Lefanai Shulḥan, Jerusalem, 2019.

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Editor's Preface

This book contains a sampling of our son's halakhic and historical works. He began publishing in rabbinic journals at age twenty-one. At that point, he was married, with his first child on the way. In the ensuing decade until his death, he published more than forty articles and three books. Another book and some ten articles were published posthumously from material found on his computer, with additional material presently in various stages of preparation for publication. His works were published in a uniquely diverse range of venues, from the ḥasidic *Bet Aharon V'Yisrael* of Karlin-Stolin, to *Yeshurun*, *Yerushatenu* and *Ḥitzei Giborim*, *HaMa'ayan*, *Ḥakirah*, *Alonei Mamreh*, *Teḥumin*, *Emunat Itekha*, *Tzohar*, *Akdamot*, and *Tziyon* of The Historical Society of Israel.

The idea for the present volume came from R. Moshe Rosenberg and R. Elli Fischer. Shortly after our family arose from *shivah*, R. Rosenberg requested our permission to organize volunteer translators from among those who had followed our son's works and now sought an appropriate response to our son R. Eitam's and our daughter-in-law Naama's deaths *Hy"d* at the hands of murderous foes of Israel. Our family expresses deep appreciation to Rabbis Rosenberg and Fischer and the other translators. In particular, I must mention Michael Appel, who was responsible for, and did marvelous work on, no fewer than seven chapters of this book. We felt that the inconsistencies in style resulting from the work of different translators were a small price to pay for this expression of the solidarity of *Am Yisrael*. I ask the translators' forgiveness for the liberties I took in editing their work. I ask my son's forgiveness, and take sole responsibility, for any errors in the text.

Thanks to a teenage prank, two of our children were able to unlock our son's computer following *shivah*. Years earlier, he and a friend had scaled an abandoned water tower, the tallest structure in our neighborhood, upon which they hung a sheet painted with the *gematria*, numerical equivalent, of their names. Our daughter Taama and our son Yagil guessed correctly that that would have been their brother's code. They found meticulously organized files of Torah writings in various stages of completion, including *ḥiddushim* on four sections of *Shulḥan Arukh*.

Two of our son's friends, R. Shmaryah Gershuni and Oz Bluman, together with our son Dr. Yagil Henkin, catalogued the files. In addition, Nomi Englard-Schaffer and Hannah Spellman assisted in organizing the files. My late husband *ztz"l* carefully reviewed each file. From that point, R. Dr. Eliezer Brodt took over the task of bringing our son's writings to the publication stage. He spent endless hours with our son's computer, insisting on painstakingly comparing files and notes to verify the latest and best formulation. Many times, we spoke several times a day. With his quick mind, he typically could solve a problem in minutes. If not for his patient guidance, wisdom, skill, brilliance and wide-ranging knowledge, readers would not be holding this book, nor the additional works that are planned.

I express heartfelt appreciation as well to our publisher, Matthew Miller, and to R. Reuven Ziegler, Caryn Meltz, and Debbie Ismailoff of Maggid Books, Koren Publishers, for their guidance, encouragement, and patience; and to Rachelle Emanuel for reading and correcting the manuscript, and finessing the language, with extraordinary skill. She typically knew the right word, and turned a good sentence into a sparkling one.

Our son *Hy"d* was a kollel student in his early twenties when he and Professor David Assaf began an exchange of articles that each had written. Professor Assaf was astonished to find a wunderkind with no academic training, producing the work of a seasoned scholar. The two were of different stripes religiously and politically, but there developed between the two a genuine affection and appreciation. We are indebted to Professor Assaf for his mentorship of our son.

The bond between R. Eitam and his father was unique, and my revered husband *ztz"l* went to his grave grieving for his son. Our son had one *rav*, and that was his father. It was he who walked to and from pre-school with the young Eitam, and who taught him halakhah along the way – a tradition that Eitam continued with his own sons. It was his father who taught him to read, in Hebrew and then in English, and who taught him to ride a bicycle and eventually to play the guitar. It was his father who set the standard for learning and writing. Similarly, my husband had one *talmid* who grasped the totality of his halakhic and hashkafic

legacy, and that was his son. Beyond the Shabbat-table conversations, R. Eitam read every *teshuvah* and article that his father wrote, and his father did likewise as soon as Eitam began to write; and they discussed their writings together. Shortly after he married, Eitam edited and, with his silver pen, rewrote his father's commentary on the Torah, which eventually was published as *Mahalakhim Bamikra*. R. Eitam was the rabbinic *yoresh*, heir, and that was clear to all. Although R. Eitam would protest the comparison with his father and with his saintly great-grandfather, R. Yosef Eliyahu Henkin *ztz"l*, one cannot fail to note the similarity of incisive mind, integrity, and self-effacing nature. He also shared with both an unwillingness "to quit the battlefield in the midst of a conflict," as was said of his great-grandfather, the Gaon.

One characteristic illustration of our son's generosity of spirit was in correspondence shown to me by R. Moshe David Chechik. A Ben-Gurion University professor, who had headed two departments at the university, was among the scores of scholars in touch with our son. This professor heard through the grapevine that our son was collecting documents relating to Maharil Diskin, and asked to see something. Our son responded, "Truth be told, I felt more than a twinge when I received your request ... The topic itself (the tension between traditionalism and modernity in Orthodox leaders, in particular those considered as zealots) is of much interest to me ... and I have for several years been collecting material on the topic, though not methodically, and have been planning to use this material for a full-scale article. However, I don't find much benefit in *kin'at sofrim*, academic jealousy; and as you are ahead of me and have already begun to write ... the academic world will certainly benefit from your work as with your previous work. Therefore I will be happy to send you the materials in my possession." Our son modestly added that the professor didn't need his bibliographical assistance, but he was appending a list of primary sources that had "landed in his fishing net," with good wishes for an excellent article.

I thank HaShem that this book benefited from the irreplaceable guidance of my husband *ztz"l*, and that we had the comfort of working together on this book. I close with thanksgiving to HaShem that our son merited a rare and extraordinary partnership with our beloved daughter-in-law, Naama *Hy"d*, his *havera* and *eshet brit*. They "ascended in a storm" to the heavens together, on the third day of *Hol HaMo'ed Sukkot*, 2015. May their souls repose peacefully together in *Gan Eden* until the time when the *tzaddikim* will arise once again.

Chana Henkin
Jerusalem 2021

Introduction

Still vivid in my mind's eye are the horrific events that transpired on that fateful third night of Ḥol HaMo'ed Sukkot 2015, when I received the email informing me of R. Eitam's and his wife Naama's murder, *Hy"d*. I kept staring at my screen and repeatedly hitting refresh, hoping all the while that the heartrending news was not true. To my deep despair, this was not the case. My disbelief had in part to do with being someone who knew R. Eitam and had been following his writings for so long. I felt that the gaping void created upon his untimely death would never be in any way filled.

Almost immediately, already during the *shivah*, people reached out to me, asking what was to become of R. Eitam's voluminous writings. Simultaneously, HaShem's many other messengers were working on some form of preserving his writings. One group of volunteers from all over the world embarked upon a project to enlist help in translating his many works into English. Others offered help in publishing his works. His parents immediately turned their attention to publishing his work on *Hilkhot Shabbat*, *Esh Tamid*, which was in its final stages prior to his murder.

At the time, however, no one had really gauged the extent of his literary legacy, still preserved in his computer's hard drive. It was following the *shivah*, when his brother and some close friends began cataloging his hard drive, that it became quite clear that R. Eitam's legacy included a plethora of print-worthy material. Eventually, I was invited to help out with this endeavor by processing what exactly was on the hard drive. As I perused the many files, I quickly discovered numerous, nearly-complete articles; a manuscript of his book about the *Arukh HaShulhan*, and much more. Slowly some of the articles and materials started being prepared for print. At the same time, R. Eitam's father, R. Yehuda Henkin

ztz"l – a unique, first-rank *talmid hakham* and *posek*, and his mother, Rabbanit Henkin, and I began working full force on publishing his book on the *Arukh HaShulhan*, titled *Ta'arokh Lefanai Shulhan*. Barukh HaShem, in 2018 the book was printed by Maggid Books.

