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**Journal of  
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and  
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The Journal of Halacha and Contemporary Society is published twice a year by the Rabbi Jacob Joseph School, Dr. Marvin Schick, President. The Rabbi Jacob Joseph School, located at 3495 Richmond Road, Staten Island, New York, 10306, welcomes comments on this issue and suggestions for future issues.

It is the purpose of this Journal to study the major questions facing us as Jews in the twentieth century, through the prism of Torah values. We will explore the relevant Biblical and Talmudic passages and survey the halachic literature including the most recent Responsa. The Journal of Halacha and Contemporary Society does not in any way seek to present itself as the halachic authority on any question, but hopes rather to inform the Jewish public of the positions taken by Rabbinic leaders over the generations.

Manuscripts which are submitted for consideration must be typed, double-spaced on one side of the page, and sent in duplicate to the Editor, Rabbi Alfred Cohen, 1265 East 108th Street, Brooklyn, New York, 11236. Each article will be reviewed by competent halachic authority. In view of the particular nature of the Journal, we are especially interested in articles which concern halachic practices of American Jewish Life.

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## Celebration of the Bat Mitzvah

*Rabbi Alfred S. Cohen*

The Bar Mitzvah celebration in America has come in for more than its share of ridicule and caricature. Commercialization of this religious milestone and its mindless exploitation have managed to dim the lustre of a very beautiful and ancient Jewish tradition, one admired and encouraged even as far back as the Tannaitic age almost two thousand years ago. A festive meal to mark life's milestones has long been considered appropriate — a *seudah* is prepared at a *Brit Milah*, also for a bride and groom during the seven days after their marriage, and by many persons on the occasion of moving into a new house. Already in the Torah<sup>1</sup> we find mention that Avraham our Patriarch tendered a great feast when his son Yitzchak was weaned. Consequently, the concept of the Bar Mitzvah does deserve our more serious attention to uncover its educational and ethical message.

Moreover, the new popularity of the feminist movement has made celebrations of Bat Mitzvah increasingly favored; even in quite traditionalist circles, it is not uncommon for the Bat Mitzvah date to be taken notice of in some manner. However, a great deal of controversy exists as to the proper or religiously valid and acceptable way to mark this rite, and that is the subject of the present enquiry. To do justice to the topic, we will investigate not

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1. בדאות נא: ח

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only the rabbinic teachings about Bat Mitzvah but try also to put it in the context of the broader topic of Bar Mitzvah.

There are a number of questions which need to be explored: First, what is the halachic basis, if any, of making a celebration upon a boy's reaching the age of thirteen. Is it a universally approved tradition of long standing among all classes of Jewish society? Furthermore, since we shall see that indeed the Bar Mitzvah held considerable importance in the eyes of our sages, we have to question why there should be any differentiation in practice between the coming of age of boys and girls. On the face of it, the widespread neglect of marking a girl's passage into adulthood is a practice which requires justification. In addition, there remains the very sensitive issue of whether a Bat Mitzvah celebration, although possibly totally innocuous, might be disallowed because it smacks of imitation of non-Jewish practices or the innovations of non-observant Jews.

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Nowhere in the Torah do we find indicated the specific time when a boy or girl reaches majority, the age of religious adulthood and full responsibility. However, the Mishnah<sup>2</sup> teaches, "The vows of a girl of twelve years and a day are valid and those of a boy older than thirteen years and a day." Rashi comments that, until that time, they are "*ketanim*", legally minors. The Gemara<sup>3</sup> also indicates that a girl should begin fasting on Yom Kippur from the age of twelve and boys from the age of thirteen. Before that time, it is the parents' obligation to train them in fasting.

There is no question that throughout the centuries the arrival of a boy at the age of Bar Mitzvah, becoming responsible for his own deeds and full observance of mitzvot, was an occasion of rejoicing. The author of *Kaf Hachaim*<sup>4</sup> mentions a number of rabbinic texts, including the *Zohar*, who laud the practice of marking the occasion with a festive meal to which were invited the

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2. נדרה מה.

3. יו"מ א פה.

4. ב"פ ה'ח'ר'ם ר'כ'ב: י' א.

luminaries of the community. In his gloss to *Shulchan Aruch*, *Magen Avraham*<sup>5</sup> rules that it is the religious obligation of a father to tender a festive meal in honor of his son's becoming Bar Mitzvah, just as he ought to do when the son marries.

The extent and lavishness of the Bar Mitzvah celebration, however, have not always been the same. In Europe, the event was commonly marked by the boy's being called to the Torah on a Monday or Thursday morning, and the family's offering a modest collation afterward. By contrast, in America some people have gone overboard in lavishing upon their celebration extravagances of gargantuan proportions. But whether the celebration consists of a modest kiddush of *kichel* and *schnaps* or a tremendous financial undertaking, it is a custom which is virtually universal.

Why should the attainment of full responsibility for mitzvot call for a celebration? We may look for the answer in an exchange recorded in the Talmud:<sup>6</sup> Rabbi Yosef, who was blind, is quoted as saying that he would make a great party if anyone were able to prove to all the rabbis that a blind person is obligated to perform mitzvot. What was behind his making this fervent offer? The talmudic sages, after considerable debate, had concluded that a person who performs a mitzvah even if he is not required to do so does not receive a reward equal to that of a person who is mandated to do a mitzvah and does it. Although one might argue conversely, that a person who doesn't have to do a mitzvah and does it anyway deserves a greater reward, the rabbis took into account that a person who is required to do something has to overcome the negative pull of his *yetzer hara* (evil inclination) which tries to induce him not to do it; thereby, he merits a greater reward. Rabbi Yosef, as a blind man, was exempt from doing mitzvot; had someone been able to change the rabbinic ruling, the mitzvot that he did would have earned him a greater reward. Therefore, he would have tendered a party to celebrate his new status.

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5. ר' ברוך הלכה טרמי מון אברהם או"ח ר' בכ: about having a *seudah* for the Bar Mitzvah in a *succah*.

6. קדושים לא.

On the basis of this talmudic discussion, Rabbi Shlomo Luria<sup>7</sup> rules that the festive meal made for a Bar Mitzvah is itself a mitzvah (the meal is a *seudat mitzvah*), for we are thanking G-d that this child has attained the landmark of becoming obligated to fulfill all mitzvot, being now a true adult. Now that he is under full obligation, he is considered on a higher lever than someone who performs the mitzvah even though he does not have to do so. Furthermore, Rabbi Luria reasons that Rabbi Yosef was going to make a party just to celebrate receiving the news that indeed he, as a blind person, was qualified to merit the same reward as everyone else; then certainly in the case of a child who actually undergoes a change in status, and does not just become informed about it, he would be far more obligated to make a celebration!<sup>8</sup>

### Bat Mitzvah

As has been shown, the rationale for making a celebration for a boy who reaches the age of thirteen arises from the fact that a person has to give thanks for achieving a higher level of religious responsibility. Since a girl at twelve undergoes the very same elevation in status, progressing to a level where she has to observe all the mitzvot incumbent upon a Jewish woman, does it not follow that there should be the identical obligation to make a party for her? The historic reality that it is not a widespread custom to do so is perplexing; *Dagul Mirevavah*<sup>9</sup> succinctly expresses his wonder: "Why, indeed, don't people make a festive meal for a girl?"<sup>10</sup>

There is a compelling logic to the argument that a girl's Bat Mitzvah is a significant attainment deserving some notice. As a matter of practice, there are a number of Orthodox communities where this is done. It is reported that many old Jerusalem families have the custom to mark the Bat Mitzvah of their daughters with a small feast; here in the United States, numerous members of the

7. ים של שלמה ב'יק זל"ז.

8. ל'ב אברהם ס'ע.

9. דגול מרביבה יוד קעיח.

10. מרגליות הים סנהדרין ל'ב: אות יט discusses making a celebration on the Friday evening following the birth of a daughter.

Washington Heights Jewish community in New York also do make a party. However, some of their spokespersons deny that there is any halachic basis for such a custom, brushing it off as "just a birthday party." The administration of the Beth Rivkah Schools has informed this author in a letter that the Lubavitcher Rebbe has instructed them to make a Bat Mitzvah celebration for their students "at either a *Mesibat Shabbat* or *Melave Malka*."

The former Chief Rabbi of the Sephardic community in Israel, Rabbi Ovadiah Yoseph, fully accepts the logic of the situation:

Accordingly, it is proper that also for a girl who has attained the age of twelve years and a day, and has become responsible for all the mitzvot which are incumbent upon a woman, since she has now become "obligated and does" these mitzvot, it is fitting to celebrate her entry into mitzvot with thanksgiving and a joyful feast, for in this regard there is no difference between a boy or a girl, when they reach [the stage of] obligation in mitzvot.<sup>11</sup>

He also cites an earlier Sephardic authority, the *Ben Ish Chai*, who wrote that although it was not their custom to hold festivities, it would nevertheless be appropriate for the girl to wear her finest Sabbath attire to mark the importance of the day. In addition Rav Yoseph cites other authorities who consider that there exists the same obligation to accept an invitation to a Bat Mitzvah celebration as there is to attend a *Brit Milah* if invited.

Despite its straightforward logic, his argument has not won total acceptance. Rav Moshe Feinstein viewed the subject differently; in a responsum on the subject, he ruled that a Bat Mitzvah should not be celebrated in a synagogue, for since "it is clearly nothing more than celebration of a birthday, it has no place in a shul."<sup>12</sup> His focus is on disallowing the party in a shul,

11. ייחודה דעת חילק ב, כ"ט.

12. אגרות משה או"ח ק"ד. In an aside, Rav Feinstein went on to offer the observation that if it were in his power, he would put an end also to cognate Bar Mitzvah

for a shul is not the place to engage in activities which are permissible [but not required], even if it were built on the condition [that the building could be used for activities other than prayer.] The celebration is certainly only a permitted matter, and just nonsense.

However, Rav Feinstein makes no objection to the father's marking the occasion by a party in his home if he wishes, since it is nothing more than a birthday party.

This was not to be his last word on the subject. In another responsum,<sup>13</sup> he addressed the question of why there should be any difference between a boy and a girl on this matter. His opinion is that when a boy attains the stage of being a Bar Mitzvah, everyone can readily observe the change that has taken place — now he is counted for a *minyan*, now he is called up to the Torah, now he can lead Grace after meals. It must be noted, however, that Rav Feinstein offers no rabbinic source to support his argument.<sup>14</sup> Indeed, Rav Ovadiah Yoseph does not accept this position.<sup>15</sup>

Later, Rav Feinstein returned to this topic again;<sup>16</sup> after reiterating his view that celebration of a girl's Bat Mitzvah is definitely optional, Rav Feinstein permits making a kiddush in shul in honor of the occasion, which he concedes is certainly no less auspicious than other joyous occasions which are celebrated with a kiddush. (In his letter to the rabbi who sought his advice, Rav Feinstein cautioned him that it was not worth making a fuss about it; if he had already agreed to permit the Bat Mitzvah celebration in shul, there was no need for him to retract, if it would cause him any embarrassment.)

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celebrations for boys, for they seldom enhance the boy's religious observance and very often lead to *Chilul Shabbat*.

13. *אגרות משה אורי ח"ב צ"ז.*

14. However, *מן אברם תכ"ה ס"ק ר'* does apply the same reasoning in explaining why a father recites the blessing "*asher petoranie*" (Who has freed me from the burden of punishment I had for this child when he was a minor) when his son becomes Bar Mitzvah, but not when his daughter reaches adulthood.

15. *ייחוה דעת ח"ב, כ"ט.*

16. *אגרות משה אורי ח"ד, ל"ו.*

Let us leave this aspect of the question and examine another side of the problem. Regardless of all the logical arguments which can and have been offered to support making a festivity at the time of Bat Mitzvah, there is no question that throughout our history the Bat Mitzvah has not been celebrated in the same way as was the Bar Mitzvah. Tradition is a very important feature of Judaism, and if something has never or seldom been done, we ought to give serious thought whether it is advisable to institute it at this time. Particularly this type of innovation should be undertaken with trepidation because there does not appear to have been any change in circumstances which would justify our disregarding thousands of years of tradition. Then as now, boys and girls reached the age of maturity; in centuries gone by, the rabbis were undoubtedly equally aware of the lack of any cogent reason for differentiation between the ceremonies made for a boy or a girl — and yet there was a differentiation.

Possibly this distinction arises from a factor outside the question of the Bar Mitzvah. Rabbi Feivel Cohen suggests that the difference may be a feature of the basic philosophy Judaism has towards women, which stresses *Tzniut* (modesty in behavior, dress, and speech) as a highly desirable quality. It has never been our way to put women in the forefront of public attention; this accounts for many instances wherein we treat boys and girls, or men and women, in different ways. Having a girl be the center of attention in a synagogue celebration of her attaining maturity would be antithetical to our concept of *Tzniut*, but one can readily appreciate that a celebration for her at home, with her family and friends, is more appropriate within the context of *Tzniut*.

It may be that the very fact that the Bat Mitzvah was not traditionally celebrated with any great festivity is sufficient reason not to institute such a celebration at this time.

Not so, argues Rabbi Yaakov Yechiel Weinberg;<sup>17</sup> he

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17. שְׂרִירִי אֶשְׁלָק ג', צ'ג, דף רצ"ז. However, many rabbis have opposed making changes in age-old customs. Following is a partial list of such instances: ה'נָא לְבָא בְּרָהָם תְּשׁוּבָה פ'נִים forbids affixing a mezuzah flat on the doorpost instead of rolled up, in part based of his contention that "an innovation is biblically

emphatically rejects the claim that there is no basis for allowing this innovation. Drawing on the historic precedent of the Beth Jacob girls' schools which represented a radical innovation when they were introduced earlier in this century, he postulates persuasive reasons for introducing a change which he deems vital to our future:

In the generations before us, they did not have to be concerned with education and training of girls, for every Jew then was full of Torah...and every city of Jews was full of the spirit of Judaism. Girls who

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forbidden." However, note that the Gemara reports that recitation of *Hallel* on *Rosh Chodesh* was an innovation of the talmudic rabbis (תענית כח:).

See also ש"ץ י"ד א: א: ש"ץ ח"ט ל"ז ס"ק ל"ז.

In the traditional method of drawing blood by mouth suction from the circumcision incision, due to the modern scientific finding that the many germs in the mouth may cause infection in the cut. (See קונטראס מציצה בפה). Some approve it, but others are opposed to "changing the form of a mitzvah from the customary and accepted way of generations."

ר' אוחזער, ח"ג, תשובה פ"ג discusses a request by butchers in a town to begin *nikur* (withdrawal of certain veins which may not be eaten) in the hind quarters of slaughtered animals, although it had always been their custom not to bother with *nikur* but to discard that portion. Although they had never been accustomed to do it previously, Rabbi Chaim Ozer Grodzenski found nothing objectionable in their undertaking it now.

The question of changing an old custom or instituting a new one occurs in many situations. Most recently, Rav Moshe Feinstein was approached on the issue of women's prayer groups. In the as-yet unpublished letter which he wrote on it, he referred to an earlier responsum of his (אגראות משה אוריה ז"ד מ"ט) concerning women donning the *tallit* during prayer. There he had indicated that the crux of the matter was really the motivation of the person who wants to make some innovation in the accepted practice. If women are donning the *tallit* or attending special prayer groups in an implied rejection of Torah values which consider these things unnecessary, or doing it as an act of rebellion against rabbinic rules, then their mitzvah is actually an *aveirah*. On purely intellectual or halachic grounds, he concedes that there is nothing wrong per se with a women's *minyan*. However, he continues, it is difficult to find at these prayer groups many women who are motivated by a sincere desire to be able to pray more effectively; most come out of a sense of rebelliousness or rejection of tradition.

were raised in a Jewish home absorbed the spirit of Judaism without any active deed, almost taking it in with their mothers' milk.

Although once it sufficed for girls to be trained by their mothers to be good Jewish women, now times have changed. The home may no longer be adequate or sufficient to assure that Jewish daughters will be committed to Torah values and observance. Changes have to be made.

Fortunately, the leaders of our people in the previous generation became aware of this and established institutions of Torah and religious strengthening for girls.