Next, we restarted the translation project, with the intent of publishing a selection of R. Eitam's essays in book form. After carefully deciding which essays would be most valuable for an English audience, the volunteers were contacted, to ascertain whether their offers to translate some of R. Eitam's material, gratis, still stood; and many responded in the affirmative. In layman's terms, the significance of such an offer is two-fold; first, translating is time-consuming, and a team working together would cut time significantly. Second, translation can cost as much as several thousand dollars per article. Our translators willingly waived their fees, performing a tremendous *hesed* for the Henkin family, *l'zekher nishmot* R. Eitam and Naama.

When the translations were completed, R. Eitam's parents vigorously scrutinized each essay for accuracy, and his mother devoted months to making numerous necessary adjustments throughout the book, as needed.

R. Eitam *Hy"d* published his articles in various Torah journals, starting from around 2006. Over time his writing gained renown for its comprehensiveness, clarity, high quality, and at times, exciting new discoveries from manuscripts. His readership ran the full spectrum of society; from far right to far left.

In general, R. Eitam's writings demonstrate a stellar command of both the halakhic and historical aspects of the topics he undertook. His many Torah articles and full-fledged halakhic works stand alongside his many first-rate historical essays. He was a unique combination of an outstanding *talmid hakham* and historian, who was also blessed with exceptional research and writing skills. A unique quality of R. Eitam's extraordinary writing skills was his inimitable ability to craft bibliographic essays, generally perceived as boring, into fascinating reads, of interest to the general reader.

One facet that cannot be overstated is R. Eitam's deep-seated *yirat Shamayim* which shines through his biographical essays, written with tremendous respect for the personality on whom the essay focuses. He was a seeker of truth, who carefully evaluated the evidence he gathered, devoid of any intent to seek out scandal and eschewed slandering anyone.

This volume contains a veritable smorgasbord of R. Eitam's writings. The first section is comprised of halakhic essays, focusing upon areas related to *Hilkhot*

Shabbat and *Yoreh De'ah*. Noteworthy is his article discussing checking strawberries for insect infestation, a subject on which R. Eitam dedicated a full-length book called *Lakhem Yihyeh L'Okhlah*.

The second section, titled *Studies in Rabbinic History*, includes historical essays, starting as far back as R. Akiva, on to the era of the *Rishonim* with Maharam of Rothenberg's captivity, as well as more current topics. This section also has two of his essays about *shemita*, a topic R. Eitam was very fond of and wrote much about. In addition, several essays relate to R. Kook, yet another personality he devoted much time to, studying about and discovering new facets of this towering luminary. Indeed, given the volume of material published yearly regarding R. Kook, R. Eitam's discoveries are an extraordinary feat. Of these, some are essays regarding R. Kook's students and how they related to his legacy upon his passing. Some of the above, unknown material was found only upon thoroughly examining R. Eitam's hard drive.

Additionally, a few of the chapters were translated into English from his work on the *Arukh HaShulhan*. One final, fascinating essay relates to the *herem* on R. Yehiel Mikhel Pines in Jerusalem of the 1880s. At the time, this controversy rocked the rabbinical world and involved many great Torah personalities including, among others: R. Shmuel Salant, R. Dovid Karliner, R. Yehoshua Leib Diskin, and R. Mordekhai Gimpel Yafeh. This article is a mere sampling of a topic which R. Eitam devoted a great deal of time researching and writing about, thereby providing a new understanding of the affair and its impact on the *Yishuv Hayashan*.

The final section contains an essay dedicated to R. Eitam's great-grandfather, R. Yosef Eliyahu Henkin, one of the greatest and most important American *poskim* in the past century. This essay, based on an essay written by his father, R. Yehuda Henkin, very carefully documents the gaon R. Yosef Eliyahu Henkin's life story. The second essay in this section deals with R. Yosef Eliyahu Henkin in relation to the well-known Langer Affair and R. Goren.

Eliezer Brodt

The family of R. Eitam and Naama Henkin *Hy"d*
expresses heartfelt appreciation to our translators

Michael Appel

Rena Bar-David

Dr. Yocheved Cohen

Ilana Elzufon

Rachelle Emanuel

R. Elli Fischer

Meshulam Gotlieb

Shimon Lerner

R. Moshe Rosenberg

Simi Peters and the team at Academic Language Experts

בצר הרחבתם לנו

Part I

Studies in Halakhah

Chapter 1

“What You Permitted, We Prohibited”:¹ The Kosher Status of Strawberries

BACKGROUND

Strawberries must be cleansed before eating because they are naturally infested by various insects. This fact has been mentioned by several halakhic authorities of recent centuries.² In our time, the issue has re-emerged in books devoted to the problem of bugs in food, foremost among them R. Moshe Vaye’s *Bedikat HaMazon*

1. Editor’s note: From the *Viduy* (confession) of R. Nissim Gaon (990–1057), recited by Sephardim on Yom Kippur, and by Ashkenazim on Yom Kippur Katan: “*For I was as a rebellious son before You, doing what is evil in Your eyes, as a slave rebelling against his master, as a disciple differing with his rabbi... What you permitted, I prohibited; what You prohibited, I permitted... Where You were lenient, I was stringent; where You were stringent, I was lenient... I pray for Your forgiveness.*” This chapter initially appeared in the author’s *Lakhem Yihyeh L’Okhlah* (Kiryat Arba, 2011) as a chapter entitled “*Kashrut Tutei HaSadeh*” (pp. 121–28). It has been supplemented with as yet unpublished material written after the book’s publication. We have divided the supplement into two parts in this chapter: first, our opening, “Background,” and afterward as the final portion of this chapter, beginning with the section entitled “New Developments and their Halakhic Analysis.” Finally, we added a previously-published section, called “Afterword,” from *Lakhem Yihyeh L’Okhlah*, 137–38. Translation by R. Elli Fischer.
2. *Responsa Hinukh Bet Yehudah* 55b (cited in *Pithei Teshuvah, Yoreh De’ah* 84:7); *Darkei Teshuvah, Yoreh De’ah* 84:93 (citing R. David Pardo’s *Mizmor L’David*); R. Yisrael Meir Mizrahi, *Pri Ha’Aretz* 2:13; and R. Eliezer Papo, *Pele Yo’etz*, the beginning of the entry for *bedikat* (I thank R. Ravid Azulai for bringing this source to my attention). For a fuller treatment of these sources, see *Lakhem Yihyeh L’Okhlah*, 147–48. See also R. Hayim David HaLevi, *Mekor Hayim* 260:12.

K'Halakhah.³ R. Vaye describes thrips and other insects found in strawberries, and explains the (complicated) cleansing methods to be used before they may be eaten. It would seem that many people, even those who are meticulous about what they eat, were not previously aware of this problem and would eat strawberries without examining them sufficiently.

In 2008 or thereabouts, a ruling that completely prohibits eating strawberries began to gain popularity. It was based on investigations undertaken by various parties (first in the United States, then in Israel), which concluded that the insects on strawberries – whose presence, as noted, has long been known⁴ – remain even after cleansing. This ruling garnered the attention of the kashrut-observant public, and, as a result, much of the community ceased eating strawberries unless they are mashed or peeled.

In some respects, the scientific investigations undertaken in modern laboratories have stretched the boundaries of the prohibition beyond the requirements of halakhah.⁵ Because of this, four years ago, I published my book *Lakhem Yihyeh*

3. R. Moshe Vaye, *Bedikat HaMazon K'Halakhah* (Jerusalem, 1998–2007).

4. Contrary to the popular belief that this is a new type of infestation. In actuality, all that changed was that they concluded that the methods of cleansing that were originally thought to be effective are not, in fact, effective. That is, those who relied on an expert opinion to eat corn or strawberries over the years (for example, see the responsum of the rabbis of the Torah V'ha'Aretz Institute from 2003, responsum 18579 on the Moreshet website) inadvertently violated the prohibition of eating *sheratzim* (insects) according to those who later prohibited it. This being the case, we might wonder: How are we supposed to know whether, and which of, today's expert rulings will turn out to be mistaken?