Rabbi Weinberg considers the establishment of a network of schools for girls to be "the most magnificent demonstration of our generation." He then proceeds to argue that other changes also must be made in recognition of the radically different status women enjoy today, as compared to previous generations.

Clear logic and principles of pedagogy virtually require equal celebration for a girl when she reaches the age of responsibility for mitzvot.

Moreover he warns of dire consequences if we do not face up to the impact which neglect may have upon girls' attitudes:

The difference which is made in the celebration for a boy and a girl upon reaching maturity makes a very hurtful impression on the feelings of the maturing girl, who has in all other areas attained equality.<sup>18</sup>

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There is yet another component which carries great weight in

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18. However in a responsum a few pages later (17x), he rejects the suggestion that a baby be anesthetized prior to circumcision, for this was never done in the past, and "one ought not to denigrate a Jewish custom." Thus we see that he is not prepared to establish innovation as desirable in all circumstances.

deciding on the question under study. Even were all to concede the desirability of commemorating a girl's reaching maturity with a joyous celebration similar to a boy's, even if superceding age-old traditions might be justified, we would yet have to contend with another issue quite apart from the Bat Mitzvah question proper.

In the Torah there is a specific prohibition that Jews should not copy the customs of other nations — “*bechukoteihem lo teileichu*”, “you shall not follow their ways.” A Jew should be proud of his heritage and must not mimic the ceremonials of others.<sup>19</sup> An otherwise innocuous practice may be forbidden simply by virtue of its actual or implicit imitation of a non-Jewish custom. It is necessary, therefore, to determine whether the impetus for investing the Bat Mitzvah with greater significance might not arise from a source other than Torah Judaism, as has been the case with other changes introduced into Jewish synagogue practice in the course of the preceding two centuries.

About two hundred years ago, Rabbi Yechezkel Landau, known by the name of his magnum opus *Noda Biyehudah*, was asked if a synagogue structure could be built in a circular shape rather than the usual rectangular one.<sup>20</sup> In his responsum he indicates clearly there is absolutely no halacha requiring a shul to be rectangular nor forbidding it to be round. However, he notes, if the people who want to undertake this project are doing this

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Nevertheless, there are times when he is prepared to allow modification of past custom, particularly when he perceives a great need. Thus, he permits girls to join with boys in singing *zemirot* at a communal Sabbath meal, for he sees it as part of an essential program to make Jewish observance more attractive to them. See *שיר ירושלמי*.

19. The central issue in the halacha of *bechukoteihem* is definition of the term, about which there is some disagreement. Most rabbis understand the prohibition to apply only to customs which have no rational basis and/or are taken up by Jews in imitation of Gentile ways. However, the Vilna Gaon describes it as any custom, fashion, or institution which Jews would not on their own have done, but do out of imitation of Gentile ways.

For a full exposition of this topic, see the article by Rabbi H. Teichman in Volume I, No. 2, of this Journal (Fall 1981).

20. *נידע ביהודה אורח ייחודי*

because they want to imitate the architectural style favored by those who build churches, they should be stopped forthwith.

In a somewhat different context a century later, Rabbi David Tzvi Hoffman discusses the question of placing an organ in a synagogue.<sup>21</sup> After an exhaustive survey of rabbinic sources on the matter, he forbids the practice, basing his decision on a mishnah<sup>22</sup> which forbids certain things because "it would strengthen the hands of scoffers," explaining that if the Orthodox continue a custom which was initiated by Reform Jews, it gives these scoffers a certain amount of status and legitimacy in the eyes of the public, and *for that reason alone it should not be done.*<sup>23</sup>

Based on these teachings, it would appear that even if an individual were personally confident that he has no desire to imitate the Christian confirmation ceremony when he makes a Bat Mitzvah for his daughter, it is probably true that the popularity of the Bat Mitzvah celebration in recent decades does proceed from the innovation of non-observant Jews, whose major purpose was to mimic the non-Jewish confirmation ceremony. If not the letter, then at least the spirit of the law seems to dictate that we not continue their practice.

The halachic rulings of the *Noda Biyehudah* and *Melamed Leho'il* pose a difficult hurdle for Rav Weinberg, but one which he attempts to overcome in seeking justification for making the Bat Mitzvah an important occasion.<sup>24</sup> He argues that since the Bat Mitzvah celebration takes place at home and not in the synagogue, this itself is an affirmation of our own positive desire to instill in

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21. מלמד להוציא חי"א ט"ז

22. חולין מא.

23. גליון מהרש"א יו"ד מ"ז specifically states that "a good custom which was instituted by a wicked person should not be practiced."

Concerning the custom of decorating the Shul for Shevuot, which was approved by the Ramo (א"ר חצ"ד), the Vilna Gaon ruled that it should be discontinued because it resembled the non-Jewish custom of bringing decorative wreaths (חג' אודם-בלל קל' אידי"ג משנה ברורה, אות ח). However, the Chatam Sofer angrily berated the new *Gabbai* in his congregation for failing to decorate the synagogue in accordance with custom (חוט המשולש עמוד קב"ה).

24. שרידי אש, חי"ג צ"ג.

our daughters pride and commitment upon their attaining majority; celebration at home is quite clearly not an imitation of the church ritual of confirmation.<sup>25</sup>

It is very interesting to note that, almost casually, Rabbi Weinberg and Rabbi Hoffman have extended the prohibition of imitating the Gentiles to include imitation of non-observant or even heretical Jews as well; this is quite a leap halachically. Possibly, this reasoning is the implicit basis for Rabbi Feinstein's reluctance to allow a Bat Mitzvah observance in a shul. Rav Ovadiah Yoseph, however, not having to confront this kind of problem in Israel, does not accept the premise. He does not accept these considerations and feels comfortable with a lenient ruling.

Innovation often arouses controversy in Jewish circles, for sad experience has shown that there is always the danger it may have an impure origin or an unfortunate outcome. Even when that great *tzaddik* Rabbi Israel Meir Hacohen, the *Chafetz Chaim*, approved the establishment of a school to teach girls Torah and Judaism, he met with a storm of opposition.<sup>26</sup> Nevertheless, the project continued and in the ensuing decades more than proved its essential worthiness. If the impetus to give more importance to a girl's reaching Bat Mitzvah arises from a similarly pure motivation, the verdict over a period of time may affirm its acceptability and importance. At the present it is difficult to give a definitive answer as to the appropriateness of making a major celebration for a girl's reaching Bat Mitzvah. Perhaps we need the experience of time to render the final decision on this vexing halachic question.

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25. Rabbi Weinberg recommends to those who are concerned about his ruling, a perusal of the teaching of Rambam, *gitin*, פ'יה: מ"ח פרוש למשניות.

26. אהרון סורסק, *תולדות החינוך התורתי* (בני ברק 1967); ספר תיקון עולם נדרנה, p. 423

## Halacha and Hospice

*Rabbi Marc D. Angel*

### Traditional and Modern Death Scenes

When our forefather Yaakov was about to die, he called his family together and gave his children his final message. The Torah describes this death scene in a straightforward way, without tears or grief. Everyone realizes that death is imminent and inevitable.

This biblical death scene was characteristic of the way families traditionally dealt with death. It was normal for death to take place in the midst of one's family, in one's own home. Philippe Aries, in his classic studies of Western attitudes towards death, has coined the phrase "tamed death." In the pre-modern world, people generally knew that death was coming and prepared themselves for this major event. "Children were brought in; until the 18th century no portrayal of a death-bed scene failed to include children."<sup>1</sup>

Aries has argued that the notion of a tamed death "has by now been so obliterated from our culture that it is hard for us to imagine or understand it."<sup>2</sup> The past fifty years have witnessed

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1. Phillippe Aries, *Western Attitudes Towards Death*, Baltimore and London (1974) Page 12.

2. Phillippe Aries, *The Hour of Our Death*, New York (1981) Page 28.

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dramatic changes in the conditions of death and in society's attitudes towards death. It is estimated that about three-fourths of deaths in the United States occur in institutions. People generally die in surroundings unfamiliar to them. They are surrounded by doctors and nurses more often than by family members. Death in a hospital or a nursing home tends to be an impersonal, technical experience — rather than a major event in the life of the dying person and in the life of the surviving family members. The hospital room, filled with machines and tubes, is a rather different environment for death from that known by our ancestors.

There has been a quiet but growing backlash to the modern style of death. Many people are saying "*chadesh yameinu kekedem*," let us try to return, at least in some measure, to the old style of dying. Let us try to consider death as a personal, human event. Let the dying person at least retain his dignity and place among family members. Let us move away from the sterility of death in a hospital to the warmth and comfort of death in familiar surroundings.

The hospice movement attempts to help the dying person and his/her family deal with the impending death. A hospice may be an actual place, a facility where terminally ill people can come to spend their last days. Such a facility attempts to create a home-like environment — to be personal, rather than official. Dying people, who cannot be properly cared for at home, may find the hospice setting far more congenial than a hospital.

Most hospice programs do not involve actual buildings. There are programs operated through various hospitals, with the goal of enabling a dying person to be cared for at home. A hospice volunteer becomes a "member of the family" for the dying person. He/she visits the person regularly and provides emotional support for the one who is dying and his/her family. The hospice volunteer treats the dying person as a person — not as a patient. And that is a great difference. Hospices involve doctors, nurses, social workers and other professionals as well as volunteers.

When dying people participate in a hospice program, they already realize that they are dying and that they will not recover their health. In fact, hospice is designed specifically for the

terminally ill, whose life expectancy is six months or less.

Are there halachic problems with the hospice idea? Should a person be told that he/she has a terminal illness and that he/she would be better off in a hospice than a hospital? Does participating in a hospice program demonstrate a lack of *bitachon* in God, since the person seems to be admitting that death is inevitable and that prayers for the restoration of health are valueless? Hospitals attempt to prolong life, even by using heroic efforts. In a hospice, though, a person is allowed to die, without heroic efforts made to prolong life. Does halacha give us the right to let a dying person die, or must we seek ways to prolong life?

#### **Death Defiance/Death Acceptance:**

Rabbi Maurice Lamm, chairman of the Los Angeles Jewish Hospice Commission, delivered a lecture at the General Assembly of the Council of Jewish Federations on November 1983. In his comments, Rabbi Lamm argued that "By history and by theology, Judaism is death-defying. Man is to do battle against the 'spirit of defilement' which, in fact, is a life-long battle against death, considered to be the worst defect of this world." According to Rabbi Lamm, Jews must struggle against death and refuse to give up on life even against the most insurmountable medical odds. On the other hand, he points out that Jews traditionally have prepared themselves for death. "Man must accept death after defying it to the last."

Rabbi Lamm's exposition, while stressing the death-defying elements in Judaism, does not adequately underscore the death accepting elements in Judaism. The heroes in the Torah did not express a fear or defiance of natural death. On the contrary, they seemed to have lived quite at ease with the idea of dying. When Abraham died, the Torah tells us that he had lived a good life, he was old and satisfied, and he was gathered unto his ancestors. When we are informed of Abraham's death, we do not feel sad, nor do we even feel that Abraham himself was sad. The Rambam has commented that God shows the righteous the reward they receive in the world to come. This information satisfies the righteous as they are dying so they do not resist death, but rather

they welcome it.

When Yitzchak is old and expects to die, he plans to give his blessing to his first-born. When Yaakov nears death, he calls Yoseph and tells him to arrange his burial in the land of Canaan. The Torah does not record that Yaakov was trying to defy death in any way. Rather, he seems to have accepted the reality quite easily and was now concerned with giving his last words to his family. When Yoseph was about to die, he said to his brothers quite clearly: "Anohi met." "I am about to die." When it was time for Aharon to die, God himself informed Moshe and Aharon of the impending death and gave instructions on how to prepare for this event.

Indeed, rabbinic tradition also does not present death as something abhorrent which must be defied with all one's strength. The Torah teaches<sup>3</sup> that when God finished Creation, he looked at the world and saw that it was "very good." The Midrash in *Bereshit Rabbah* offers the well-known interpretation that the words "*hineh tov me-od*" refer to death. That is, after examining His creation, God recognized that death was a positive feature in His creation. There are a number of rabbinic texts which underscore that death is a positive feature of creation and necessary ingredient in God's plan.<sup>4</sup>

Rather than being a strictly death-defying culture, Judaism is actually a balance between death-defiance and death-acceptance. Faithful Jews resist death as long as they can so that they can have the opportunity to fulfill more mitzvot; but once the time of death approaches, the faithful Jew is not afraid. *Hashem li velo ira*.

In her important writings, Dr. Elisabeth Kubler-Ross has described the stages through which a dying patient passes when dealing with his illness and ultimate death. The stages include denial, anger, bargaining, depression — and finally acceptance. At

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3. Genesis 1:31.

4. See Louis Ginsburg, *Legends of the Jews*, Vol. 6, Pages 112-113 Note 641; Vol. 1 pages 287-8; *Avot de Rabbi Natan*, Chapter 14; *Berachot* 10a; *Eliyahu Rabba* 16, 81; the response of Rabbi David Ibn Ali Zimra, Vol 1. 1, No. 256.

this stage, the dying patient has moved beyond grief and sorrow, beyond his own depression and sadness at reaching the point of death. With acceptance, the person feels ready to die.

Reaching a level of acceptance of death may be the most profound experience a person can have in his entire life. It allows a person to evaluate his life from the perspective of one who is about to leave this world. This period provides a person with deep insight and understanding; it is as though he receives a key to solving the riddle and enigmas of life. Anyone who has spent time with a person who has reached this level of death acceptance will know the depth of wisdom, serenity, and love which can characterize this stage of life.

The idea of hospice is built upon the premise that death-acceptance is a positive feature of a person's life. When one knows, really knows, that his remaining time of life is short, he should be allowed to experience the wisdom and love that come with death-acceptance. The hospice setting tries to give moderns the same possibility of experiencing the positive elements of death as existed for our ancestors in earlier generations.

### Should A Person Be Told He/She is Dying?

The hospice idea depends on patients' reaching a level of death-acceptance. Do we have the responsibility or the right to force a person into the realization that his death is imminent? Should we inform a terminally ill patient that he is dying?

The weight of halacha opposes telling a patient that he is dying. The *Shulchan Aruch*<sup>5</sup> rules that we may not tell a very ill patient the news of the death of one of his close relatives. Such news would break his heart and reduce his ability to resist his illness. If a relative died over whom the ill person is obligated to mourn, we still may not inform him of this death, nor tear his garments, nor cry, nor eulogize in his presence. The *Bach* there comments that we should not even tell an ill person of the death of someone who is *not* related to him. By mentioning the death of

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5. *Yoreh Deah* 337.

anyone and by showing our sadness over that death, the ill person may become frightened that maybe he too will die. By extension, it seems evident that we should not tell a patient that he himself is dying, since this will de-moralize him and weaken his will to live.

If a patient is not informed of his terminal illness, how will he have the opportunity to say *vidui* (confession) and to set his house in order before dying? The most obvious answer is that the person himself — regardless of what others do or do not say — knows the seriousness of his condition. Although some people can delude themselves until the very end of their lives, a great many people know of their impending death without anyone having to inform them officially. And even where a person is somewhat reluctant to face up to the reality, we are obligated to remind him of the necessity of confession.

The *Shulchan Aruch*<sup>6</sup> teaches that if one is about to die, we tell him to confess. We tell him that "many have confessed and have not died, and many have not confessed and yet died. On the merit of your confession may you live. All who confess have a portion in the world to come." In other words, we make it clear that a confession is in order, but that confession does not in and of itself mean that the person will die right away.

The text of the confession<sup>7</sup> is itself somewhat tentative. "I admit before you, God, my God and God of my ancestors, that my cure and my death are in Your hands. May it be Your will that You heal me with a complete healing. And if I die, may it be an atonement for the sins, transgressions and violations which I have sinned, transgressed and violated before You. And place my portion in the Garden of Eden, and let me merit the world to come reserved for the righteous." The ill person first asks God to heal him. Only then does he consider the alternative that he might not recover.

From this discussion, it seems clear that a person should not be compelled into a hospice setting if he has not yet achieved the

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6. *Yoreh Deah* 338.