5. From *Lakhem Yihyeh L'Oklah*, 16–17: “Even in the past generation, and occasionally nowadays, there are public declarations that something that rabbis and experts heretofore thought was permissible is in fact prohibited, because there turns out to be some phenomenon that had not previously been detected, because some method of cleaning that they had been relying on is ineffective, or the like. However, in my humble opinion, these matters, and those like them, should attest to the contrary – namely, that there is a problem of method, and that some of these investigations have stretched the boundaries of the prohibition beyond their limits. Indeed, according to the aforementioned experts, it emerges that the instance of ‘a pest jammed inside a legume’ – which was permitted by some of the greatest *Rishonim* and *Shulhan Arukh* on the grounds that it does not creep – almost never actually occurs, and thus Heaven forbid that these authorities throughout the generations permitted something that is actually forbidden! (See what *Tola'at Shani* 1, p. 38, states: “Therefore, in my humble opinion, all insects found in legumes should be prohibited” except those found in rice!) Should we not be concerned about casting aspersions on all the early authorities who permitted this very thing!? Rather, in my opinion, it is simply certain that, even given the ascertained facts that in laboratory studies they found that at birth the insect is smaller than the hole it creates around itself and is capable of crawling inside the hole, and only later matures and fills the entire hole, perforce this is not called ‘creeping’ as far as halakhah is concerned (according to the permissive opinions). **On such matters, we follow halakhic definitions, not scientific definitions. The Torah was not given**

L’Okhlah regarding bug infestation in foods, including a chapter dealing extensively with the kashrut of strawberries. Following a detailed clarification of the facts and the halakhah, the chapter concluded with the permissibility of eating strawberries following removal of the leafy cap and rinsing under a stream of running water, while it is initially desirable to soak them for a few minutes in soapy water. This *heter*, permissible ruling, is based on the ruling of my master and teacher, R. Dov Lior *shlit”a*.

CLARIFYING THE FACTS

The facts pertaining to strawberries were investigated in a recently published comprehensive study undertaken by the Makhon L’Mitzvot Hateluyot Ba’Aretz, under the leadership of R. Shneur Zalman Revaḥ.⁶ In this study, almost 500 strawberries from eight different sources of cultivation in Israel were inspected. The method of inspection, in most cases, was comprised of four stages:

1. Cutting off the cap and part of the flesh
2. Visual inspection
3. Soaking and stirring in soapy water
4. Examining the water with a fine strainer (plus a second visual inspection of the fruit)

The official results of the study were that there was a 17% infestation rate (79 of 471 strawberries). However, close scrutiny of the details yields findings whose implications deviate from the overall, ostensibly uniform, results.

In the first place, the study inspected strawberries in base units of 50, sometimes more. This quantity is more than double the quantity of strawberries in commercially available boxes, which is the base unit of inspection from the consumer’s perspective. Secondly, for some reason, the details of the study contain no description of the second visual inspection, following the soaking. Had such an inspection not taken place, it could call into question the validity of the study’s findings, if there is concern that even after the soaking, insects may remain on the strawberry itself. However, when I inquired about this (on 22 Sivan 2009), R. David Ben-Yosef, the supervisor of the study, clarified that the second visual inspection after soaking had indeed taken place. The reason that it does not appear

to ministering angels, nor was it given to laboratory researchers capable of distinguishing between grains of flour, identifying germ colonies with the naked eye, tracing the hatching of eggs, and the like, even if they do not use specialized equipment.”

6. Printed in *Tenuvot Sadeh* 85 (Av–Elul 5769/2009): 29–33.

in the study's documentation is that the result in [almost] every instance was that the strawberries were completely insect-free!⁷

Secondly, the distribution of findings across the different batches of strawberries was not uniform. As noted, strawberries from eight different growers were inspected. More than one-third of the insects (30 of 79) were found in the strawberries from a single source ("random market purchase"), from which only about 20% of the total number of strawberries came (90 of 471). With regard to the remaining strawberries, it turns out that those from two sources – both of which are Arab growers – had a significantly higher infestation rate than those from Jewish-owned sources (22 of 115 strawberries). If we separate the findings related to these three growers, where there was an exceptionally high infestation rate relative to the others, and examine only the strawberries from Jewish-owned sources, it emerges that the incidence of insects drops to 10% – 27 insects in 266 strawberries. In fact, even within this group, 14 of the insects were found in strawberries from one bio-organic source. With respect to most of the Jewish-owned sources – four out of five – the average incidence was a mere 6% (13 insects in 216 strawberries). It therefore seems necessary to conduct a second study, of the same magnitude, focusing exclusively on strawberries from Jewish-owned sources. If the results are consistent with the above, it will demonstrate that a different conclusion should be reached for this specific subset (which represents, it seems, a considerable proportion, if not the majority, of strawberries sold in stores in Israel).

In conclusion, the study's declared outcome of a 17% infestation rate is not evenly distributed. In half of the sources investigated (the Arab and bio-organic growers), the prevalence of insects was relatively high, about 30%; in the other half, the non-organic Jewish-owned sources, the prevalence was very low, about 6%. At the same time, it was demonstrated that a superficial visual inspection does not reveal all of the insects liable to be found on the strawberry.

As for the effectiveness of soaking in soapy water and then rinsing – even if this method, on rare occasions, does not completely eliminate the presence of

7. It should also be noted that in strawberries from two of the growers investigated, there was a second soaking and straining (following the initial soaking and straining). In one case, the results were completely clean; and in the second case, a single larva was found among 66 strawberries, the presence of which seems merely incidental. It should further be noted that one of the two groups was rinsed in a special industrial machine, after which nothing was found, neither during visual inspection nor through straining, except for half a book louse. Additionally, all of the achenes ("seeds") were removed from a different batch of 20 strawberries, whereupon nothing was found.

insects – there is, in my opinion, no need to be concerned about the presence of insects after soaking and rinsing, at the very least with respect to strawberries from Jewish-owned sources.⁸ As noted, these conclusions need further support in more focused research. Our ensuing discussion will focus on the theoretical case wherein even after inspection and soaking, experts say that there may sometimes be additional insects hidden on the surface of the strawberry, which are impossible to remove during the inspection.⁹

DETECTING AND IDENTIFYING INSECTS, AND THEIR PROHIBITION

The recent public discussion about the kashrut of strawberries was incorrectly diverted to the question of whether insects invisible to the naked eye are

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8. The study concludes that in general, rinsing and soaking are adequately effective, even if it is recommended to rub the strawberry manually, with a brush, or the like: “It seems clear that, with proper rinsing, it is sufficient, certainly if accompanied by manual rubbing of the entire surface of the strawberry. It is not necessary to require peeling [of the strawberry] ... Even though there are rare cases of [the insects] burrowing, this minority case does not generate a requirement of peeling.” Regarding what R. Avraham Rubin wrote (*Bet Hillel* 7:1 [2006]: 118–20) – namely, that after the different steps of cleaning, an additional visual inspection is required; and only then will the presumption of prohibition (*hezkat isur*) be removed from the strawberry – I do not understand his reasoning. Firstly, a substantial minority (*mi’ut hamatzuy*) is not a basis for presuming prohibition; in fact, the opposite is the case. Secondly, the *poskim* state explicitly that a thorough cleaning is the equivalent of a visual inspection. In the case of strawberries, in fact, a thorough cleaning is superior to a visual inspection. If it has been determined to be effective, what need is there for visual inspection? (R. Moshe Vaye writes similarly in *Bedikat HaMazon K’Halakhah*, 124.)
 9. In this context, it is worth noting what was reported in the name of R. Yehudah Amiḥai in the newspaper *B’Sheva* (May 27, 2009), 8, that after a single rinse there is still a 30% infestation rate, and after two additional rinses the infestation rate is only 8%–10%. He therefore concludes, “We permitted eating strawberries after two thorough rinses and after crushing, though some rabbis did not permit even this.” However, according to the detailed research of the Makhon L’Mitzvot Hateluyot Ba’Aretz, this level of infestation (even before rinsing) exists only in some of the produce in the market. Likewise, their own investigation showed that rinsing and soaking are effective (for instance, two rinses). Compare this to the figures from the Makhon L’Heker HaḤakla’ut al pi HaTorah, reported in brief in *Bedikat HaMazon K’Halakhah* (vol. 2, 555), according to which the inspection of forty samples from various sources during a single season found all to be infested. In the least infested sample, there were two insects per kilogram, and in the most heavily infested there were twenty-two insects per 250 grams. This data is too general and not broken down, but it does not deviate from the findings of the study by the Makhon L’Mitzvot Hateluyot Ba’Aretz, according to which some sources were almost completely insect-free (with the average weight of a box of strawberries being about 500 grams), while others were heavily infested. In any event, after removing the cap of the strawberry, infestation seems uncommon enough to be considered a *mi’ut hamatzuy* (*ibid.*, 559, footnote).

prohibited. Some researchers in the field claimed that “all insects, of any size, that live on plants are identifiable while they are crawling – even the smallest of insects.”¹⁰ Nevertheless, there are grounds to discuss, in principle, the prohibition of indiscernible insects, and this will clarify several points that are important for the present discussion.

R. Moshe Vaye¹¹ makes a straightforward distinction between insects that cannot be detected at all without optical enhancement and are not prohibited; and insects that are **visible** to the naked human eye – as tiny black specks, for instance – but can only be **identified** as insects, and not as dirt, for example, with some sort of optical enhancement. In this latter case, according to R. Vaye, the insects are prohibited. Therefore, he does not rule out – indeed, he requires – using magnification devices to identify the insects. R. Yitzhak Yaakov Fuchs reiterates this view in his book, *HaKashrut*.¹²

The truth, however, must be told: We find no such distinction in the statements of all the *poskim*, who permit insects that are visible only by means of a magnifying glass or the like;¹³ on the contrary, the principle implied by their statements is that anything that one cannot know by natural means to be an insect is not prohibited – irrespective of categories such as “detection” or “identification.” R. Vaye’s main proof for the distinction between detection and identification is the discussion among many latter-day authorities [*Aḥaronim*] concerning an insect called *milbin* – which R. Vaye identifies as a mite. They offer several grounds to permit it, but not because it is difficult to identify. However, it should be self-evident that these *poskim* were discussing a creature that could be identified without any optical instruments.¹⁴

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10. R. Shneur Zalman Revaḥ, in a letter to R. Shlomo Amar dated 10 Iyar 5769 (May 4, 2009; published in *Tenuvot Sadeh* [above, n. 6], pp. 22–28). However, aside from the fact that larvae eggs are prohibited even though they cannot be discerned while crawling, and the fact that the eggs of certain genera (especially thrips) are indiscernible without magnification, R. Revaḥ himself (*Tola’at Shani*, vol. 1, pp. 137, 184) mentions insects that are indiscernible to the naked eye.
 11. *Bedikat HaMazon K’Halakhah*, p. 102, as well as pp. 58, 66–67, and 200.
 12. R. Yitzhak Yaakov Fuchs, *HaKashrut* (Hemed, 2002), 327, n. 8.
 13. As R. Elyakim Schlanger notes in *Halikhot Sadeh* 51 (p. 35). See also *Emunat Itekha* 31 (5769/2009): 38. (I have found only a single source, in *Responsa Pri HaSadeh* 3:80, which states that small creatures [*“milbin”*] are considered discernible because they can be identified with a magnifying glass.) Of course, we are not discussing the inability to discern an insect due to camouflage, hiding, motionlessness, or the like (these have implications vis-à-vis nullification at the *d’Orayta* level, but not vis-à-vis the fundamental prohibition); rather, we are discussing tiny specks that can be seen with the naked eye but not identified as insects.
 14. R. Vaye cites *Responsa She’elat Ya’avetz* (New York, 1961) as mentioning examination under a magnifying glass, but that proves nothing for our discussion, as the magnifying glass was

R. Vaye brings support for his view from a lone contemporary *posek* when he writes in the name of R. Shlomo Zalman Auerbach that if an average person sees only a black speck, but an expert says it is a worm, it is prohibited from that point forward. However, in my opinion, this evidence should be weighed in light of what R. Auerbach states elsewhere. *Shemirat Shabbat K’Hilkhatah*¹⁵ states in his name, as a matter that is obvious, that the prohibition of worms does not include citrus aphids (even if they are visible as small specks) “since the eye of an **average person** does not discern when they crawl.”¹⁶ Moreover, in the second edition of *Shemirat Shabbat K’Hilkhatah*,¹⁷ the same thing was written with a similar formulation: “If they cannot reach a stage where it will be possible to discern that they live and move, they cannot be called *sheretz hashoretz*, ‘any creeping thing that creeps’” (Vayikra 11:43). However, he adds that it had been made known to him that in actuality, before they enter the pupal stage (when their movement is indiscernible), “Even with normal vision, one can sense their movement somewhat.”

mentioned as an aid to help the examiner find insects more easily, not as an instrument without which it would be impossible for the examiner to identify the insect (as R. Vaye himself notes, p. 102); see also *Shu”t Shevet HaLevi* 4 (Bnei Brak, 2001), 142:b. Indeed, in the very next responsum (*She’elat Ya’avetz* 2:125), R. Yaakov Emden attests that his eyesight is weak and it is difficult for him to see the *milbin* without a magnifying glass. Moreover, some *Aharonim* contested this statement of R. Emden. See R. Shlomo Kluger, *Tuv Ta’am VaDa’at* 2 (Lwow, 1852), *Kuntres Aharon* 53:

Examination by means of a magnifying glass, which you write in the name of R. Yaakov Emden, makes no sense to me, for examination cannot be other than something that anyone can do. That which is only possible by the exceptional means of this instrument is not considered an examination that is grounds to permit. There is support for this in the Sages’ statement in the second chapter of Pesahim [37a]: “They will say, ‘All shaped [matzah] is prohibited, but the shaped [matzah] of Baitos is permitted.’”

Thus far, one might posit that R. Kluger disagrees with R. Emden only when it comes to rendering something permitted, but when it comes to finding something prohibited, he concurs. However, he continues:

Further evidence: The experts say that if we look at water under a magnifying glass, worms would be visible in all water. And if we look at any slaughtering knife, we would find flaws in the knife. Given that we have never taken this into consideration, perforce that seeing something with a device is not considered seeing that would warrant stringency, and so certainly it is not considered seeing that warrants leniency. Thus, using this device is not considered an examination.

15. *Shemirat Shabbat K’Hilkhatah* (Jerusalem, first edition, 1965) ch. 3, n. 46.

16. The author adds that he later learned that Hazon Ish was stringent about this, but it is not clear whether this means that Hazon Ish was stringent with respect to detection and identification, or that he felt that citrus aphids are forbidden. (Incidentally, the aforementioned citation by R. Fuchs of *Shu”t Shevet HaLevi* that appears below states that there is no obligation to examine a tiny black speck; thus, R. Fuch’s statements contradict themselves.)

17. Ch. 3, n. 105.

In other words, practically speaking, these aphids belong in the category of “any creeping thing that creeps” and are therefore prohibited.