7. *Yoreh Deah* 338:2.

state of death-acceptance. This is a very delicate matter. If the patient himself feels that he is dying and is ready for death, he may ask for the comfort of hospice, for a more personal and humane kind of death. He may express resentment at the possibility of having to die in a hospital, amidst strangers and strange machines. If the dying person does not ask about hospice, or does not know about it, one needs to be very careful in presenting the option. It is not acceptable to deprive a dying person of hope, if a person still fosters hope.

**Bitachon:**

Does death-acceptance reflect a lack of faith in God? By entering a hospice setting, does the dying person imply that God cannot heal him, that prayers are not efficacious?

These questions, which may seem significant, are based on what I think is a false premise. As discussed earlier, Abraham, Yitzchak, Yaakov, Yoseph and other Torah heroes did accept their deaths without difficulty. Even Moshe, who pleaded with God for an extension of life, did so in the hope of being allowed to enter the Promised Land. Moshe did not fear death, nor did he defy it for its own sake. He merely wanted to live to see the fulfillment of his years of labor. God Himself told Moshe that he would die soon and would not enter the land of Israel. Accepting death was not a sign of lack of *bitachon* (trust) but was rather an acceptance of the wisdom of God's creation — which includes both life and death.

Moreover, accepting death does not mean precluding the possibility of God's performing a miracle. There certainly have been many people who were on the brink of death and who miraculously were saved, even after doctors had given up all hope. The one who participates in hospice might have the following thought process: "I am very ill. It appears that I will die soon. I do not want to die in a hospital. I want to be in a comfortable setting. I want to be with family and friends. I am ill, but I am still a person and I want my humanity to be respected. While I understand that the odds are very much against my surviving, I know that the power over life and death is in God's hands. If He decides to grant me life, well and good. If not, I prefer to die in a

hospice setting." To my mind, such a thought process does not reflect any lack of *bitachon*.

The Talmud<sup>8</sup> records the meeting of the prophet Yeshayahu with the king Chizkiyahu. When Yeshayahu informs the king that he is going to die, Chizkiyahu tells the prophet of a tradition in his family that even if a sharp sword is resting on one's neck he should not give up on God's mercy. This idea was also stated by Rabbi Eliezer: "*Afilu cherev chadah munachat al tsavaro shel adam al yimna atsmo min harachamim*." No matter how dangerous one's condition is, there is always the possibility of recovery through God's power. Death-acceptance does not mean total resignation and total giving up on the possibility of extended life.

#### **The Dying Person And His/Her Loved Ones:**

The stages of dying as outlined by Dr. Kubler-Ross apply not only to the patient, but also to the loved ones. The ill person and his family members do not necessarily go through the process at the same rate. It is tragic when a family has given up on the patient, while the patient is still struggling optimistically, thinking that he will survive. It is equally tragic when the patient has achieved death-acceptance, and the family members still persist in telling him that he will recover, that things will be better. The hospice idea is important in that it deals with the dying person and his loved ones. It attempts to harmonize the experiences and feelings of those concerned.

What is the responsibility of family members who see the dying person in great pain or discomfort? What if the doctors have informed the family that the disease can no longer be treated, that the situation is beyond human control? Should the family accept this evaluation and act accordingly? Or should the family continue to defy death?

Put in more specific terms: should the family consider a hospice for the dying person? Should they ask that no heroic medical measures be taken to prolong the person's life? Or should

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8. *Berachot* 10a.

they insist that doctors do everything possible to prolong the person's life with respirators, drugs and other medical procedures? Is the family allowed to say: "The dying person's life is in God's hands. Let us make no heroic efforts to prolong his life."

Rabbenu Nissim<sup>9</sup> has expressed his opinion that "There are times when one must ask for mercy for the ill person — that he should die, such as if the ill person is suffering very much in his illness and it is impossible for him to live." He refers to the Gemara in *Ketubot* 104a, where the maid servant of Rabbi Yehudah Hanasi prayed for the death of Rebbe, since she saw how greatly he suffered. This means that at a certain point it is permissible to conclude that it is best for a person to die, rather than to continue suffering from a hopeless disease. Giving up in such a case is not a sin, but rather a virtue.

One has a responsibility to make the dying person as comfortable as possible, to relieve as much pain as possible. One may pray to God to have mercy on the dying person, to spare him further suffering. But, needless to say, one may not take any physical action to hasten the death of the ill person. In the words of the *Aruch Hashulchan*<sup>10</sup> "Even if we see that the person suffers greatly and that death is preferable for him, nevertheless it is forbidden for us to do anything to hasten his death. The universe and its fullness belong to God, and such is the will of the Blessed One."

### Dealing With A Goses

The Ramo<sup>11</sup> teaches that, while it is forbidden to do something to the imminently dying person (*goses*) to hasten his death, it is permissible to *mesir hamonea* (remove the impediment to death). That is, if someone nearby is chopping wood, and the noise is preventing the person from dying, one may ask the woodchopper to stop, in order to let the person die in peace. Likewise, if the

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9. *Nedarim* 48a.

10. *Yoreh Deah* 339:1.

11. *Ibid.*

dying person has some salt on his tongue, and the salt is preventing him from dying, then the salt may be removed.

A person should live his life in full, without being actively deprived of it, not even a second of it. On the other hand, it is sometimes appropriate to pray that the person be spared further pain and suffering. One need not seek to prolong life beyond its normal course, through artificial means. It is unfair and wrong to prevent one's soul from returning to its rest when the proper time has come.

In past times, Jewish communities served naturally the functions of a hospice. They provided comfort and emotional support for the dying person and his family. The dying person was not deprived of his personality, was not treated as a scientific or medical case number. Death was defied and accepted; it was an event for the individual who died, for his loved ones, for the community. To the extent that hospice tries to restore the human element in dying, it is in harmony with Jewish tradition.

## Use of Disposable Diapers on Shabbat

*Rabbi J. David Bleich*

In recent years a practical problem has arisen regarding Shabbat regulations which impinges upon the lives of virtually every young family. Involved are seemingly simple acts but ones whose permissibility or non-permissibility can be determined only upon careful analysis of several of the fundamental forms of labor proscribed on the Sabbath. Attesting to the significance of the problem are the numerous responsa addressing this matter which have been authored by rabbinic decisors in the United States, Israel and Great Britain.

The disposable diaper is a welcome time and labor-saving convenience of contemporary society. Since the relatively inexpensive paper substitute is discarded immediately after it has served its purpose, a mother need no longer either herself engage in the tedious task of diaper washing or subscribe to a diaper service. Moreover, the disposable diaper eliminates the need for the use of safety pins and the accompanying danger of piercing either the baby or the diaperer's own finger. The diaper itself is made of paper which is shielded by a soft plastic cover designed to limit leakage and the attendant soiling of clothing and crib sheets. Affixed to each of two corners of the paper diaper is a thin strip of gummed plastic tape. Once the diaper is in place, it is secured

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simply by pressing each tab firmly against the corresponding corner of the diaper.

Originally, the adhesive agent applied to the plastic tape was of a nature that made it virtually impossible to remove the diaper with the gummed strip yet intact. When pressed against the corresponding side of the diaper the adhesive agents bonded the gummed tape to the plastic cover of the diaper. As a result, the diaper could be removed only by tearing the plastic tab or by ripping the diaper itself. Recently, some manufacturers have substituted an adhesive agent which permits repeated fastening and unfastening without damage either to the diaper or to the gummed tape. Use of either type of disposable diaper on Shabbat presents halachic problems both with regard to attachment of the gummed tape and with regard to removing the soiled diaper either by tearing the tab or the diaper itself or by unfastening the gummed tab.

### I. Affixing the Gummed Tab

Sewing is one of the thirty-nine categories of labor forbidden on the Sabbath. The end result and the purpose for which sewing is undertaken is the fusion of two previously distinct components into a single entity. Other procedures designed to achieve the same effect, when produced by a process other than sewing, are also forbidden as a derivative (*toladah*) of sewing. Thus, Rambam, *Hilchot Shabbat* 10:11, followed by *Shulchan Aruch, Orach Chayyim* 340:14, rules, "If a person fastens together papers of skins with scribes' paste, this is a derivative of 'sewing' and he is culpable. Similarly, if a person separates papers previously fastened together or skins previously fastened together and does not intend simply to destroy, this is a derivative of 'tearing' and he is culpable."

The principal form (*av melachah*) of sewing involves the durable fusion of two pieces of cloth by means of a thread. In this ruling, Rambam posits causing permanent adhesion of any two objects through the intermediacy of another substance as a

derivative form of "sewing."<sup>1</sup> As a source for Rambam's ruling *Markevet ha-Mishneh* points to a statement of the Palestintian Talmud, *Shabbat* 16:2, indicating that two objects pasted together are regarded as fused into a single entity. Similarly, the Gemara, *Menachot* 34b, records the view of R. Judah who declared that attaching the various sections of a phylactery scroll by means of paste is tantamount to sewing them together. *Magen Avraham*, *Orach Chayyim* 440:18, rules that joining pieces of paper or the like even by means of wax constitutes a form of "sewing" despite the fact that objects joined by wax are much more readily separable than are those attached with glue or paste.

Ostensibly, then, securing a diaper on Shabbat by means of pressing upon the gummed tape would constitute a forbidden act of "sewing." This would certainly appear to be so when the adhesion is permanent, as is the case with regard to disposable diapers whose tabs cannot be removed from the protective plastic cover to which they are attached but must be ripped from the diaper. This is indeed the position of a number of scholars who have addressed this issue. The most detailed exposition of that view is presented by R. Pesach Eliyahu Falk, a member of the Gateshead *kollel*.<sup>2</sup> Rabbi Falk reports that the noted Israeli authority, R. Yosef Eliashiv, fully concurs in the opinion that use

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1. See *Markevet ha-Mishneh*, *Hilchot Shabbat* 10:11; and R. Menashe Klein, *Mishneh Halachot*, VIII, no. 60, s.v. *ve-zeh yatza*. Cf., however, R. Pesach Eliyahu Falk, *Teshuvot Machazeh Eliyahu* (Bnei Brak, 5739), no. 70, sec. 3, who maintains that adhesion even in the absence of a "thread" or intermediary substance constitutes "sewing." Thus, for example, whether or not fusion of two pieces of plastic by means of heat would constitute an act of "sewing" appears to be contingent upon this dispute. *Machazeh Eliyahu's* position appears to be supported by the definition of sewing formulated by R. Moshe Feinstein, *Iggerot Mosheh*, *Orach Chayyim*, II no. 84, and by the comments of *Aruch ha-Shulchan* 317:18. *Aruch ha-Shulchan* declares that the sole difference between "tying" and "sewing" is that objects tied together may be separated and restored to their original state whereas objects sewn together cannot be separated without being torn apart by means of a destructive act. See also R. Samuel David Munk, *Teshuvot Pe'at Sadecha* (Jerusalem, 5735), no. 5, and no. 45.

2. *Teshuvot Machazeh Eliyahu* (Bnei Brak, 5739), no. 70, sec. 4.

of such diapers on the Sabbath involves a biblical transgression. A similar view is advanced by R. Noson Gestetner, author of *Natan Piryo* on various tractates of the Talmud,<sup>3</sup> as well as by R. Shraga F. Schneebalg.<sup>4</sup> R. Isaac Liebes<sup>5</sup> forbids the use even of refastenable tabs. R. Menashe Klein<sup>6</sup> also opposes the use of disposable diapers on Shabbat on grounds which would apparently apply to the use of refastenable tabs as well. A similar opinion is expressed by the Sephardic Chief Rabbi of Israel, R. Mordecai Eliyahu.<sup>7</sup>

In terms of the halachic problems involving use of disposable diapers on the Sabbath, there is, to be sure, a marked difference between diapers secured by gummed tapes which cannot be unfastened and those which can be unfastened in order to remove the diaper. *Bet Yosef*, *Orach Chayyim* 317, and *Ramo*, *Orach Chayyim* 317:3, record two conflicting views with regard to whether or not the prohibition against sewing extends to sewing stitches which are not designed to be permanent in nature. Some authorities are of the opinion that the category of "sewing" includes only sewing stitches designed to effect a permanent bond between the articles so joined. According to those authorities, temporary stitches designed for subsequent removal do not create such a bond and hence are not encompassed by this prohibition. Other authorities are of the opinion that permanence is irrelevant and maintain that the act of stitching is forbidden under all circumstances. Since glueing or pasting is classified as an activity forbidden on Shabbat because it is a derivative of "sewing," it stands to reason that those authorities who view temporary stitching as permissible would deem pasting for purposes of forming only a temporary cohesion to be permissible as well. *Ramo* rules in accordance with the lenient opinion but admonishes that such actions should not be performed in the presence of the untutored who are likely to be unaware of the distinction between

3. *Or ha-Shabbat*, no. 1 (5744), pp. 23-27.

4. *Teshuvot Shraga ha-Meir*, III, no. 103, secs. 4 and 5.

5. *Teshuvot Bet Avi*, IV, no. 79.

6. *Sha'arei Halachot*, Iyar 5733, reprinted in his *Mishneh Halachot*, VIII, no. 60.

7. *Sefer Zikaron le-ha-Rav Yitzchak Nisim* (Jerusalem, 5745), I, 14.

permanent and temporary stitching. It would appear that the same restriction is also applicable with regard to non-durable forms of pasting.

However, *Shulchan Aruch, Orach Chayim* 440:7, fails to make any distinction between permanent and temporary stitching, thereby implying that even the sewing of temporary stitches is forbidden on Shabbat. Moreover, *Tehilah le-David*<sup>8</sup> maintains that this distinction applies only to the biblical prohibition, but that all forms of temporary sewing (and pasting) are rabbinically proscribed.

Rabbi Falk suggests that all cohesion effected by means of diaper tabs may be regarded as non-permanent in nature. That contention is based upon the consideration that although, in reality, the tab cannot be unfastened, the mother who diapers the baby has no desire whatsoever to cause a permanent bonding of the tab to the diaper. The diaper is designed to be removed in a relatively short period of time and then, in light of the fact that it cannot yield any further benefit, to be cast aside as useless. Since permanent bonding yields no benefit there is no reason to assume that such bonding is intended by the person securing the tape and hence, it might be contended, no biblical transgression is incurred. Rabbi Falk, however, dismisses this argument in asserting that "permanence" versus "non-permanence" is determined by empirical reality rather than by subjective intent. A similar position is espoused by Rabbi Menashe Klein.

In support of the position that "permanence" is determined by the factual nature of the situation rather than by subjective intent, Rabbi Falk cites an inference from the comments of Rashi, *Sukkah* 33b, attributed to R. Shlomo Zalman Auerbach.<sup>9</sup> A similar distinction between "permanence" versus "non-permanence" applies to the prohibition concerning tying knots on Shabbat and Yom Tov, i.e., the tying of any "permanent" knot is forbidden. Rashi declares that the four species may not be bound together

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8. 440:6.

9. Cf., the comment of Rabbi Auerbach published in Dr. Abraham S. Abraham's *Lev Avraham*, II (Jerusalem, 5738), 20.

with a proper knot because tying a knot on Yom Tov constitutes a biblical transgression and the person binding the four species with a knot "has no intention of ever unloosing [the knot]." It is quite clear that the individual binding the four species in order to fulfill the mitzvah properly has no need for the species to remain permanently bound as a unitary entity and hence has no intent to tie them together permanently. Indeed, it is precisely because he has no further need for the species themselves that he makes no attempt to untie the knot subsequently. Nevertheless, since, in point of fact, the knot is destined to remain tied permanently, tying the knot on Yom Tov constitutes a biblical transgression. Hence, it may be deduced, argues Rabbi Auerbach, that the halachic category of "permanence" is determined by empirical reality rather than by subjective intent.<sup>10</sup> Similarly, points out Rabbi Falk, even though the mother has no particular need for the tape to adhere to the diaper permanently and hence has no intent to effect a permanent cohesion, nevertheless in point of fact, the attachment is permanent in nature.