However, it is also clear that R. Auerbach requires only the eyes of an average person, not those of an expert. It is likewise explicit in R. Auerbach’s words that there could be situations in which small specks are visible but not identifiable as insects (without a magnifying glass or a similar device), and in such instances, there is no prohibition.¹⁸ This being the case, we should say that the meaning of the statement attributed to R. Auerbach in *Bedikat HaMazon K’Halakhah* is that in a case where an expert explains to someone that a particular speck is actually a worm, the person himself can now identify it as a worm, even if earlier he thought it was only a black speck.¹⁹

R. Shmuel Vosner (*Shu”t Shevet HaLevi* 7:122) likewise wrote explicitly that if someone sees a black speck and does not identify it as a worm, he has no obligation to examine it under a magnifying glass. He explains that in such a case it is not the seeing of the eye that causes the stringency, but the magnifying glass; this being the case, it is not prohibited. He likewise clarifies the issue of average vision versus the vision of an expert: “Examination applies only to what is visible to **most people**.” That is, even if there is someone with exceptional vision who can see that the specks are creatures, they are not prohibited. R. Vosner mentions the words of R. Shlomo Kluger (above, n. 13), “for examination cannot but be **something that anyone can do**. That which is only possible by the exceptional means of an instrument is not considered....” However, R. Vosner later qualifies his statement and says that one must be concerned about things that people with acute vision can see, even if those with average vision cannot

18. It is obvious to me that the positions brought in the name of R. Auerbach in *Shemirat Shabbat K’Hilkhatah*, which were presented to him for review on three occasions (the first edition in 1965, the second edition in 1979, and in the edition of “addenda et corrigenda” in 1993) and left as they were, should be preferred over hearsay testimony that was published after R. Auerbach’s death, in 1998. Accordingly, we can also infer that the view attributed to R. Auerbach in *Halikhot Sadeh* (p. 42), “The Torah did not forbid a worm that is so small that the eye of a person with the finest vision cannot detect it,” is not referring to an expert with particularly rare vision, but to an average person, who must be someone with “the best vision,” that is, twenty-twenty vision, vision that is in no way even somewhat defective. (There is thus no need for what R. Vaye and R. Zev Weitman wrote about this in *Emunat Itecha* 38 [5761/2001]: 28, 32.)

19. Just as in the case of citrus aphids, which R. Auerbach ultimately prohibited because the **experts** found that an **average person** can discern their movements. Similarly, see *Hokhmat Adam* (38:28) regarding water bugs that are discernible as worms by those familiar with them, even without assistance of an optical device, but to someone who has never been shown them, they will not be discernible until they are removed and placed separately. At that point, even such a person will see with his own eyes that they are insects.

(7:125:b). He also writes there that experts make things clearer for the public, but this is something that the public is capable of clarifying for themselves with proper training, as we have explained.

Similarly, R. Shlomo Amar wrote at length, in a responsum dated Nisan 5769 (2009) (*Tenuvot Sadeh* 85 [Av–Elul 5769], 9–21), that if one sees a speck on the body of the strawberry, but it is impossible to discern whether it is a worm or dirt, and this can only be clarified with some optical device, then:

Since it is not possible to determine its identity without specialized devices, it has not yet reached the status of a living creature, and is not forbidden. We can further say that even if they examined the speck and say that it is certainly a worm, it remains permitted.... Even if he saw the speck and there is great concern that it is an insect, one is nevertheless not obligated to examine it.... Since to a regular eye it does not have the form of a worm or any other form, but simply looks like a speck, not crawling at all, but simply staying where it is, motionless, there is no need to be concerned about it.

I also asked *mori v'rabi* R. Dov Lior (on 17 Iyar 2009), and he responded that, indeed, as long as the insect cannot be discerned naturally, it is not prohibited, even if we see a small black speck; in such a case, there is no requirement to use a magnifying glass. He spoke of all people, not only about experts.²⁰

R. Naḥum Eliezer Rabinovich likewise wrote (*Responsa Si'ah Naḥum, Yoreh De'ah* 45) that even if “the semblance of small specks of fine dust” are visible, if they are not recognized as insects by the naked eye, and their motion is indiscernible, they are permitted.

R. Asher Weiss likewise ruled incisively (*Minḥat Asher* 1:41, p. 130) that we base ourselves on the average person with respect to all the laws of the Torah, and the average person may rely on his senses and need not seek out an expert to identify worms, especially if there is uncertainty about whether there are even worms present.

In sum, if one detects a small black speck or the like, which is not crawling, such that the vast majority of people with good vision cannot determine with the naked

20. See also the last paragraph of R. Meir Mazuz’s approbation to *Lakhem Yihyeh L’Okhlah* (p. 12): Our custom on the night of Rosh Hashanah was to take dried figs and visually examine them thoroughly.... One whose eyesight is weak should use a magnifying glass, but there is no need to look under a microscope that magnifies an insect on a strawberry 450 times! A person can go only on what his eyes see!

eye whether it is an insect, there is no prohibition. There is no validity to findings that use methods of optical enhancement or people with exceptionally rare vision.

THE HALAKHIC IMPLICATIONS OF THE FINDINGS

Let us now summarize the halakhic status of strawberries, in light of the issues we discussed throughout *Lakhem Yihyeh L'Okhlah*:

Nullification at the Level of the Torah Prohibition (*bitul mid'Orayta*)²¹

The concern about strawberries is that even after cleansing, insects that are hard to detect and remove will remain hidden on the surface of the strawberry. However, based on our discussion, if no insects can be found through close observation of the exterior of the fruit, or if identifying the insect requires a great deal of effort, the insects are nullified at the Torah level according to all opinions.

An Intact Creature (*beriya*)²²

According to the opinion that an intact creature is nullified in the concentration of circa one per mil (i.e., one to a thousand), which, we suggested, can be combined as an uncertainty (*safek*, in order to reach a lenient ruling), it is not clear that this leniency can be applied in practice to strawberries; for it is possible that small strawberries are not one thousand times the bulk of the insects found on them. We can only apply the leniency of “uncertainty” in the case of large strawberries.²³ However, the position that the status of *beriya* does not apply in such

21. Translator's note: A key question that arises whenever a forbidden food, or a food item containing forbidden mixtures, becomes mixed with permitted food is whether the prohibited food is considered halakhically nullified (*batel*) by a majority of the permissible food. A secondary question is, in cases where there is no nullification, whether the resulting prohibition is forbidden at the level of a Torah commandment (*mid'Orayta*) or at the rabbinic level. Stated differently, the question is whether, at the Torah level, nullification indeed takes place (*bitul mid'Orayta*), but not at the rabbinic level. The halakhic differences between foods that are rabbinically prohibited and foods that are prohibited *mid'Orayta* are manifold. This issue is treated at length in *Lakhem Yihyeh L'Okhlah*, 23–41.

22. Ed. note: The general principles of nullification do not apply to a *beriya*, a wholly intact item or creature. In *Lakhem Yihyeh L'Okhlah*, 103–7, the author cited one view that even a *beriya* can be nullified when it is only one in about one thousand items, and another view that a creature must have some intrinsic significance to be considered a *beriya* that cannot be nullified.

23. On the other hand, we cannot definitively say that small strawberries do not have one thousand times the bulk of the insects, for the primary problem with strawberries is the larvae of thrips, which are only about half the size of the achenes on the surface of the strawberry. It is therefore necessary to take real measurements, as this is considered, in my opinion, *hisaron yediya*, a lack of information [Ed. note: which can be remedied by measuring the size of the thrip and the strawberry] and nothing more. [Ed. note: Since the reality can be clarified by measuring, the

cases, either because the bugs are tiny and repulsive or because they will never be alone as single units and therefore have no independent significance, certainly applies even to small strawberries – and perhaps the halakhah follows this position. In either case, since, in reality, it is uncertain that there is an insect upon the specific strawberry being considered (and on the contrary, in most cases the strawberries are clean), we are thus dealing with an uncertainty at the rabbinic level, on which we rule leniently (after examining whatever possible).

A Substantial Minority (*mi'ut hamatzuy*)²⁴

In principle, it seems that the risk of infestation should be calculated for each individual strawberry, for they are commonly eaten one by one. That is, even if we assume that the threshold of a “substantial minority” for the purpose of calculating a *mi'ut hamatzuy* is as low as 10%, it means that insects must be found on at least one in every ten strawberries in order for the infestation to be considered a substantial minority. This applies to insects found on the body of the strawberry, not its cap, which is generally removed. Our analysis of the studies shows that fruits from the relatively clean sources do not reach this level of infestation. Moreover, since the obligation to examine in such cases is rabbinic, and a significant proportion of produce on the market is from the clean sources, if the consumer is uncertain whether the strawberries in his possession come from one of the cleaner sources or one of the more infested sources, and he cannot easily clarify this, he may be lenient. In addition, we have seen that when it comes to bugs and when there is nullification at the level of *d'Orayta*, it is not clear that there are grounds for being stringent and equating the threshold of a *mi'ut hamatzuy* vis-à-vis bugs with the threshold of 10% that applies to *treifot* (animals rendered non-kosher by terminal conditions).

In practice, however, it stands to reason that the presence of insects should be calculated with respect to the quantity that a person would eat at a single sitting. Therefore, in the case of strawberries (as opposed to larger fruits such as peaches), since several fruits are eaten in one sitting, the insects are indeed present as a *mi'ut*

author does not tend to apply *safek bitul* here.] This is not the same situation as the question that the *poskim* discuss, of whether a cherry contains sixty times the bulk of a worm that infests it (see Maharshal, *Yam Shel Shlomo*, Hulin 3:102; *Shakh* on *Yoreh De'ah* 84:30); for it is clear that in that case, they are discussing a worm that is much larger than the aforementioned larva (see *Responsa Maharil HaHadashot* 78:2; *Terumat HaDeshen*, *siman* 172).

24. Translator's note: The general principles of nullification do not always apply to a “substantial minority.” The questions of what constitutes a “substantial minority,” how it is calculated, and when the general rules of nullification do not apply to it are addressed in *Lakhem Yihyeh L'Okhlah*, 53–81.

hamatzuy, and so *l'khatĥilah*, preferably, an examination should be performed. However, after a regular examination (and in such cases, cleansing is superior to visual inspection), it is no longer necessary to be concerned, and they are permitted even without the need to take further uncertainties into account. It goes without saying that in such cases, the Sages did not require one to peel or mash the strawberries.

PRACTICAL CONCLUSION

In conclusion, it is not clear that a “substantial minority” of store-bought strawberries are infested and, consequently, that they must be inspected, because in many sources of cultivation, the incidence of insect infestation is very low (and if one does not know whether the fruit comes from one of the sources with a higher infestation rate, he may, as stated, be lenient, because the uncertainty is whether there are insects present [*safek matzuy*], not whether there is a presumption of prohibition [*safek muhzak*]). Moreover, there is rabbinic disagreement [*pluġta de-rabbanan*] about how to define the quantitative unit that one would be obligated to examine. Nevertheless, *l'khatĥilah*, an examination should be done, as long as it is not too troublesome. After a regular examination (by cleansing the fruit, as per below), it is all but certain that no insects will remain, if there ever were any. At this point, even if there are insects that remain hidden in the fruit, they are nullified *mid'Orayta* according to all opinions. As for the question of *beriya*, since this is an uncertainty regarding a rabbinic prohibition, we rule leniently; and to this we can add the view of those who maintain, for various reasons, that the prohibition of *beriya* does not apply at all in such cases.

Therefore, with respect to strawberries from a source that is not generally known to be infested (and preferably not from a bio-organic source or from Arab growers), one should remove the leafy caps together with a bit of flesh and then rinse the strawberries under running water – and ideally they should be soaked in soapy water and the like for a few minutes – and then they may be eaten.²⁵ One who is scrupulous should undertake the stringency of rubbing each strawberry in addition to rinsing it; such practice is praiseworthy.²⁶ On the other hand, one

25. Unless one sees with his own eyes that there remain worms on the strawberry (in which case, if one cannot remove them, there is nothing to be done; and if one finds three such strawberries in a box, the entire box is prohibited until all uncertainty is completely removed. On this, see the responsum of my father and teacher, R. Yehuda Herzl Henkin, in *Responsa Bnei Banim* 1:8 [Jerusalem, 1981], 34–37). However, for most strawberries, according to all opinions, one need not even be concerned with a supposition of such a phenomenon.

26. Those who are especially scrupulous may take upon themselves the method of examination detailed by R. Vaye (*Bedikat HaMazon K'Halakhah* 2, 559–61), which is very burdensome, entails the loss of some of the fruits, and takes into account *insubstantial minorities*. Some are

should not object to those who are lenient and eat strawberries after removing the cap and rinsing, even without soaking, for they have much upon which to rely. This is the practical ruling of my teacher, R. Dov Lior (on 24 Iyar 2009).²⁷

NEW DEVELOPMENTS AND THEIR HALAKHIC ANALYSIS

In the years following the publication of *Lakhem Yihyeh L'Okhlah*, some of the institutes, in fact, altered their rulings, whether because the underlying facts changed, or because they changed their halakhic opinions, or, as seems to be the primary reason, because they looked into the statistics and measured more comprehensively and methodically than previously. Thus, even though R. Yehudah Amiḥai, head of the Torah V'ha'Arezt Institute, had not previously permitted strawberries unless each berry was rubbed with an abrasive pad,²⁸ beginning in 5773 (Tishrei 2012), he permitted them after soaking two or three times and rinsing – without any need to rub.²⁹ Nevertheless, others still require scrubbing with a brush after soaking,³⁰ and some still do not permit without peeling or mashing.

All of the halakhic institutes, with their various rulings, rely on investigation conducted in-house. Some of them, for whatever reason, do not publish their results in detail, but only issue their bottom-line rulings, which does not allow others – even the greatest *poskim* – to express an independent view.³¹ Nevertheless, several institutes publish their results as well, especially the Makhon L'Mitzvot Hateluyot

so strict that they do not eat strawberries unless they are peeled or mashed, but there is no end to this; see *Arukh HaShulḥan*, *Yoreh De'ah* 39 and 65:46, based on *Leḥem HaPanim* cited in *Hagorat Shmuel*, s.v. *v'haklal hasheni*) – and let us suffice with this.

27. R. Lior reiterated his support in a letter to R. Moshe Bigel on 3 Nisan 2014 and in a letter to R. Meir Lubin from the winter of 2012 (published in *Responsa Dvar Hevron*, *Yoreh De'ah* 2:46). I can add that I know that on several occasions, R. Lior was asked to give his approbation to prohibitive rulings about strawberries, and he declined to do so. See also R. Meir Mazuz's approbation to *Lakhem Yihyeh L'Okhlah* cited in n. 20 above.
28. See n. 9 above, as well as responsum no. 35516 on the Yeshiva website and nos. 111716 and 149545 on the Moreshet website.
29. See responsum no. 156341, from September 11, 2013, on the Moreshet website (requiring two soakings), and the responsum on the Torah V'ha'Arezt Institute website, dated 14 Shevat 5775/2015 (requiring three soakings).
30. The bulletin of the Koshrot organization, winter 2013 (no. 269253 on the Arutz 7 website) and the instructions that the same organization sent out, which appeared in *Emunat Itekha* 107 (Iyar 5775/2015): 157. It should be noted that the initial instructions mandated soaking for five minutes, and the later instructions, three minutes.
31. When my friend, R. Michael Machlouf, asked a leading Torah sage in the spring of 2011 about the facts with respect to eating strawberries, he replied, “I am a complete ignoramus in this regard!” The facts pertaining to insects (prevalence, the possibility of removal, etc.) are not part

Ba’Aretz. Therefore I wish to revisit the question of eating strawberries in light of data that was published after my book came out.

DATA FROM 2012

The laboratory of the Makhon L’Mitzvot Hateluyot Ba’Aretz reported in Shevat 2012 that there was a 12.7% infestation rate at first rinsing, a 3.6% infestation rate after a first rinsing, and an infestation rate of only 1.2% after a second rinsing.³² This apparently means that the basic infestation rate of the strawberries is 12%, a figure that is generally accepted as a “substantial minority” that would mandate an examination, yet significantly lower than the basic infestation rates of strawberries in earlier years. In light of these findings, R. Amihai *shlit”a* was asked why a simple rinse of the strawberries is insufficient. He answered:

When there is a 12% infestation rate, it means that there is a substantial minority, and it cannot be eaten without examination. As long as you have not examined them, you may not eat them. Rinsing alone lowers [the rate of infestation], but an examination of most is not sufficient for an infested species, only an examination of all. Therefore, there is a need for two soakings of the strawberries in water (and rinsing), and then rubbing with a sponge, abrasive pad, or the like.³³

In other words, since an infestation rate of 12% is a substantial minority that mandates an examination, and since the obligation to examine applies to each fruit/berry independently, in keeping with the ruling of Rashba cited by Rema,³⁴ one should now do whatever is necessary to bring the rate of infestation down to zero, literally 0%.

of the curriculum of the kollelim, so even the greatest of sages cannot express an opinion unless those who investigate the facts deign to share their findings and not just their conclusions.