Moreover, contends Rabbi Falk, even if the mother, by painstaking effort, were somehow able to unfasten the gummed tape, use of such diapers on Shabbat would be forbidden nonetheless. *Bi'ur Halachah, Orach Chayyim* 317:1, rules, contrary to the position of *Taz*, that a knot of a nature which is ordinarily permanent may not be tied on Shabbat even with the intention of untying it immediately. Applying the same principle to fastening the diaper tab, Rabbi Falk concludes that, since the tape is not ordinarily unfastened, the prohibition would be equally applicable even were the mother to resolve to unfasten the tape in removing the diaper.<sup>11</sup>

Accordingly, Rabbi Falk advises that, if disposable diapers are used on Shabbat, they be used in the same manner that cloth diapers have been used heretofore, i.e., the diaper should be

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10. Cf., however, R. Eliezer Waldenberg, *Tzitz Eli'ezer*, XV, no. 17, sec. 3, s.v. *nosaf la-zeh*, and sec. 4.

11. See also the comments of *Mishneh Halachot*, VIII, no. 60, s.v. *ve-od bo*.

fastened by means of a safety pin and the gummed tape disregarded and left unused.

Nevertheless, a permissive view with regard to the question of use of disposable diapers on Shabbat is adopted by many prominent rabbinic decisors.<sup>12</sup>

Although not addressed to him, the most compelling argument against Rabbi Falk's position is advanced by Rabbi Binyamin Silber.<sup>13</sup> Rabbi Silber argues that the "sewing" involved in attaching the gummed tape to the diaper is "non-permanent" in nature despite the fact that it is designed to adhere permanently. "Sewing" involves the permanent cojoining of two separate articles. In the case of disposable diapers, the joining of the corresponding sides of the diaper is not at all permanent. To be sure the "thread," i.e., the adhesive strip or tape, is not removable but, nevertheless, the cojoining of the two sides of the diaper is entirely transitory as evidenced by the fact that the diaper itself is torn in the process of its removal.<sup>14</sup> A similar principle is enunciated by *Mishnah Berurah* 317:23 with regard to untying knots. *Mishnah Berurah* rules that strings which become entangled and knotted may be torn on Shabbat since at no time is there any intention that the articles in question remain permanently tied. The knot is regarded as non-permanent in nature by virtue of the fact that the strings are separable by means of tearing them apart even though the knot itself cannot be untied. Similarly, argues Rabbi Silber, the intention to follow the common practice of tearing the diaper in the process of removal renders the cohesion non-

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12. Among these authorities are R. Pinchas Scheinberg, *Moriah*, Kislev 5744; R. Ovadiah Yoseph, *Yechaveh Da'at*, IV, no. 24; R. Binyamin Silber, *Az Nidberu*, VI, no. 31; *idem*, VII, nos. 34 and 35; *idem*, XII, no. 11; and *idem*, XIII, no. 25; R. Issac Liebes, *Teshuvot Bet Avi*, IV, no. 79; R. Moshe Stern, *Teshuvot Be'er Mosheh*, VI, no. 14; R. Eliezer Waldenberg, *Moriah*, Kislev 5744, reprinted with additions in *Tzitz Elei'ezers*, XVI, no. 6; and R. Ephraim Greenblatt, *Teshuvot Rivevot Efrayim*, IV, no. 96.

13. *Az Nidberu*, XII, no. 11.

14. Cf., R. Menashe Klein, *Mishneh Halachot*, VIII, no. 60, s.v. *u-le-fi zeh*, who advances a similar argument but does not regard it as compelling.

permanent in nature even though the adhesive itself is not disturbed.

Noteworthy is the fact that Rabbi Silber asserts that Rabbi Eliashiv is in full agreement with him on this crucial point. Rabbi Falk writes that when Rabbi Eliashiv "heard the facts, [viz.,] that it is not the wont of women to open the adhesion when they remove [the diaper] from the baby, it was obvious in his eyes that this involves a biblical prohibition." Rabbi Silber asserts that Rabbi Eliashiv was led to believe that the diaper is customarily removed intact without being torn in any way. Under such circumstances the grounds for prohibiting the use of paper diapers are quite cogent. Nevertheless, Rabbi Silber declares that, if not for the opinion of Rabbi Eliashiv to the contrary, he would be prepared to permit use of disposable diapers even when they are secured with full intention to remove them intact. He argues that, since the diapers are thrown away and destroyed after a brief period of use, the "sewing" is designed to effect a transitory bond rather than a durable one. Rabbi Silber assumes that sewing with intent immediately to incinerate or otherwise to destroy the sewn object is regarded as a non-permanent form of sewing. Having made this assumption, Rabbi Silber argues that intent to dispose of the diaper as refuse reduces the "sewing" performed in fastening the adhesive strip to a state of non-permanence. Rabbi Scheinberg similarly contends that a mother diapering her baby with a disposable diaper intends no permanent adhesion "since she afterward throws it away."

Rabbi Silber's discussion focuses entirely upon the question of whether or not the "sewing" is to be deemed permanent in nature but does not address the fact that, as noted earlier, *Bet Yosef*, *Orach Chayyim* 317, and *Ramo*, *Orach Chayyim* 317:3, cite authorities who regard the prohibition as applicable even in cases in which the "sewing" is non-permanent in nature. Rather, Rabbi Silber relies upon his own earlier novel analysis of this issue<sup>15</sup> in which he notes that the authorities cited by *Bet Yosef* and *Ramo*

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15. See *Az Nidberu*, I, no. 57, sec. 5.

speak, not of sewing which is non-permanent in nature, but of *tearing* stitches that are not designed to remain in place permanently. Rabbi Silber maintains that even those authorities who express a stringent view do so only with the regard to tearing temporary stitches. Rabbi Silber reasons that since, when undertaken for a constructive purpose, tearing is a culpable act even when the tear is made in the garment proper rather than at a seam, therefore the ripping of non-durable stitches also constitutes a culpable act of tearing. But, argues Rabbi Silber, all authorities agree that there are no grounds for prohibiting non-permanent sewing since the only form of sewing that was undertaken in the construction of the Tabernacle (which serves as the paradigm for all forbidden forms of labor on Shabbat) was permanent in nature.<sup>16</sup>

R. Ovadiah Yosef similarly rules that attachment of the adhesive tab constitutes a non-permanent form of sewing but does not at all describe the method utilized in removing the diaper. Although he does not explicitly state this to be the case, he apparently maintains that all types of disposable diapers may be used including those that can be removed only by means of tearing the tape or the diaper.<sup>17</sup> Rabbi Yosef, however, does not enlighten us with regard to why he regards such attachment to be non-

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16. Rabbi Silber expresses a similar view in *Az Nidberu*, VI, no. 21.

For an opposing view see *Mishnah Berurah*, 440:27, and *Shulchan Aruch ha-Rav, Mahadura Batra, Orach Chayyim* 301. Rabbi Silber, *Az Nidberu*, VI, no. 21, *s.v. ve-ha-Ran*, concedes that *Ritva, Shabbat* 74b, maintains that non-permanent sewing is forbidden but asserts that this is an isolated opinion. A diametrically opposed position is espoused by *Tehillah le-David* 440:6 who maintains that even those who permit the ripping of non-permanent stitches concede that sewing such stitches is proscribed at least by virtue of rabbinic decree. This also appears to be the view of *Shulchan Aruch ha-Rav, Orach Chayyim* 317:7. See also, R. Mordecai Eliyahu, *Sefer Zikaron le-ha-Rav Yitzchak Nisim* (Jerusalem, 5745), I, 13.

17. The permissive ruling of R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilchatah* (Jerusalem, 5739) 15:81, similarly fails to distinguish between different types of adhesive tabs and is cited by Rabbi Silber, *Az Nidberu*, XIII, no. 25, as in agreement with his own permissive view despite the reservation expressed by Rabbi Neuwirth as interlocutor in *Az Nidberu*, VII, no. 34.

permanent in nature. Rabbi Yosef permits what he regards as non-permanent attachment of the adhesive tab on the basis of a configuration of considerations none of which independently would constitute sufficient grounds for a permissive conclusion:

(1) Although, as noted earlier, even non-permanent sewing is prohibited by many authorities, there are some, primarily Ravyah, *Hilchot Shabbat*, no. 206, who permit sewing of such nature. Rabbi Yosef asserts that the opinion of those authorities should be given greater weight in situations involving "unusual" forms of "sewing" such as the fastening of garments by means of glue or paste.

(2) *Tal Orot*, p. 56b, advances the novel thesis that although joining by means of glue or paste constitutes "sewing" insofar as paper or leather is concerned, the sewing of cloth is forbidden only when the pieces of material are joined together by thread. He reasons that, although paste is a customary and usual form of cojoining for other substances (*darkan be-kach*), pieces of cloth are not usually joined together by means of substances other than thread and hence use of such substances for the cojoining of pieces of cloth is not forbidden.<sup>18</sup>

(3) At one time formal garb in Baghdad included an elaborate turban made of a length of cloth intricately wound around an item of headgear which in turn was placed upon a thick cotton skullcap. Once wound in this manner, the turban could be removed and replaced on the head repeatedly "for a month or two" without becoming unravelled. *Rav Pe'almim*, I, *Orach Chayyim*, no. 26, questions whether fashioning the turban in this manner on the Sabbath constitutes a forbidden form of "finishing a vessel" (*tikkun mana*).<sup>19</sup> *Rav Pe'almim* rules that, although the turban cannot be removed and replaced unless it is wound in this manner and hence it becomes an article of clothing only upon performance of this operation, it is nevertheless permitted to fashion the turban

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18. For a discussion of this thesis see *Ginat Veradim*, *Orach Chayyim*, *klal 3*, secs. 17 and 18.

19. Cf., R. Moshe Feinstein, *Iggerot Mosheh*, *Orach Chayyim*, I, no. 122, sec. 6, and R. Pinchas Scheinberg, *Moriah*, Kislev 5744, p. 204.

on Shabbat. *Rav Pe'alm* reasons that, since it is impossible to fashion the turban unless it is actually upon the head of the wearer, the procedure is permissible because it is performed *derekh levishah*, i.e., incidental to donning the garment, rather than in the form of fashioning an article of clothing. Rabbi Yosef rather tenuously argues that, by the same token, "sewing" which takes place *derekh levishah* is not prohibited.<sup>20</sup> Accordingly, since the fastening of the adhesive tab is undertaken in the course of "donning" the diaper, Rabbi Yosef opines that it is permissible according to the opinion of *Rav Pe'alm*.

The Debrecziner Rav, R. Moshe Stern,<sup>21</sup> apparently relies upon the opinion cited by Ramo, *Orach Chayyim* 340:14, to the effect that ripping non-permanent stitches is not a forbidden form of "tearing." *Be'er Mosheh* apparently assumes that, although Ramo cites two conflicting opinions, he accepts the view that, as a matter of normative law, there is no prohibition even against sewing such stitches but that, nevertheless, they should not be sewn or torn in the presence of an ignorant person lest such an individual be misled and fail to distinguish between "permanent" and "non-permanent" types of sewing. Such confusion, argues *Be'er Mosheh*, is unlikely to result from permitting the fastening of disposable diapers. Since it is well known that the diaper rapidly becomes soiled, the non-permanent nature of the attachment of the tab to the diaper will be perceived by all and will not lead to confusion with other forms of cojoining.<sup>22</sup>

Rabbi Waldenberg, on the other hand, maintains that Ramo himself forbids tearing even non-permanent stitches as a matter of normative law since he records the negative view without comment

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20. R. Ovadiah Hadaya, *Teshuvot Yaskil Avdi*, IV, *She'ilat Shalom*, no. 7, sec. 5, cites the reasoning of *Rav Pe'alm* in arguing that fastening a garment by means of a pin does not constitute "sewing."

21. *Teshuvot Be'er Mosheh*, IV, no. 14.

22. *Chazon Ish*, *Mo'ed* (Bnei Brak, 5733), p. 257b, draws a similar distinction with regard to temporary attachment by means of a pin. See also *Teshuvot Machazeh Eliyahu*, no. 70, sec. 1.

but prefaces the permissive view with the phrase "but some permit." In this assessment of Ramo's position Rabbi Waldenberg follows the opinion of *Chazon Ish*,<sup>23</sup> who maintains that Ramo accepts the stringent view with regard to this matter.<sup>24</sup>

Rabbi Waldenberg, however, argues that fastening the adhesive tab of a paper diaper is permissible according to all authorities, but for an entirely different reason. *Shulchan Aruch, Orach Chayyim* 314:10, permits the tying of a knot designed to be untied on the same day on the theory that such a knot is not even in the category of a "non-permanent" knot.<sup>25</sup> *Magen Avraham, Orach Chayyim* 440:18, followed by *Mishnah Berurah* 340:45, equates the categories of non-permanent sewing and the tying of a non-permanent knot. Accordingly, argues Rabbi Waldenberg, halachically, an adhesion not intended to survive for even a single day is not even a form of "non-permanent" cohesion and hence is entirely permissible.<sup>26</sup>

R. Samuel Wosner<sup>27</sup> speaks of diapers which are "loose" and designed "to be sealed and opened constantly," from which it may

23. *Otzerot Yerushalayim*, no. 78 (5731), p. 1, 234, reprinted in the 5733 edition of *Chazon Ish, Mo'ed*, p. 257b.

24. See, however, *Shulchan Aruch ha-Rav, Orach Chayyim* 317:7, who maintains that Ramo accepts the lenient view. This is also the position of R. Samuel Wosner, *Teshuvot Shevet ha-Levi*, V, no. 31, sec. 2, and no. 78, sec. 4, as well as of R. Pinchas Scheinberg, *Moriah*, Kislev 5744. See also *Az Nidberu*, VI, no. 21.

25. Citing this ruling, *Magen Avraham* 340:18 permits the separation of pages accidentally fastened together by wax adding that, *a fortiori*, this is permissible since the attachment occurred "of its own accord." Even if one does not accept Rabbi Waldenberg's argument that it is permitted to cojoin objects if the cohesion is not designed to endure for at least one day, it nevertheless seems that *Magen Avraham* certainly regards the separation of an adhesion designed to endure for such a brief period as permissible even in the presence of an ignorant person. It should be noted that later authorities do not understand attachment "of its own accord" as a necessary condition of *Magen Avraham*'s permissive view; see *Chayyei Adam, Hilchot Shabbat* 29:1, and *Shulchan Aruch ha-Rav, Orach Chayyim* 340:17. Cf., however, *Mishneh Halachot*, VIII, no. 60.

26. The same point is made in an analogous context by *Shemirat Shabbat ke-Hilchatah* 15:81, note 250; see below, note 57 and accompanying text.

27. *Teshuvot Shevet ha-Levi*, V, no. 31, sec. 2.

be inferred that he permits only the use of gummed tapes which are readily unfastened. Rabbi Wosner follows the view cited by Ramo which maintains that non-permanent sewing is normatively permitted but should not be performed in the presence of an ignorant person. The latter consideration, Rabbi Wosner rules, may be waived "for the benefit of an infant." Rabbi Wosner does, however, advise that the tape be fastened in an unusual manner (*shinuy*), i.e., that only the very tip of the tab should be secured.<sup>28</sup>

## II. Removal of Disposable Diapers

Rabbi Shrage F. Schneebalg<sup>29</sup> adopts a stringent view with regard to tearing the gummed tape of a disposable diaper in order to remove it from the baby. Rabbi Schneebalg rules that the diaper may be removed in this manner only if the child is in great discomfort and then only by a non-Jew. However if the child cries incessantly or is otherwise in danger of illness, Rabbi Schneebalg permits the tearing of the diaper even by a Jew.

Rabbi Schneebalg's opinion notwithstanding, it would appear that the question of removal of a disposable diaper poses an entirely different issue. The resolution of that question is not necessarily related to the permissibility or non-permissibility of securing such a diaper in the first instance. Thus, even though it may not be permissible to fasten the adhesive tab on Shabbat, if it transpires that a disposable diaper fastened with the accompanying gummed tape has been used on Shabbat, or if the baby is still attired in a diaper which has been secured in this manner before Shabbat, must authorities maintain that there is no problem with regard to tearing the tape, or the diaper itself, in order to remove the diaper on Shabbat. Rambam, *Hilchot Shabbat* 10:11, rules that only "if a person separates... and does not intend simply to destroy, this is a derivative of 'tearing.'" Tearing a diaper in order to remove it from the baby's body certainly renders the diaper unusable and constitutes a "destructive" act. Tearing the gummed

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28. A similar ruling appears in his *Teshuvot Shevet ha-Levi*, V, no. 78 sec. 4.