32. This was published on the Kosherot website (no. 49660). However, the leaflet “*Otzar HaTorah V’ha’Aretz L’Tu B’Shvat*,” which was likewise published in 2012, reported that the infestation rate “after a first rinsing” is 9% (no data was provided about infestation prior to rinsing) and “after a second rinsing, there is a dramatic drop” to 1.4%. The use of terminology in these parallel publications, as well as all other publications of the Makhon L’Mitzvot Hateluyot Ba’Aretz below, is not clear (“rinsings” in this context seems to mean “soakings”), nor is it uniform (it is not always clear whether the initial examination was done before or after any cleansing action). This, of course, is in addition to the change in the data itself in this case. It is possible that the Tu B’Shvat publication reflects interim results only.

33. Responsum no. 149545 on the Moreshet website, dated 30 Shevat 5772/2012.

34. *Yoreh De’ah* 84:8 (see also *Lakhem Yihyeh L’Okhlah*, 78).

In my opinion, however, this is incorrect. Rashba’s statement means that if there is a group of individual items [i.e., fruits, berries, etc.] that must be examined out of concern for a substantial minority, one may not examine only some or even most of them, because the concern applies equally to each piece. If each item must be examined on its own, how does examining its fellow items benefit the item that was not examined? But this does not pertain to our situation, where each strawberry, without exception, has been cleaned. Here, the question is otherwise: If the chosen method of examination is proven to be effective for most, but not all, of the pieces (in the present case, rinsing that lowers the rate of infestation from 12.7% to 3.6%), can it be relied upon when before that rinsing, the original conditions were those of a substantial minority?³⁵

The Sages instructed us to be concerned for a minority even though, according to Torah law, we follow the majority. Nevertheless, they did not instruct us to be concerned for a minority of a minority. Therefore, when someone takes several strawberries to eat, since according to the accepted position there are insects in a substantial minority of the strawberries, he must examine them, even though according to the aforementioned data (that one in eight is infested on average), it is most likely that the strawberries in his hand are clean. The person takes a step to separate the prohibited from the permitted – that is, he rinses the strawberries, whereupon (according to the above data) the infestation rate of the strawberries drops to only one in 28. Thus, concern that the strawberries in his hand were not only initially from the infested 12.7%, but that they are also among the 1/28 that remain infested after rinsing (or the 1/83 that remain infested after a second rinsing) is, *prima facie*, the classic case of worrying about the minority of a minority.³⁶ Likewise, in any case where someone takes a fruit that is infested in a substantial minority of cases, and takes an action that effectively cleans it in

35. This is in contrast to fruits that are presumed to be infested. On whether examinations that only partially clean the item are effective, and under what conditions, see chapter 4 of *Lakhem Yihyeh L’Okhlah*.

36. Moreover, there is no end to this, for the larger the breadth of the investigation, the greater the chances that some infestation will be found after all the cleansing. To illustrate, based on the 2015 study (below), R. Amihai ruled that one must soak the fruit three times, since after this procedure, all of the dozens of boxes examined were found to be completely insect free. However, what if in all those boxes a single, solitary insect was found even after a third rinsing. In such a case, would he issue a ruling for the public to perform four soakings from now on, in order to remove this far-fetched concern for infestation even after three rinses!? If the answer is affirmative, then, as said, there is no end to this. If the answer is negative, then we must discuss where the boundary runs.

most cases, the percentage that remains infested is, *prima facie*, the minority of a minority, about which we do not worry.³⁷

Nevertheless, it seems that this issue hinges on how a unit of measurement is calculated with regard to a substantial minority. The aforementioned case was where one person took several strawberries, as is customary. But in the case of a family intending to serve an entire box of strawberries, it would seem – though by no means definitively – that the entire box should be treated as one unit, especially if its contents are chopped up and mixed together on a plate or the like.³⁸ If this is correct, then (according to the 2012 data) an individual who wants to eat strawberries must rinse them once in running water, and a family that wants to eat an entire box should soak them again.

This is true all the more so according to the data reported a year later by the insect research lab of the Torah V'ha'Aretz Institute,³⁹ according to which there was a 6% infestation rate at first rinsing, a 3% infestation rate after a first rinsing, and an infestation rate of only 0.3% after a second rinsing – figures that at each stage are many times lower than what has taken hold of the public imagination since the declaration that strawberries are forbidden! Although these rates are not fixed – on the contrary, we see that they fluctuate from year to year – they show that at certain times not even a substantial minority of strawberries are infested (according to most views), and, more importantly, rinsing is consistently effective at cleaning most, but not all, of the strawberries.

DATA FROM 2015

According to the data published in Shevat 2015 by R. Amiḥai⁴⁰ regarding research conducted by the research lab of the Torah V'ha'Aretz Institute, dozens of boxes

37. See chapter 3 of *Lakhem Yihyeh L'Okhlah* (especially p. 55), where I demonstrate with respect to a substantial minority that we do not maintain that requiring the examination of a fruit means that it will not be permissible until any shadow of a doubt about its infestation has been eliminated.

38. See *Lakhem Yihyeh L'Okhlah*, ch. 3, section 6.

39. Published on the Koshrot website, no. 57002. This data is based on the examination of 386 strawberries, not at one time, but over the course of several years (a situation that raises questions about the validity of the data and its relationship with the different seasons of the year). The Torah V'ha'Aretz Institute also published an update on 15 Shevat 5774/2014 (on the Yeshiva website, article/200), according to which 540 strawberries were examined. However, for some reason, the results were reported relative to boxes (“as supplied”), not to individual strawberries. At first rinsing, all boxes were infested. After a first rinsing 60% of boxes were infested, after a second rinsing, 20% of boxes were infested, and after a third rinsing, no infestation was found.

40. *Emumat Itekha* 107 (Iyar 5775/2015): 45–46.

(“as supplied”) of strawberries, each containing thirty to forty-five strawberries, were examined as follows: First, the leaf and some flesh were removed from every strawberry, and an initial examination was conducted. Then they were soaked in soapy water three times, while the water was vigorously stirred. After each soaking, another examination was conducted.

After the description of the process, the report provides specific examination results for ten boxes. Presumably, the full list of results, for all the dozens of boxes, was not published due to space considerations. However, there is no indication as to why these ten boxes were selected, nor whether or how they are representative of the overall average. In any case, the results are as follows:

1. In each box, between six and seventeen insects were found initially.⁴¹ That is, the base rate of infestation fluctuates, **on average**, around 30% of the strawberries if we assume that each insect was on a different berry, which, of course, is not necessarily the case. In any event, these figures are significantly higher than the figures from 2012–2013 (5772).
2. In each case, one rinsing (soaking) did not render the box completely clean, but there was a significant drop in the rate of infestation – to an average of three insects, or 8%.⁴²
3. A second rinsing effectively rendered the boxes almost completely insect free; in six of the ten boxes, no insects remained, and in the other four boxes, there were still a few isolated insects. The total average rate of infestation was less than 2%.⁴³
4. After the third rinsing, as expected, no insects were found in any box.⁴⁴

In keeping with his policy, R. Amiḥai’s conclusion based on these findings is that after removing the leafy cap and part of the flesh, one should rinse (i.e., soak) them **three times** in order to obtain a 0% infestation rate, and then rinse them in running water to remove the soap. However, based upon what I have written, the

41. It was recorded that fifteen sloughed exoskeletons were found. These (which do not have the status of a *beriya* which is not nullified) are presumably rinsed off easily.

42. This data does not indicate the degree of effectiveness of rinsing under running water after a single soaking (which is simpler than a second soaking, and possibly nearly as effective).

43. That is, we can say that each rinsing (soaking) eliminated more than three-quarters of the insects that were there before that rinsing.

44. It should be noted that in three boxes, more insects were found in the second examination than in the first (!), or different kinds of insects were found. It is not clear why this happened, and it raises questions about the validity of the examinations as a whole. I raised this and other questions with the researchers, but have not yet received a response.

halakhah requires only one soaking, as this effectively cleans three-quarters of all infested strawberries,⁴⁵ since even at the outset, only a minority of strawberries were infested. However, it is possible that with such borderline statistics (i.e., where there is still 8% infestation after one cleansing), one should nevertheless perform a rinse after the soaking.