29. *Teshuvot Shraga ha-Me'ir*, III, no. 103, sec. 5.

tape which secures the diaper similarly appears to be an act that is "destructive" in nature since at the minimum the tape is destroyed even though the diaper itself may remain usable if secured by a safety pin. Accordingly, although Rabbi Falk forbids fastening the diaper on Shabbat by means of securing the adhesive strip, he finds no difficulty in permitting its removal.

Nevertheless, according to the position of at least one authority, the concept of "destruction" (*kilkul*) as applied to the diaper and its gummed tab requires re-examination. In days gone by, it was the practice to leave food, particularly the Sabbath *cholent*, in a baker's oven to be kept warm for Shabbat. Heat was provided, not by an open flame, but by retention of heat within the brick oven. In order to assure that the oven would retain its heat the door of the oven was sealed by pasting a thick paper over it. The paper was then ripped off on Shabbat in order to remove the food from the oven. Despite the fact that the paper was attached to the oven with paste, that act was not regarded as a forbidden form of "tearing" since the paper was destroyed in the process. Nevertheless, *Pri Chadash*<sup>30</sup> forbade this practice. He argues that, although the paper is rendered unusable, the act cannot be deemed to be destructive in nature since it is designed to yield a desired constructive benefit, viz., access to the food within the oven. Rabbe Gestetner points out that, according to the line of reasoning espoused by *Pri Chadash*, ripping disposable diapers in removing them from a child on Shabbat would be forbidden since the intent is constructive in nature, i.e., the comfort and cleanliness of the child.<sup>31</sup>

The opinion of *Pri Chadash* is, however, sharply disputed by R. Zevi Ashkenazi<sup>32</sup> and R. Abraham Danziger.<sup>33</sup> *Magen*

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30. *Yorah De'ah* 118:18.

31. Rabbi Waldenberg suggests that tearing the diaper is not designed to yield even the constructive benefit of providing access to the child but merely to eliminate a source of discomfort. Removal of an object causing discomfort, he argues, is not "constructive" in the sense that it does not yield a positive benefit.

32. *Teshuvot Chacham Zevi*, no. 39.

33. *Nishmat Adam* 29:5.

*Avraham*<sup>34</sup> cites the ruling of the Tosefta, *Shabbat* 17:9, permitting the tearing of a skin cover from a barrel of wine provided that there is no intention to fashion a spout. *Magen Avraham* cites the Tosefta as establishing the principle that tearing in a destructive manner is permissible even though, as in the case of the Tosefta, an attendant constructive benefit is derived, viz., access to the contents of the barrel. Such permissible tearing is readily distinguishable from forbidden forms of tearing such as tearing cloth in order to facilitate sewing a seam or tearing in anger as a means of venting frustration.<sup>35</sup> R. Zevi Ashkenazi reports that in a personal confrontation with the author of *Pri Chadash* regarding this issue the latter remained silent and that that silence should be construed as acquiescence with his view.

Rabbi Gestetner, however, cites a statement of *Shulchan Aruch ha-Rav*, *Orach Chayyim* 340:17, which appears to be in agreement with the basic principle formulated by *Pri Chadash*. *Shulchan Aruch ha-Rav* declares that "tearing" is forbidden only when it involves the separation of discrete objects or articles which have been cojoined, e.g., the tearing of cloth composed of multiple threads. However the tearing of a single, unitary sheet of paper, rules *Shulchan Aruch ha-Rav*, does not involve a forbidden form of "tearing" (unless the paper is being cut to a desired size, in which case the infraction is that of completing the fashioning of a utensil). Disregarding any consideration of the destructive nature of the tearing, *Shulchan Aruch ha-Rav* declares that it is for this reason that a skin may be torn from the mouth of the barrel, as explicitly sanctioned by the Tosefta.<sup>36</sup> Nevertheless, Rabbi

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34. *Orach Chayyim* 314:14

35. Cf. Ritva cited by *Kesef Mishnah*, *Hilchot Shabbat* 10:10, and *Bi'ur Halachah* 340:14, s.v. *ve-lo nitkaven*. *Pe'at Sadecha* points out that, according to *Bi'ur Halachah*'s analysis of Rashi, tearing is forbidden only if the benefit derived is contemporaneous with the tearing itself. In removing a diaper, the benefit to the child occurs only subsequent to the removal of the diaper and hence is not contemporaneous with the tearing.

36. See, however, *Chochmat Adam* 29:5, who contests the thesis of *Shulchan Aruch ha-Rav*.

Gestetner assumes that, even according to the thesis of *Shulchan Aruch ha-Rav*, tearing a disposable diaper is permitted since it is composed of single sheets of paper and plastic, which are torn without being separated from one another in the course of removing the diaper. Moreover, elsewhere, *Orach Chayyim* 314:12, *Shulchan Aruch ha-Rav* appears to contradict himself and to accept the position of *Magen Avraham*.

*Be'er Mosheh* does not cite the view of *Pri Chadash* but remarks that removing a soiled diaper does not involve "even a destructive form of tearing for [the diaper] is already destroyed at the time of tearing. Such tearing is not at all in the category of 'tearing.'" *Be'er Mosheh* is apparently of the opinion that there can be no prohibition of "tearing" in ripping an object which is of no utilitarian value even prior to being torn.

However these arguments are not accepted by all rabbinic decisors. R. Ovadiah Yosef apparently accepts the basic contention that tearing the diaper is constructive in nature but nevertheless finds grounds to permit tearing the gummed tape, although not for ripping the diaper itself.

Rabbi Yosef cites a number of authorities who maintain that Rambam and *Shulchan Aruch* forbid only the tearing of papers that are permanently glued together but do not forbid such tearing if the papers were originally joined with the intention of separating them at a later time. Thus, R. Joseph Kazis,<sup>37</sup> *Taz*,<sup>38</sup> and R. Jacob Emden<sup>39</sup> permit opening a sealed letter on Shabbat. Indeed, R. Jacob Emden assumes that it is for this reason that his father, *Chacham Zevi*, permitted ripping the paper covering of an oven door on Shabbat.<sup>40</sup> Be that as it may, Rabbi Yosef cites numerous authorities who maintain that such an act of tearing is at least

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37. Quoted by *Pachad Yitzchak*, I, 79b.

38. *Orach Chayyim* 519:5.

39. *Shei'lat Ya'avetz*, II no. 140.

40. *Shei'lat Ya'avetz* apparently misunderstood his father's reason for permitting this practice since, as noted earlier, the matter is explained in an entirely different manner in *Teshuvot Chacham Zevi*, no. 39.

rabbinically forbidden.<sup>41</sup> Hence this consideration cannot justify the tearing of a diaper in its removal.

Nevertheless, consistent with his permissive view regarding securing the diaper by means of the gummed tape, Rabbi Yosef rules that the gummed tape may be removed because, as has been shown earlier, he maintains that its attachment does not constitute a form of "sewing". Since the cohesion of the adhesive strip and the plastic shield covering the diaper is not a proper form of "sewing" they are not deemed to have been cojoined as a unitary object; hence destruction of the cohesion cannot constitute a form of "tearing" a unitary object into separate entities. However, since removal of the adhesive strip is permitted only because its original application is not deemed a form of attachment, Rabbi Yosef cautions that this consideration does not pertain to the tearing of the diaper and hence the diaper itself should not be torn in the process of removing it from the baby. Even though care is taken not to tear the diaper it is entirely possible that, in a significant number of instances, the diaper will nevertheless be torn. Such tearing of the diaper, Rabbi Yosef notes, presents no problem whatsoever since it is an unintended effect of an otherwise permitted act (*davar she-eino mitkhaven*). Moreover, Rabbi Yosef is prepared to permit removal of the tape even if it is certain that unintended ripping of the diaper must occur. Even though the unintended prohibited result is a necessary effect (*pesik reisha*) it is undesired. Rabbi Yosef rules that such an undesired necessary effect (*pesik reisha de-lo niha leih*) is permitted when the infraction involved is only rabbinic in nature.<sup>42</sup>

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41. See, however, *Chazon Ish, Orach Chayyim* 61:2, who maintains that it is now customary to open letters in a manner which is designed to preserve the envelope as a receptacle and hence such an act is forbidden as the fashioning of a utensil. Cf. also, the negative views of *Mishnah Berurah* 440:41 and *Iggerot Mosheh, Orach Chayyim*, I, no. 122, sec. 8.

42. See *Tosafot, Yoma* 34b; R. Yoseph Sha'ul Nathanson, *Sho'el u-Meshiv, Mahadura Kamma*, I, no. 210; *idem, Mahadurah Telita'ah*, III, no. 3; R. Malki'el Zevi Tennenbaum, *Divrei Malki'el*, II, *Yoreh De'ah*, no. 42, sec. 31; R. Yitzchak Elchanan Spektor, *Teshuvot Be'er Yitzchak, Orach Chayyim*, no. 15, sec. 5; and *Teshuvot Maharam Brisk*, I, no. 59. See also, below, note 47.

Rabbi Liebes similarly permits the tearing of the gummed tape but apparently not of the diaper itself. In doing so he relies upon authorities who maintain that, although sewing non-permanent stitches is forbidden by virtue of rabbinic edict, tearing such stitches is not forbidden.

In the course of a lengthy and incisive analysis of a number of fundamental principles concerning Sabbath restrictions which appeared in the Kislev 5744 issue of *Moriah*, the use of disposable diapers on Shabbat is discussed in an almost tangential manner by R. Pinchas Scheinberg, Rosh Yeshivah of Yeshivah Torah Or in Jerusalem. Removal of the gummed tape without tearing the diaper poses no problem for Rabbi Scheinberg, just as it poses no problem for Rabbi Waldenberg,<sup>43</sup> since he does not regard its attachment as a form of "sewing". Tearing the diaper itself, however, is an entirely different matter. Although he agrees with the position of the earlier cited authorities that ripping the diaper in its removal is destructive in nature, Rabbi Scheinberg nevertheless advances a novel view which would militate against that practice.

*Chazon Ish*<sup>44</sup> certainly understands the Tosefta cited by *Magen Avraham* as permitting any type of tearing which is destructive in nature and it is this position which is assumed by Rabbi Gestetner and Rabbi Falk.<sup>45</sup> Although, in general, forbidden forms of labor may not be performed on Shabbat by virtue of rabbinic decree, *Chazon Ish* maintains that destructive forms of tearing, and destructive forms of undoing a knot, as well as destruction of a utensil are permitted when performed in order to make use of an otherwise inaccessible object. Rabbi Scheinberg, however, asserts that even destructive forms of tearing are forbidden by rabbinic edict. According to Rabbi Scheinberg, the element of destructiveness serves to negate only what would otherwise be deemed the "building" of a utensil but does not serve to render other forms of labor permissible. Accordingly, Rabbi Scheinberg understands the Tosefta as permitting only the ripping

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43. See above, note 25 and accompanying text.

44. *Orach Chayyim* 51:13 and 61:2.

45. See also, *Iggerot Mosheh*, *Orach Chayyim*, I, no. 122.

of the skin cover in its entirety from the barrel but not the perforation of the skin. Citing *Bi'ur Halachah* 314:8, and *Pri Megadim, Eshel Avraham* 317:9, he asserts that there is no prohibition against tearing when subsequent sewing is impossible. Therefore, explains Rabbi Scheinberg, the skin may be ripped off since it cannot be sewn to the barrel, but the skin itself may not be torn since it can be mended by means of sewing.<sup>46</sup>

Nevertheless, Rabbi Scheinberg does find other grounds upon which to permit the tearing of even the diaper itself in order to facilitate its removal. He assumes (as do *Shulchan Aruch Shulchan Aruch ha-Rav* and *Teshuvot Shevet ha-Levi* but, as noted earlier, contrary to the position of *Chazon Ish*) that *Ramo, Orach Chayyim* 317:3, accepts the opinion permitting the tearing of a non-permanent seam as normative and forbids such an act only in the presence of an uneducated person who may not perceive the distinction. However, in an argument similar to that advanced by Rabbi Stern, Rabbi Scheinberg contends that such a consideration pertains only in a situation in which the sewn object may appear to be permanent in nature and hence the untutored observer may be led into error. In the case of the gummed tape, argues Rabbi Scheinberg, even the uneducated will readily recognize that the adhesion is in no way durable in nature.<sup>47</sup> Moreover, asserts Rabbi Scheinberg, acts which are forbidden only in the presence of the uneducated are permitted for reasons of "great need" and may therefore be permitted for the benefit of an infant. As noted earlier, the identical consideration is also advanced by Rabbi Wosner. Rabbi Eliezer Waldenberg and Rabbi Mordecai Eliyahu both rule that the rabbinic edict prohibiting tearing non-permanent stitches does not apply "in situations of pain."

However, as emphasized by Rabbi Silber<sup>48</sup> and by Rabbi Waldenberg<sup>49</sup> care must be taken to tear the gummed tape rather

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46. Cf. however, *Aruch ha-Shulchan, Orach Chayyim* 314:20.

47. Unintentional tearing of the diaper is permitted by Rabbi Scheinberg for the identical reason advanced by Rabbi Yosef; see above, note 42 and accompanying text.

48. *Az Nidberu*, XII, no. 11.

49. *Tzitz Eliezer* XVI, no. 6, sec. 9.

than simply to slip the diaper off the baby lest the adhesion be left as a permanent joining of the tape to the diaper.<sup>50</sup>

### III. Removal of Protective Plastic

The gummed tabs attached to disposable diapers are covered with protected strips of thin plastic at the time of manufacture. Those plastic strips are designed to be peeled off prior to use of the diaper. The plastic strips serve to protect the adhesive on the tape and to prevent the adhesive from sticking to other diapers in the box and thereby effectively ruining both the tab and the diaper to which it becomes attached.

At one time it was the practice for shoemakers to sew the right and the left shoes together as a pair. The customer would then tear or cut the threads which held the shoes together. Ramo, *Orach Chayyim* 317:3, records a controversy with regard to whether or not it is permissible to rip or cut these threads on the Sabbath in order to separate the shoes. All agree that it is forbidden to do so in the presence of an ignorant person.

R. Pesach Eliyahu Falk<sup>51</sup> argues that the removal of the protective covering which adheres to the gummed tape is forbidden according to both authorities cited by Ramo. *Taz*<sup>52</sup> declares that the parameters of "permanent" versus "non-permanent" forms of sewing parallel those which establish similar categories of "permanent" and "non-permanent" knots. All knots which are permanent in nature are forbidden to be tied on Shabbat by virtue of biblical law. Mordechai, cited by *Shulchan Aruch*, *Orach Chayyim* 317:1, maintains that it is forbidden to tie any knot designed to remain knotted for a minimum of seven days. The tying of such knots is prohibited by rabbinic decree. *Kol Bo*, similarly cited by *Orach Chayyim* 317:1, maintains that rabbinic law prohibits the tying of any knot designed to remain tied longer

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50. As noted earlier, Rabbi Silber himself maintains that, even if the tab is not torn subsequently, the cohesion is not deemed to be "permanent" in nature.

51. *Teshuvot Machazeh Eliyahu*, no. 70, sec. 2.

52. *Orach Chayyim* 417:6.

than a single day. According to *Taz*, it is similarly forbidden, at least by virtue of rabbinic decree, to cut or tear stitches designed to remain in place for a period of longer than one day or one week.

Disposable diapers, manufactured and packaged in a factory, argues Rabbi Falk, are certainly not designed to be removed from their wrapping and used within a week of manufacture. A similar ruling in the name of R. Shlomo Zalman Auerbach is recorded by R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilchatah* (Jerusalem, 5739) 35: 26, note 66, with regard to use of band-aids on Shabbat. Rabbi Auerbach forbids removal of the inner protective covering of the adhesive strip of the band-aid as a proscribed form of tearing because the covering is intended to remain in place for an extended period of time. A similar view is expressed by R. Yitzchak Weisz.<sup>53</sup> Accordingly, maintains Rabbi Falk, it is similarly forbidden to remove the protective covering from the gummed tape attached to a disposable diaper. R. Samuel Wosner<sup>54</sup> similarly requires that the protective covering be removed before Shabbat. *Shemirat Shabbat ke-Hilchatah* 15:81, also stipulates that the protective covering must be removed before Shabbat but observes that, once removed, the protective covering may be replaced with the intention to remove it on Shabbat. Since the covering is designed to be removed within the period of a day, it is comparable to a knot which may be tied provided that it is designed to be untied the same day.<sup>55</sup> A similar view is quoted in the name of R. Yechezkel Abramsky by Dr. Abraham S. Abraham.<sup>56</sup>

In challenging this analysis Rabbi Scheinberg points out that

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53. *Teshuvot Minchat Yitzchak*, V, no. 39, sec. 2.

54. *Teshuvot Shevet ha-Levi*, V, no. 78, sec.4.

55. See *Shemirat Shabbat ke-Hilchatah* 15:81, note 250. *Teshuvot Be'er Mosheh*, VI, no. 14, refuses to permit reattachment of the protective covering on the tenuous ground that it is necessary "to make a sign and change that they may know that today is Shabbat and not be disdainful." His position is even more incongruous in light of the fact that in *Teshuvot Be'er Mosheh*, I, no. 36, he regards removal of the protective covering of band-aids as so obviously permissible that no explanation need be given. See below, note 58.

56. *Lev Avraham*, I, 6:117, note 223, and *Nishmat Avraham*, *Orach Chayyim* 328:28, note 545.

the shoes described by Ramo which, according to one view, may be cut or torn on Shabbat, were certainly not sold and separated on the very day they were sewn together.<sup>57</sup> Rabbi Scheinberg proceeds to argue that the crucial factor is the desire of the individual who ties the knot or who sews the items together. If, for some purpose, he desires that the knots or stitches remain in place for a day or for a week it is forbidden to untie the knot or to tear the stitches. If, on the other hand, he has no such purpose or desire, it is permitted to untie the knot or to cut the stitches even though, in reality, the knot or the stitches will remain intact for a longer period of time and it is known in advance that this will be the case. The fact that the knot or the stitches remain intact is a mere "technical" or accidental matter, argues Rabbi Scheinberg, rather than a factor intrinsic to the tying of the knot or the sewing of the stitches. The manufacturer of band-aids or of disposable diapers, argues Rabbi Scheinberg, certainly has no objection to their immediate sale and use. To be sure, he knows that they will not be sold to the consumer immediately. But since any delay in sale and use is not by design, Rabbi Scheinberg concludes that there is no impediment to removal of the protective covering from either band-aids or disposable diapers.

Yet another argument for permitting the removal of the protective plastic is advanced by Rabbi Waldenberg. Rabbi Waldenberg, who apparently is of the opinion that destructive forms of tearing are entirely permissible, suggests that the protective covering may be removed because it is ripped off in a destructive manner for purposes of being thrown away. Rabbi Waldenberg reasons that since the covering is peeled off and disposed of as a means of gaining access to the underlying adhesive, its removal is comparable to tearing the skin covering a barrel of wine which most authorities regard as expressly permitted

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57. The identical point is made by R. Ovadiah Yosef in opposition to the view expressed by *Minchat Yitzchak* and R. Shlomo Zalman Auerbach. Rabbi Yosef, however, concludes that it is preferable to remove the protective covering before *Shabbat*.

by the Tosefta, *Shabbat* 17:9.<sup>58</sup> Nevertheless, Rabbi Waldenberg advises that, in light of conflicting opinions, the protective covering be removed before Shabbat. However, Rabbi Waldenberg agrees that, subsequent to its removal, the protective covering may be replaced before Shabbat.

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58. This may also be the basis of the permissive view expressed by *Teshuvot Be'er Mosheh*, I, no. 36. See above, note 55.

## Synagogue Membership and School Admission

*Rabbi Herschel Schachter*

The Midrash on the verse "and there was famine in the land,"<sup>1</sup> comments that in Scripture ten famines are described. Nine of these famines have already transpired; one more is prophesied for the era preceding the coming of Messiah, as described by the prophet Amos:<sup>2</sup>

לא רעב ללחם ולא צמא למים ... כי אם לשמע את דברי ר'.

Not a hunger for food... nor a thirst for water but a strong yearning to hear the word of G-d.

The Gemara comments:

דבר ה' זו הלה, דבר ה' זו נבואה

"To hear the word of G-d" — this is halacha; "the word of G-d", this is prophecy.<sup>3</sup>

Equating halacha (law) with prophecy captures the frustration which will characterize the period before the advent of Messiah.

1. בראשית כ"ו, א.

2. עמוס ח, י"א.

3. שבת קל"ח.

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We will be faced with questions in halacha which are so vexing and complex that they appear insoluble except by prophecy. Such are the intricacies of modern halachic problems that there seem to be few traditional sources to aid us in coming to a methodical, proper conclusion.

The halachic questions raised in today's society concerning synagogue and school membership fall into this category of the difficult and perplexing. We will explore the sources which are available in investigating these topics.

### Shul Membership

As an association for the purpose of serving the religious needs of the community, the membership of a shul should consist only of Jews. It goes without saying that non-Jews cannot under any circumstances be accepted as full-fledged members of a shul.

On the other hand, there are often occasions when a Gentile may want to become a member simply as a sign of respect for the Jewish community or as an expression of support for the religious center of his Jewish friends. He neither expects nor desires any voice in determining the affairs of the shul; his is a non-voting membership. Can there be any halacha forbidding such a step?

On the surface it would seem innocuous to allow a non-Jew (*nochri*) or a Jew who converts out of the faith (*mumar*) to be a non-voting member in a shul. However, there are limitations prescribed by the halacha. The problem reduces to the question of whether we may accept a donation to the shul from a Gentile or a *mumar*. Generally, we are guided by the principle "מקבלים נדירים ונרבבות מן העכו"ם" "We accept contributions from a *nochri*." In the Beth Mikdash, sacrifices were accepted from Gentiles and offered on their behalf. However with respect to the *building* of the Beth Mikdash the verse in Ezra<sup>4</sup> states "לא לכם ולנו לבנות את בית אלוקינו" [When the *nochrim* offered to help build the Temple, they were told] "It is not for both you and us to build the house for our Lord."

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4. עזרא ז, ג.

Based on this verse the Talmud concludes that we do not accept a contribution towards the building of the Beth Mikdash from a *nochri*.<sup>5</sup> Many of the halachic regulations concerning synagogues are patterned after the rules governing the Beth Mikdash.<sup>6</sup> *Kaf HaChaim* quotes *poskim* who feel that the prohibition of accepting money from a Gentile for building the Temple is also applicable to a shul. This, therefore, precludes our accepting money from a *nochri* for the purpose of building a shul. But if the money is designated for use in another religious project, such as erecting an *eruv* or a *mikvah*, we may accept his donation.

This ruling is novel when viewed alongside the teaching of Ramo<sup>8</sup>, which states that if a *mumar* (apostate) offers to contribute to a shul, we must turn him down. Why don't we take from him if we are ready to take from the *nochri*? The *Mishnah Berurah*<sup>9</sup> explains that this case, in fact, exactly parallels the law of the Beth Mikdash. Based on the precise language of Scripture, the Gemara derives the halacha: *מכם ולא כולכם להוציא את המומר*. [The verse says] "From some amongst you" and not "from all of you" to exclude a Jew who denies his faith.<sup>10</sup>

Here we are taught not to accept donations from a *mumar*. By our principle of applying the laws governing the Beth Mikdash to the shul, *Kaf HaChaim* explains, we accept money from a Gentile except for building purposes. Conversely, we turn down all donations to a shul from an apostate Jew.<sup>11</sup>

Now we must determine whether upkeep of the synagogue

5. ערכין ה:ג.

6. See lengthy essay in קדושת בהכ"נ on אוור המורה תשורי תשמ"ו.

7. בפ' החאים או"ח קנ"ד סק פ"ו.

8. או"ח ס' קנ"ד ט"א.

9. The *poski mahri* and others base this ruling on the משנה ברורה.

10. ארם מכם כי יקריב קרבן לד' חולין ה' based on the verse —

11. It should also follow that donations from Jews who are heretics or so non-observant that the halacha considers them equivalent to Gentiles (דינם בעכרים),

should also not be accepted for a school. See, however, responsa of R. Ovadia Yoseph in ספר הוכרכן "פחד יצחק", ל"ג הרב יצחק הוטנר.

falls into the category of donations unacceptable from a Gentile, namely, those used for building purposes. Allowing a *nochri* to become a member in a shul would hinge on this clarification, since membership dues can be assumed to be equivalent to the dues collected in the days of the Temple for its upkeep.

The Talmud qualifies the prohibition of accepting money from a *nochri* for construction of the Temple with the following statement:

כִּי בְּתִחְיָה כִּי בְּסֻף

"In the beginning [we may not accept donations] but at the end [we may]."<sup>12</sup>

Two explanations of the terms **בְּתִחְיָה** (at the beginning) and **בְּסֻף** (at the end) are offered by Rashi:

- 1) **בְּתִחְיָה** – when we build.
- 2) **בְּסֻף** – once the building is completed.

According to this interpretation, it would appear that only for the initial building campaign is it forbidden to accept donations from *nochrim*.

However, Rashi's other interpretation is as follows:

1) **בְּתִחְיָה** – when the Jews were independent they followed the halacha and did *not* accept donations from *nochrim*.

2) **בְּסֻף** – in later years, when the Jewish community was dominated by the non-Jewish government, and under extreme pressure to accept donations from *nochrim*, they had no choice on the matter.

In later years, the Temple was not being build but being maintained. Clearly, according to this view in Rashi, upkeep and maintenance of the shul are the same as a building campaign; once the building is completed, only a contribution without a specific purpose (**סֵתֶם נְדָבָה בְּעַלְמָא**) would be acceptable.

Although it is not spelled out by the *poskim*, this author assumes that the second view of Rashi precludes allowing a *nochri*

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12. ערכין ז.

to become a member in a shul. Membership in a shul implies not merely a subscription to the shul bulletin and the dinner news, but implies that one has joined the ranks of "the supporters of the shul", responsible for its upkeep and its maintenance. A lone donation may be accepted, but a *nochri* may not be counted among those who have undertaken responsibility for the constant upkeep of the synagogue.<sup>13</sup>

### Membership With Voting Privilege

A new dimension is clearly added when deciding who may be given voting rights in a shul. Ideally we should only entrust this important power to learned, righteous people. At the very least, rules must be enacted to exclude obviously aberrant members of the Jewish community from wielding power in a shul. Thus, a man married to a non-Jewess, a Cohen married to a proselyte or to another woman forbidden to him, a person whose transgressions warrant his being distanced from the community (רָאוּי לְנַדּוּי) — such as one who publicly insults the Rabbi or who refuses to circumcise his children — has a distorted sense of what is necessary in the Jewish community. We must bar such an individual from affecting the outcome of choices which have weighty religious significance.<sup>14</sup>

### Lifnei Iver

One of the situations which may prove problematic for a synagogue is a social function open to nominal members of the Jewish

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13. A clear instance occurs if a Gentile requests that a prayer for his health be said for him in a shul. According to the verse לא תחנָם we are not permitted to give a blessing to a *nochri*. (ט"ז יו"ד רל'ב ס"ק ר). However if he is willing to pay for this blessing, we may bless him. But may we accept the donation from him? Were we permitted to accept a donation, we would be allowed to bless him. Based on our interpretation, we may accept from him and bless him when he makes a one-time contribution. But we may not accept remuneration from him in the form of a lifetime membership to the shul.

14. The following is told over by Rav Soloveitchek about his ancestor Rabbi Yoseph Dov Ber of Brisk. During the last century, the Russian government was interested in closing the *חרדי* (schools). The rabbis decided to send a

community. Does the sponsoring synagogue need to be concerned that some of the guests may be *mamzerim* or perhaps not even Jewish? One of the commandments in the Torah is "Thou shalt not put a stumbling block before a blind man,"<sup>15</sup> which includes not causing a person who is "blind" — i.e., unaware of the true facts — to be misled. It is quite possible that a single person attending a function under synagogue auspices will automatically assume that he/she can be assured of the "eligibility" of all participants in the function. Is the shul administration liable for indirectly initiating a forbidden relationship and causing the Jewish partner to sin?

In gauging the validity of this objection, we have to ascertain the scope of the admonition not to cause the blind person to stumble. If the group as a whole will benefit from our action, but a few individuals might be misled, does the prohibition apply?

A similar quandary attaches to the mitzvah of rebuking<sup>16</sup> a fellow Jew when we see him engaging in sin. Here the Gemara qualifies the mitzvah by noting, "*keshem shemitzvah lomar...*"

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representative to St. Petersburg to be on hand to watch out for the religious Jewish needs at all times. The hope was that, in this manner, they would be able to ward off an impending edict forcing them to close the schools before the edict would ever be enacted. One of the congregants in the Brisker's community, who had always been lauded by the Rabbi of Brisk, was suggested for the position, but Reb Yoshe Ber was the first to object to the appointment. When asked to explain his position, he cited a text in "הכונש". There the Gemara deals with the instance of a man who wraps a golden cup for a woman to watch in such a way that she thinks it is silver. If the cup is stolen, she is liable only for the value of a silver cup. By way of "drush" the Rav of Brisk explained that a person puts extra care into watching over something which he thinks is more valuable. The woman would watch over a golden cup more carefully than over a silver one. Hence, if she were negligent in her care of the cup, she would only be obligated to pay the value of a silver cup.

Reb Yoshe Ber's assessment of the man in question was that he lacked an appreciation of the paramount importance of education of the young. The position should be entrusted to someone who valued the schools, above all else, as the most important aspect of Jewish life, regardless of his other qualifications. The same logic applies to voting in a shul.

15. יי"ד ט"ז קרא.

16. יי"ז ט"ז קרא.

"Just as it is a mitzvah to say that which will be listened to, so too is it a mitzvah *not* to say things that will not be listened to."<sup>17</sup> Use of the word "*keshem*" implies equivalence — it is the same mitzvah to remain silent in futile situation as it is to speak up when it might do some good. Moreover, the Gemara rules that if a person engages in an activity which is forbidden but is not aware that he should not be doing it, we must still be cautious about "rebuking" him on the matter. If we are certain that he will not change even if we make him aware of his transgression, it is better to remain silent. "Better that they [the sinners] should violate the law unknowingly than that they should do it deliberately."<sup>18</sup> If a person unknowingly sins he is not considered wicked. However, if after being rebuked he nevertheless continues, he then becomes a *rasha*, a wicked person.

Nevertheless, it seems from the Gemara that even if the rebuke will fail to stop the sinful actions, there is still an obligation of "rebuking," for the sake of protest so that it will not have a bad effect on those watching. Obviously, there are situations where the two aspects of "rebuking" will be in conflict.

This is the dilemma of the rabbi, who must stand before his congregation and "rebuke" them about their oversights or make them aware that some customary activity is forbidden, since he cannot know that there will be 100 per cent compliance. Should the rabbi not to try to uplift the congregation because some individuals hearing his sermon might nevertheless continue their misdeeds, and now be classified as deliberate rather than inadvertent sinners? Certainly not. The limits of the mitzvah of "rebuke", as clarified in the talmudic discussion, apply only to the individual, not to the group. If the rebuker can bring benefit to the group, he must do so, even if some individuals do not go along and will now be caused to sin intentionally.

Similarly, the prohibition of "placing a stumbling block" applies to the individual, not to the group; if the group will benefit

17. *רבנות ס"ה*.

18. *שבת קמח*.

by having an opportunity to socialize with one another, we cannot deprive them of this opportunity because one or two may inadvertently stumble.<sup>19</sup>

### Admission to Yeshiva

Were we able to fashion our own utopia, our schools would be filled exclusively with fine children from observant homes. But functioning as we do in the real world, we are forced to deal with the reality of Jewish marital and familial situations which are far from ideal.

Some problematic situations which have to be confronted include the following:

- 1) When, if ever, may we turn a child away from a yeshiva?
- 2) What are the options of a teacher who discovers that one of his students is, by halacha, not considered Jewish? May he continue to teach Torah to this child in class?
- 3) Does the halacha allow us to expel a child from a yeshiva? If so, when?
- 4) What rules are we to follow concerning non-Jewish children

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19. This approach is verified by a question which was posed to R. Moshe Feinstein (אג"ר מ"ש ז"ד ג' סימן ד'). We have a rule that a *nochri* is forbidden from learning Torah (חגיגה י"ג). A rebbe who was teaching a class where one student wasn't Jewish questioned whether he isn't violating the prohibition of *לפניהם עור לא תתן מכשול* by helping this non-Jewish child to study Torah which is a sin for the child. Rav Feinstein answers that the *rebbe* should continue to teach the class since the group is benefitting from his lessons. Private instruction of this child, however, would be prohibited.