AFTERWORD⁴⁶

We have now completed our halakhic inquiry with the help of the Almighty. With regard to relying *l'khatilah* on permissive rulings, let us bring the words of R. Shlomo Kluger (Maharshak),⁴⁷ which were cited in our time by R. Yosef Shalom Elyashiv⁴⁸ and earlier by R. Mordechai Brisk,⁴⁹ who wrote: “This gaon of blessed memory [Maharshak] is himself worthy of being relied upon, even when circumstances are not pressing.” R. Kluger permitted whole chickpeas, a substantial minority of which were infested by maggots with no external sign of infestation, on several grounds. He added that even if, in general, one should not rely on these rationales *l'khatilah*, only *bedi'avad*, nevertheless, this case – where there would be no other way to eat the chickpeas (except by cutting each pea in half, which is very tedious) – is a *sha'at hadehak*, pressing circumstance. Maharshak writes: “To prohibit the entire species – there is no greater loss than that,” and in such a case, one may act *l'khatilah* on the basis of a leniency that applies *bedi'avad*, because, “*kol sha'at hadhak k'di'eved dami*, any pressing circumstance is treated as *bedi'avad*; and prohibiting the entire species is worse than one who transgressed and cooked one time without inspecting. If food that was cooked one time in this fashion [i.e., without the requisite inspection] is permitted *bedi'avad*, then certainly an entire species should not be prohibited.” The author of *Korban Netanel* wrote similarly:⁵⁰ “Regarding your objection, namely, that permissibility based on a double uncertainty (*sfek sfeika*) is only *bedi'avad*, when they have already been cooked, but not *l'khatilah* – I say that since it will come to prohibit the entire species of food to the Jewish people... it is considered *bedi'avad*.”

45. This figure is consistent through all examining described here.

46. The author's *Divrei Siyum* in *Lakhem Yihyeh L'Okhlah* (137–38), has been appended here, as the fitting ending for this chapter.

47. *Tuv Ta'am VaDa'at* III (Lwow, 1852), *siman* 158.

48. *Bedikat HaMazon K'Halakhah*, 177.

49. *Shu"t Maharam Brisk* 1 (Tasnád, 1939), 88.

50. *Shu"t Torat Netanel*, 38.

One who is scrupulous about observance may ask: So what? Why not avoid chickpeas? They are certainly not a staple food. Moreover, why did R. Shlomo Kluger define this as prohibiting “the entire species”? They could have made the effort to cut each pea in two and inspect it for infestation, and if it was not infested, they could eat it! This person would also have to ask why Rema writes (*Yoreh De’ah* 96:1, at the end) that in a place where the only radishes in the market were cut with knives of non-Jews, one may purchase them and rely on the view that permits them, *bedi’avad*, after removing the place of the cut: Why couldn’t they simply refrain from eating radishes? There is no existential need to eat radishes, so why not follow *ikar hadin*, the basic halakhah, namely, that *l’khatilah* the entire radish is forbidden?

However, it is not the way of the Torah to completely forbid things to the public when a practice has been established and when it is possible to find grounds for leniency, even using a *bedi’avad* approach (as *Taz*, *Yoreh De’ah* 96:8, states: “Since one cannot find other [radishes], the *l’khatilah* is treated like *bedi’avad*”). Furthermore, even if there is another way but which is extremely tedious, we see that people prefer to simply refrain altogether. This would be tantamount to requiring that which is impossible and to prohibiting an entire species; and it is therefore proper to endeavor to find grounds to permit and justify the established practice, even *l’khatilah*. See what we wrote⁵¹ concerning R. Ḥayim Yitzhak Ḥasid,⁵² who likewise deems such conditions “impossible”, and once he found grounds to permit, he concluded that one should not cast aspersion upon an established practice unless the prohibition [of the said practice] has been adopted by the entire Jewish people. Additionally, he writes, if it is a “decree that most of the public cannot tolerate,” we should rule permissively. He wrote thus even though one cannot say about sweet cherries and the like that prohibiting them is a “decree that most of the public cannot tolerate” (for these are not staple foods); nevertheless, where there is a permissive established practice, that practice should not be prohibited.

It is surely a great act of piety and asceticism to refrain from eating anything questionable, even after inspection. However, it is clear that such practice is not the black-letter law and should not be applied to the public (see *Ḥatam Sofer*, *Yoreh De’ah* 77, at the end; *She’elat Ya’avetz* 2:124–25; *Shu”t Bah Hahadashot*, 23).⁵³ “It

51. *Lakhem Yihyeh L’Okhlah*, 62–63.

52. *Ohel Yitzhak*, *Yoreh De’ah* 5.

53. R. Avigdor Nebenzahl, in a letter (reproduced in *Lakhem Yihyeh L’Okhlah*, 11), writes that even if something is halakhically permitted, there are other reasons for concern: First, we are stricter about danger than we are about prohibitions; and second, desensitization of the heart (*timtum halev*). In truth, throughout *Lakhem Yihyeh L’Okhlah*, I did not mention the grave issue of *tim-*

is enough that we have found a reasonable explanation for the practice of the disciples of prophets [i.e., the Jewish people].”

tum halev due to forbidden foods even once – because in virtually all rabbinic responsa from past eras, from the greatest *Rishonim* and *Aḥaronim*, who dealt with practical questions of the laws of maggot infestation, I have not found a single instance where *timum halev* is invoked as a reason to be stringent above the letter of the law. Rather, they dealt only with halakhic parameters. It is apparent that their silence about this indicates simply that where something is halakhically permitted, there is no concern for *timum halev*. The Sages state explicitly: “Transgression desensitizes the heart” (Yoma 39a, commenting on Vayikra 11:43), meaning, because it is a transgression, it causes *timum halev*, not because of any natural properties (see the explanation of Maharal of Prague, *Tiferet Yisrael*, ch. 8). Our subject is no different from other laws governing mixtures, and we do not find – neither in *Shulḥan Arukh*, nor in its commentaries, nor in the works of other *poskim* – that even where a prohibited foodstuff is *batel* (nullified) one should be stringent out of concern for *timum halev*. (The dispute among *Rishonim* about whether a prohibited foodstuff that is nullified by a majority in a dry mixture is actually transformed into something permitted, discussed in *Yoreh De’ah* 109, has no bearing on the present inquiry.) Rather, it is only when something is prohibited according to the laws of prohibited foodstuffs, and is actually a prohibited food, but may be eaten for some extraneous reason – for example, to save a life – that we find concern for *timum halev*. (See *Yoreh De’ah* 81:7, in Rema and commentaries, and this is also the intent of *Meshekh Hokhmah* on Devarim 6:11.) With regard to danger, in my humble opinion, there is no clear conclusion about the present case, for although Shabbat 90a mentions a dangerous maggot that infests figs, Avodah Zarah 30b mentions concern for puncture marks (indicating the potential presence of snake venom in the fig) but not this type of maggot. This is because the question of danger hinges on time and place, and nowadays we know of no such dangerous maggot infesting figs. So too, according to Rabbenu Ḥananel, lettuce is dipped in *ḥaroseṭ* (*Pesaḥim* 115b) because there is concern for a dangerous maggot. Many *Rishonim* followed this interpretation, and *Taz* cites it as well. However, *Mishnah Berurah* and *Arukh HaShulḥan* omit this interpretation, apparently because nowadays this dangerous maggot no longer infests lettuce. Certainly, then, there is no obligation to be concerned about types of danger that are not mentioned in the Gemara and which go against medical consensus (as reported in the name of my great-grandfather, R. Yosef Eliyahu Henkin, on *Yoreh De’ah* 70:2 and 87:6, in *Yeshurun*, vol. 21 [Jerusalem, 2009], 519, 522; on the relationship between danger and prohibition, see also *Zivḥei Re’ayah* [R. Kook’s commentary on *Hulin*] 9b, p. 45 [in the 1985 edition]).