Another mitigating consideration in the synagogue-sponsored social: Suppose someone is about to commit a sin and one is able to convince him to commit a lesser one. Is he then culpable for "placing a stumbling block before the blind" by getting his friend to do something wrong that he hadn't intended to do, even if it is less serious than what he did intend to do? Rabbi Shlomo Eiger cites several *poskim* to prove that this is not a violation of *לפניהם עור*, if one accomplishes more than one loses. The singles' socials are very important to maintain Jewish identity for the participants and to prevent them from intermarriage. Even if some individual participants may unfortunately be led to marry improperly, yet the overall result is that much more will be gained than will be lost.

of a Jewish parent, and *mamzerim* (bastards)?

Regarding the admission of a *nochri* (i.e., the child of a parent whose conversion is questionable or child of a mixed marriage where the mother is not Jewish) into a yeshiva, we face two major obstacles. One is the prohibition against teaching Torah to a *nochri*. This prohibition is usually taken to mean teaching Torah in any form.<sup>20</sup> Even at the most basic educational levels we are commanded not to teach Torah to a *nochri*. This would preclude accepting a non-Jewish child into a yeshiva or day school at any level where even basic Jewish knowledge is passed along.

The second problem which we face is our fear of intermarriage. If we allow the child to go to school together with other Jewish children, when he grows up they will remember him as one of theirs, mistakenly assuming that he is Jewish since he went to yeshiva with them. A similar problem arises with a *mamzer* who, although completely Jewish, is not allowed to marry another Jew. If the *mamzer* attends yeshiva as a child, how will it be known later that he is nevertheless not to be married?

At the end of the second chapter in *Ketubot*, the Mishnah lists different cases where a person may be trusted to testify on something which he saw as a child.

אלו נאמנים להעיר בגדרם מה שראו בקטנים

In these cases one is trustworthy to testify as an adult about what he saw as a child.

Among the examples brought,<sup>21</sup> a man's word concerning his

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20. Rabbi Akiva Eiger goes so far as to say that you may not teach a Gentile who wishes to convert even basic laws such as those found in *קידוץ שלוחן ערוך*.<sup>22</sup> Others take a different approach. Rav Feinstein contends that we would not be allowed to teach him arcane or intricately involved material (עסוק בתורתה). But the straightforward laws are suitable material for instruction of a potential convert. The *מוהרש"א* says that one is only forbidden to teach a Gentile the secrets of the Torah (סודות). Although in practice the ruling of Rabbi Akiva Eiger is not followed, we ought to consider it when discussing a non-Jew who has no intentions of being proselytized (תשוי מנוחת אליעזר).

21. Such as *שטר עירובי תחומיין* and *קיים שטר עירובי תחומיין*.

childhood memories is used to certify that someone is a Cohen. For example, testimony that the individual in question used to leave school early to cleanse himself before dark so that he would be able to eat *terumah* is sufficient evidence to confer Cohen-status upon him. Certainly, then, the *nochri* attending the yeshiva will be assumed by his classmates to be Jewish.<sup>22</sup> The child will grow up with the presumption of being Jewish; he will think he may marry a Jewish girl simply on the basis of this false assumption.

Paradoxically, our fears of intermarriage are better founded if the conversion is questionable than in a case where the child is definitely not Jewish. In the former case, not only will the children vaguely recall that their classmate was Jewish, but they may remember that he was *even* converted, not realizing that the conversion was invalid. Erroneously they will assume that he is a Jew and eligible for marriage within the community. But a child who was known as not being Jewish will not so readily be accepted as an adult.

Our second reason for excluding non-Jewish children subsumes the former. The fear of misleading our children would bind us even in an early childhood setting. Thus, even if no Torah learning is taking place, a child-care environment run under Jewish auspices should not accept a non-Jewish child.<sup>23</sup>

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22. What do we do with a child of a mixed marriage where the mother is Jewish and the father is a *nochri*? In his responsum, Rav Feinstein brings an opinion that the dictum *בַּת יִשְׂרָאֵל הַוָּלֶד כְּשֶׁר הַבָּבָעַ עַל עֲכֹוּם* means that the child is a kosher non-Jew! That is the opinion of Rashi and Tosafot, brought down by the *mag. Acharonim* discuss the question of what to do if such a baby boy is born on Shabbat. Do we do the *brit milah* on the following Sabbath? Rabbi Akiva Eiger (חידושים ליו"ר הלכות ייל"ה) quotes authorities who say that we don't since the child is a *nochri*, and his circumcision is an act of conversion, and not a *מִילָה* which alone is allowed on Shabbat. He is not a *mamzer*, but he still must be converted in order to be considered Jewish.

Although this opinion is an interesting one, it would appear that it is generally not accepted for practical purposes.

23. A question arises when a Jewish organization is only loosely connected with a program, such as a Head Start program run by the government which rents rooms in a shul or a yeshiva building. Here everyone knows that there are all kinds of children in the class and no one, it is assumed, will draw any erroneous

A further dimension to this problem derives from the biblical injunction requiring the Jew to honor the Cohen, as the verse commands, "and you shall sanctify him."<sup>24</sup> Consequently, we always give the Cohen the first *aliyah* when reading the Torah, as a form of recognition of his exalted status. What is the procedure if there is no Cohen present? The Gemara States:

אין שם כהן נתפרדה החבילה

If there is no Cohen present the package [connection] has been broken.<sup>25</sup>

Rashi offers two possible explanations of the talmudic phrase:

- 1) The Levi may be given the first *aliyah* in place of the Cohen, if we choose to do so.
- 2) We may *not* give the *aliyah* to the Levi [since we want to preserve the uniqueness of the Cohen's status.]

Rabbi Joseph Ber Soloveitchek explains that according to Rashi's second interpretation we are blurring the distinctions between the various categories of Jews (*מיוחסים בישראל*).<sup>26</sup> This underscores Judaism's concern about preserving family lineage in *Klal Yisrael*. The commandment of sanctifying the Cohen requires of us to remember the difference between the Cohen and Levi at all times. Rav Soloveitchek suggests that the special punishment prescribed for someone who calls another a "mamzer" or a slave is due to violation of this prohibition.<sup>27</sup> Clearly,

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conclusions. However, if the playgroup or class is sponsored by the yeshiva, one would think that the yeshiva should not accept a non-Jewish child, or it would be guilty of *לפניהם עור*.

24. וקריא ב'א, ח'.

25. גיטין פרק ח'.

26. This reasoning clarifies the ruling that we are permitted to give the first *aliyah* to a *תלמיד חכם* even if he is a Levi. His being honored with the first *aliyah* will not lead anyone to conclude that as a Levi he is being honored as a Cohen, but rather that he is being honored because of his Torah knowledge. However, Rav Soloveitchek, himself a Levi and a *talmid chacham* would very often decline to accept the first *aliyah* in the absence of a Cohen, in order to teach this principle of this view in Rashi to his *talmidim*.

27. It is for this same reason, to preserve the purity of lineage of the Jewish nation,

then, for the reasons mentioned, a *nochri* may not be permitted to attend a yeshiva.

Admission of a *mamzer* is certainly not proscribed by the first argument, since one is permitted to teach Torah to a *mamzer*. But the second objection would appear to govern his case as well as the case of the non-Jewish child. Ideally, we should have a separate but equal school for *mamzerim* to avoid possible intermarriages; in the absence of such an option, however, we are forced to educate the *mamzer* together with other children.



Administrators in a yeshiva are obligated to investigate that a child is Jewish before enrolling him as a student. But what happens if they have been negligent and a non-Jewish child in the class is entrusted to a teacher for the purpose of education? Would he/she be required to quit his/her job in order to avoid teaching such a child?

Rav Moshe Feinstein was asked such a question:<sup>28</sup> a man was hired to teach in a community yeshiva; among the children in his class were some who were actually non-Jewish but assumed by the community to be Jewish. They were being brought up as Jews and were sent to the local day school. Was the teacher obligated to quit his job in order not to violate the prohibition of teaching Torah to *nochrim*?

Rav Feinstein instructed him to proceed according to the following predictable ramifications of his actions:

The school will probable hire a non-observant (or at most a less-observant) teacher who will offer the other children an inferior education. Another possibility is that the other parents may be so

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that Rav Soloveitchev has recommended that today in America boys at day schools and yeshivot be encouraged to incorporate "הלוּי" or "הכזָן" into their names when handing in reports or taking exams in Hebrew. Many American Jews do not know whether they are *לוּיִם*, *כהנִים*, or *ישראלִים*. The mitzvah of *קידשנו* requires of us that we preserve the pure lineage of all our people.

28. *אגרות משה אבן העוד* ס' ב"ו אות ג'.

indignant that they will withdraw their (Jewish) children and send them to public schools. The entire yeshiva may collapse as a result of the teacher's leaving. If such be the case, the *rebbe* should not quit. The fact that a greater *aveirah* (sin) will be precipitated by his leaving the school obviates the need for the teacher to quit in order to avoid the *aveirah* of teaching Torah to a *nochri*.

On the other hand, if the yeshiva would hire someone equally qualified in the event of the current *rebbe's* resignation, and business in the school would continue as usual, Rav Feinstein, while expressing hesitation at the man's losing his livelihood, recommends that the teacher leave. However, according to Rav Feinstein, in such a case a man is not obligated but only advised to quit his job.<sup>29</sup>

If the teacher does find himself teaching a child who considers himself Jewish although technically he is not, Rav Feinstein recommends that the teacher try to proselytize the child in question. If he is past the age of Bar Mitzvah, the teacher can explain his true status to him and convince him of the importance of conversion. If the child is not yet of age, effort should nevertheless be made to convert him. We can use the rule

גַּר קָטָן מִטְבְּלִין אָוֹתָו עַל דָּעַת בֵּית דִין

A child may be ritually immersed for the purposes of conversion under the auspices of the Beth Din.<sup>30</sup>

The conversion is valid because of the principle that "we are permitted to do something which will be advantageous for a

29. Rav Feinstein relies here on some mitigating circumstances:

1) There are other children in the class with the *nochri*. We have already encountered the principle of educating the group even if instruction of an individual in the group violates *לְפָנֵי עָרוֹם*.

2) The level of learning is not one of *עַסְקָה* since the learning is only superficial (see note 20).

3) The child is assumed to be Jewish. Although he doesn't clarify, we assume this means that since, in all likelihood the child will be observant this will be a *זכות* for him.

30. כתובות יא.

person, even if he is not present." In other words, even though the child, as a minor, cannot effect a legal conversion, we can grant the consent for him.

If the child will grow up to be an observant Jew, we would indeed do him a great favor by converting him. But if the parent is not Jewish, what privilege are we bestowing on the child? Is it reasonable to assume he will be able to live as a good Jew? We might even reason that we are harming him by the conversion, since once he is a Jew he will be judged more harshly (by Heaven) than as a *nochri*. But here we must take into account that the teacher is religious and presumably there are others like him in the school. Rav Feinstein relies on the probability that the teachers will be able to influence him to be an observant Jew.

וְאֵף שֶׁהוּא סְפָק הָוּא זְכֹות וְדָעַי

And even if it is questionable whether he will be observant, it is definitely a privilege for him [to be Jewish].

However, he does not further clarify or quantify his assertion.<sup>31</sup>

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31. Rav Moshe seems to assume that the *majority* of children coming out of such a day school will be observant. But if we have a doubt which way the child will go, clearly we don't say "meanwhile, convert the child and wait to see how things turn out." Based on whether the child ends up observant or not we will decide if the conversion was valid. If he grows up to be observant we will say, yes, he was converted. If he turns out non-observant, we will assume that he is still a *nochri*. Although this might be a tempting approach, we have a precedent disqualifying such a view.

The precedent is found on a responsum of Rabbi Elyah Pruzener (maternal grandfather of Rav Soloveitchek) in *(ח' חלק אבן העזר סי' ל"א)*. He rules that we cannot use the principle of *shlala b'penei* if one is not convinced from the outset that he is affecting a *get*.

The Mishnah at the end of *Yevamot* indicates that a man may not give a *get* to his wife unless she is present. Suppose, though, the man is on his death bed and his wife will require *Yibum*, after he dies. We don't know if she will be interested in *Yibum*. Maybe she will prefer a release (*chalitza*) and have difficulty obtaining it. If she would be divorced from her original husband, she would be relieved of any obligation after his death. The Gemara and the *poskim*

Rav Feinstein proceeds further to state that even if we have reason to believe that the child won't be observant, we should still attempt to convert him. Here the assumption is that one is better off being a non-observant Jew than a *nochri*. This is not an obvious affirmation. We might try to reason that if he will violate the commandments of the Torah, he might be better off remaining as a *nochri*. Since a *nochri* is not obligated in many mitzvot, the child's actions during his lifetime would be judged more leniently than if he were to remain in his original situation.

The rationale behind Rav Feinstein's assertion that it is better to be a non-observant Jew than a *nochri* is as follows: The person in question will be judged for his transgressions as a *shogeget*, an inadvertent sinner, since presumably he is brought up non-observant and is not aware that what he is doing is wrong. On the other hand, whatever mitzvot he does do will count in his favor. Rav Feinstein's evaluation contradicts the opinions of most other rabbinic leaders through the ages who felt that one was better off remaining a Gentile than becoming a non-observant Jew.<sup>32</sup> According to the view of the majority of *poskim*, we should not attempt to convert a child unless we feel assured that he will be observant when he matures.

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discuss whether *hamotza get* *laashoto b'makom yibum* is considered a valid divorce. Maybe this is a case of *shogeget* (אבן העור ס' א' רמ"א) and *la'adim shel ba'fnei* (ובין לאדרם של בא' פנוי) (see *Halichot Eliyahu* *Netivot* in asserting that only applies if at the time of the act we are convinced that it will turn out to be a *zivcha*. Thus, for example, the Rabbi makes an *eruv* *habshilin* on behalf of others assuming that this is a *zivcha* for them. At the time, we are sure that others will consider it a *zivcha*. Since we are sure of the *zivcha* when we do the act of *eruv* the *eruv* is valid. However, if we are not convinced from the very outset that it is a *zivcha*, we can not utilize the principle of *zivcha*.

32. See *Shraddiy Ash* (ח"ב ס' ר"ה) that the majority of rabbis consulted, including Rav Yitzchok Elchonon, felt that when the parents were not observant, the act of conversion for the child could not be considered a *zivcha*.

This is also the opinion of Rav Soloveichik.

We have dealt with "biological" reason for denying a child admission into a yeshiva, but there are other factors which might warrant exclusion of expulsion of a child from our schools.

Suppose a child's parent is not living up to his/her obligations as a Jew. May we suspend a child's Jewish education because his parents do not pay tuition? Are we allowed to deny a troublesome Jewish child education in a yeshiva if his recalcitrant behavior might negatively affect his peers?

The *Shulchan Aruch*<sup>33</sup> clearly states that if someone is a sufficient *baal aveirah* (sinner) we should exclude him from the community. Various levels of punitive isolation from the community and normal or religious intercourse, such as *cherem* and *niddui*, are described for different offenses. His need to belong to the community is used as leverage to force the sinner to comply with a directive of the Torah or an edict or decision or the rabbi.

The Ramo rules:

ריש רשות לב"ד להחמיר עליו שלא ימולו בניו ולגרש את  
בניו מבית הספר ואשתו מבית הכנסת עד שיקבל עליו את  
הדין

Permission is granted to Beth Din to be strict with him and not circumcise his children [even though Beth Din is responsible to assure that every Jewish child is circumcised] and to chase his children out of school and his wife from the synagogue until he accepts that which they are trying to force him to do.<sup>34</sup>

An objection might be raised as to the justification for such action. Why punish the sinner's wife and children for something which they didn't do? The *Taz* queries:

אם הוא חטא, אשתו מה חטאה? בניו מה חטא?

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33. יורה דעה של"ד סי' ס"ו.

34. הילכות נרו.

If he sinned, what sin did his wife commit? And what sin did his children commit?<sup>35</sup>

The answer, quite simply, is that restricting his wife and children is the single most efficacious method of forcing him to comply with Beth Din's wishes. The rabbis felt that his family's suffering would have the greatest impact on the sinner. He would agree to obey the law, in the particular area in which he is remiss, in order to afford his wife and children a proper religious environment. Using the children as leverage is not to be confused with punishing them unjustly.

Another objection might be raised. How do we permit violation of a mitzvah such as *Talmud Torah*, *Brit Milah*, and embarrassment of a fellow Jew (the wife and children) in order to achieve our goals?

In *Yevamot*, the Talmud teaches:

יש כח ביד חכמים לעקור דבר מן התורה בקום ועשה  
להוראת שעה ולמיגדר מילתא

The power is in the hands of the sages to uproot something from the Torah even with a positive action, if the purpose of this is to solve a one-time problem or a very important matter.<sup>36</sup>

Obviously, forcing a man to observe certain critical mitzvot may be termed a "very important matter."

One might want to exclude a child from yeshiva if his parents do not pay tuition. But if the child would be sent to public school as a result, such a move on the part of the yeshiva is precluded. Even assuming that the child will be transferred to another yeshiva or that the parents will acquiesce, it appears questionable whether this would be considered an important enough matter to warrant uprooting from the Torah the mitzvah of not embarrassing our fellow man.

35. This ruling is brought in the name of Rav Paltiel Gaon. The *Taz* quotes the Maharshal at the end of *Bava Kamma*.

36. *יבמות ד. ר. יבמות ד.*

The final issue to be discussed herein concerns expulsion of a delinquent student from a school. Some rabbis argue that children younger than Bar Mitzvah are halachically considered too young for judicial punishment (לאו בני עונשין) and may therefore not be expelled from school for any misbehaving or mischief they happen to do. In my opinion, this analysis is not wholly correct.

Certain insights may be gained by turning to the talmudic debate concerning the permissibility of meting out punishment on the Sabbath. Jewish jurisprudence functions on the principle "no punishment is inflicted on the Sabbath."<sup>37</sup> Nevertheless, Rabbi Akiva Eiger<sup>38</sup> does on occasion permit a miscreant to be jailed on the Sabbath, because he distinguishes between different forms of incarceration. Imprisonment as punishment for a deed already committed is not allowed. Sometimes, however, we imprison people in order to prevent them from doing a terrible deed. If a man wishes to run away on Shabbat, leaving his wife an *Agunah* (an abandoned wife whose husband's whereabouts are unknown and who may not remarry), we immure him even on Sabbath. This is permitted and is not to be seen as a *punishment*; taking the would-be sinner into custody is a  *deterrent*.<sup>39</sup>

His distinction can serve as a basic guideline in determining how to deal with an outrageous child. It is our opinion that we may expel a child from school for being a nuisance, even if by Jewish law he is not accountable or punishable. Our rationale in essence is that we are not punishing him. We are simply trying to prevent him from affecting his peers or other children in the school. Parents who spank their young children when they misbehave are not considered in violation of the principle that a

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37. לאו"ח של"ט ס"ק ד.

38. Cited by יד. לאו"ח של"ט ס"ק ד.

39. Rav Akiva Eiger further says, in the name of *rishonim*, that someone who doesn't want to eat matzoh or sit in a succah may be forced to do so on Yom Tov. The Gemara in *Ketubot* states מכין אותו עד שתצא נפשו. This is not a punishment but rather a form of *mitzvah*. כופה על

minor is not subject to punishment. The hitting is intended for educational purposes and not primarily as retribution.

Our analysis of problematic situations has been intended only to suggest directions in which to seek solutions. Let us hope that we can improve our community sufficiently so as to obviate the need for clarifying the topics covered herein.

## The Baal Teshuva in the Jewish Community: Re-entry Problems

*Rabbi Moshe Weinberger*

### Introduction

It is said in the name of the Baal Shem Tov: "In the case of Acher (the other) a heavenly voice proclaimed: Return, return, children who would return, except for Acher. It was Acher's punishment that he should be cast aside. But still if he had pressed forward and returned he would have been accepted. There is nothing that can stand up before repentance."

We are living in a period of bewildering paradoxes. It was not long ago when the Jewish people felt cast aside, with little hope of rejuvenation. We stand now, forty years later, in the midst of a massive spiritual restoration program known as the *Teshuva* movement. One cannot help but feel that we have succeeded where Acher failed. Thousands of Jews of all backgrounds and ages have "pressed forward and returned" to the beliefs and practices of Torah Judaism, thereby creating a need for specialized academies known as *Baalei Teshuva* yeshivot, as well as an increasing amount of organizations which cater to *Baalei Teshuva* and potential *Baalei Teshuva*.

Anybody who is even tangentially involved with this movement knows that the journey is not over once the individual has become an observant Jew. There are a number of halachic problems that confront the *Baal Teshuva* and threaten his status in

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the home from which he originates as well as the community into which he seeks entrance and acceptance.

The purpose of this article is to present some of these unique problems and to undertake a study of how halachic authorities, past and present, have responded to them. It must be emphasized at the outset that this is not meant to be an halachic guide for a *Baal Teshuva* or a person considering becoming one. The Rambam's *Hilchot Teshuva* accompany the Jew into the world of *teshuva*, and the *Shulchan Aruch* regulates his life once he has arrived. There is, nevertheless, a difficult period of transition and adjustment.

### I. Filial and Familial Problems

The *Baal Teshuva* is an individual who has undergone a transformation which in most cases completely redefines his position and role as a Jew and as a member of society as a whole. The Rambam writes:

It is the way of *teshuva*... to keep a large distance from that which caused him to sin... He [the *Baal Teshuva*] changes his name as if to say, "I am different, I am no longer the person who did those things..."<sup>1</sup>

Thus the *Baal Teshuva* is involved in a difficult struggle to create a new lifestyle as well as an environment which will help facilitate the development of his new identity. Within the context of this battle the *Baal Teshuva* confronts a painful and perplexing dilemma: "What about my family? What about that person or group of people who cannot be excluded from my new life but whose lives are now so different from mine?" This is not merely a philosophical quandary. The *Baal Teshuva* demands to know what his or her halachic obligations are vis a' vis the nonobservant or at times, anti-religious members of his family. On the one hand he is fully aware of the great emphasis the Torah places on the mitzvah

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1. Rambam, *Hilchot Teshuva* 2:4

of honoring and revering one's parents, but on the other hand his new lifestyle counterclaims a myriad of actions and beliefs which antagonize the rest of his family and often alienate him from those whom he must respect. He is not certain if he must remain under the jurisdiction of people who despite their love and concern are ignorant of their obligations as Jews. How does the halacha classify nonobservant Jews or Jews who claim to be atheists?

We must therefore determine:

1. What are the general halachic responsibilities one has toward the nonobservant members of his family?
2. What effect does the parents' nonobservance have upon their halachic status or classification?
3. How does this classification affect the *Baal Teshuva's* relationship with his family?
4. How does the *Baal Teshuva* deal with the practical problems of living in a home with Jews who ignore the directives of halacha?
5. What are the problems facing a "mixed couple" — a marriage in which only one of the two people involved has undertaken the lifestyle of an observant Jew?

### 1. General Responsibilities

What was initially a dispute in the Gemara and *Rishonim* evolved into a debate between the author of the *Shulchan Aruch*, R. Yoseph Karo, and the Ramo, the primary Ashkenazi commentator to that code. The *Shulchan Aruch* rules: "A *mamzer* is obligated to honor and fear his father (and mother); even if his father is wicked and a violator of the law he must honor him and stand in awe of him."<sup>2</sup>

The Ramo comments in his gloss: "And some say that one is not obliged to honor one's wicked father unless he repents."

Obviously according to the Ramo one need not honor a parent as long as he or she is in the category of a *rasha* — evildoer. In the

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2. Y.D. 240:18. The source of this dispute is found in two *sugyot* in the Gemara, *Yevamot* 22b and *Sanhedrin* 85a. See *Techumin*, Vol. 6, pp. 122-126.

following section of *Shulchan Aruch*, Rav Karo rules:

If one's father or mother are completely wicked and violate the commandments, even if they have been condemned to death and are on their way to execution, he must not strike them or curse them. And if he strikes them or curses them, he is not punished. But if they have repented, he is punished for his guilt and is killed, although they are going to be executed themselves.<sup>3</sup>

Interestingly, here there is no comment from the Ramo. The *Shach* obviously noticed this when he commented upon the Ramo's previous statement: "However, even though according to the Ramo the son is not obligated to honor such a father, nonetheless he is forbidden to cause him anguish or pain."<sup>4</sup>

In other words, according to the Ramo, one is under no obligation to honor a parent who is a *rasha*. Nevertheless, the *rasha* status of a parent does not free the son or daughter from the obligation of "fear" (האָרֶר). Therefore, although the *Mechaber* (R. Karo) mentions both honor (כְּבָדָר) and fear (הָאָרֶר), the Ramo in his gloss only frees the child from the obligation of honoring his parents who are "wicked" (מַעֲשֵׁר). The *Shach* brought it to our attention that the Ramo agrees that it is forbidden to disgrace a parent or cause him anguish. That is why in the following section of the *Shulchan Aruch* where the *Mechaber* rules that it is forbidden to curse or strike a parent who is about to be executed, the Ramo is silent. Since cursing and striking are both acts which humiliate the parents and do not simply reflect an absence of honor, they are forbidden.<sup>5</sup> One writer has summarized this distinction:

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3. Y.D. 241:4.

4. Ibid., 240:20; see also *Taz* 240:17.

5. The Gemara in *Kiddushin* (31b) defines fear and honor: "Fear is when the son does not stand in his father's place, sit in his place, contradict him, or pass judgment over his father's opinion. Honor is when he provides his father with food, drink, clothing, or shelter, and accompanies him on his way in or out." The problem as described by a contemporary scholar is "Whether those duties

The son need not exert himself in positive acts reflecting the worth and esteem implied in filial honor; at the same time he must retain the elemental sensitivity to the father-son relationship that restrains and indeed prevents acts of overt hostility.<sup>6</sup>

Obviously it is extremely difficult to determine the distinction between the two:

This line is difficult and at times impossible to detect. The omission of the expected expression of honor is often in reality a source of pain, even shame.<sup>7</sup>

Even more difficult than drawing the line between honor and fear is identifying which individual is classified as a *rasha*.<sup>8</sup>

In one of the talmudic sources dealing with our topic the Gemara states:

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are archetypal and mere examples or actually exhaustive, i.e., whether these specific activities were intended and no others. In addition there was the question of whether honor required unquestioning obedience to a parent's will and authority, irrespective of whether that will as expressed by the parent was in the parent's own best interest." (Basil F. Hering, *Jewish Ethics and Halacha for our Time*. Ktav, 1984, p. 203). If we are to answer, as almost all the authorities do, that the Gemara is only providing us with examples of "fear and honor," the *Shach's* reading of the *Ramo* is very understandable. Striking or cursing a parent are the antithesis of "fear" which in its broader interpretation includes the avoidance of any activity that might lessen the dignity of the parents.

It is interesting to note that according to many authorities, although a father may forego the honor due him, he may not permit his son to disgrace him. See *Minchat Chinuch*, No. 48; *Birkei Yoseph* Y.D. 240:8; *Turei Even Megilla* 28a; *Resp. Chatam Sofer* C.M. 177; *Resp. Beit Yitzchok* Y.D. I No. 158-159.

6. Gerald Blidstein, *Honor Thy Father and Mother*. Ktav, 1975, p. 135.

7. Ibid. See *Rambam, Malve V'Loveh* 4:4.

8. R. Yoseph D. Epstein, who devoted much attention to this problem in *Mitzvot Hashalom*, cogently points out: "To determine the status of a man, whether he is fit or unfit, a *tzaddik* or a *rasha*, is *dinei nephashot* (a case involving a human life), and not all judges have sufficient expertise in this area. The two extremes of love of Israel and hatred of the wicked are not the only tools with which these people can be judged. In all of these matters the decision must be left up to any men of great wisdom." (*Mitzvot Hashalom*, pp. 301-302).

Where the [deceased] father left them a cow or garment or anything which could be identified [as stolen by the father], they are liable to restore it in order to uphold the honor of their father.

The Gemara then asks:

But why should they be liable to restore it in order to uphold the honor of their father? Why not apply to them "nor curse a ruler of thy people" — only when he practices the deeds of thy people [and the father was a thief]?

The Gemara answers: "Here we suppose that the father repented [and was unable to return the object before his death]."<sup>9</sup>

According to the Gemara a person who is in the category of "one who does not practice the deeds of thy people" has earned the title of *rasha* as far as honor and fear of parents is concerned, and this title can only be removed by means of *teshuva*.<sup>10</sup>

When is a person considered someone who "does not practice the deeds of thy people?" R. Eliezer of Metz broadly defines it as

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9. *Bava Kamma* 84b.

10. In an article published in *Or-Hamizrach* (Tishrei 5728) R. Israel Shepansky quotes the famous Gemara in *Kiddushin*: "If one betrothes a woman on the condition that he is a *tzaddik*, and he is a *rasha*, she is betrothed because perhaps in his heart he had a thought of *teshuva*." The *Minchat Chinuch* (No. 374) asked how the Gemara can be understood according to the Rambam, who in *Hilchot Teshuva* specifically rules that verbal confession is the main aspect of *teshuva* and this is lacking in the case of the conditional message. In response to this question R. Shepansky suggests that according to halacha there are two categories of evil-doers:

1) The individual whom the Torah specifically labels a *rasha* such as violators who must be executed or flogged (where the Torah specifies *rasha*) or a thief (ונחטף). The title *rasha* when used in relation to these people is describing the essential character of that person. He and the term *rasha* are one. 2) A Jew who transgresses and violates other prohibitions of the Torah, whether they be in the area of civil law or religious law, is actively a *rasha*. In other words he is actively committing an evil act (רשע), he is a person whose behavior is evil. He is called a *rasha* even though he violates prohibitions for which the Torah does not call him a *rasha*. Nevertheless, his actions are evil in the eyes of G-d and men. Therefore he is

"A *rasha* is one who violates any of the mitzvot of the Torah."<sup>11</sup>

In the Rambam however we find: "If one's father or mother were completely wicked and violated the commands."<sup>12</sup> The *Chinuch* claims it is "one whose parents were notorious (מפורטים) for being completely wicked."<sup>13</sup> In the comment of the *Hagahot Maimoniyot* on the Rambam we find: "If he has not repented, one need not honor or revere him since he violates the commands deliberately and he has been rebuked but has not turned from his wickedness."<sup>14</sup> This more limited, restrictive interpretation of *rasha* is reiterated in one of the modern classics of halachic codification, the *Aruch Hashulchan*:

Even according to the Rambam [who holds that one must honor a father who is a *rasha*] it appears that one must continue to honor his father only if he sins out of lust (רשות לתיאבון) but if he sins in a spirit of defiance (ሞמר להכעיס) such as the *apikorsim* and *minim*, it is obvious that it is forbidden to honor him. It is also apparent that one is only called a *rasha* if he consistently violates the commandments but if it once happened that he sinned, then the father is not called a *rasha* and all agree that one is obligated to honor and fear him.<sup>15</sup>

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described as a *rasha*, an individual whose behavior is evil. The *rasha* of the first category is a *rasha* in *din* – by definition of the law. The second type of a *rasha* is a *rasha* in *metziyut* – reality. There is a great difference between them. The first type of *rasha* cannot remove the label of the Torah which is attached to him unless he repents according to all the laws of the Torah. Until that point he is still called a *rasha*. The major aspect of repentance is verbal confession. The second type of *rasha* is not in essence a *rasha* but rather one whose behavior is evil. The moment he expresses regret for his sins and his intention to improve his behavior (even on a moment's whim), he is called a *tzaddik* and verbal confession is unnecessary. See R. Shmuel Volk, *Shaarei Tohar* (Vol. 7, no. 56) who distinguishes between the two levels of *tzaddik* and *Baal Teshuva* in order to resolve this problem. See also *Birkei Yoseph* 240:1.

11. *Sefer Yereim*, *Mitzvah* 56.
12. *Hilchot Mamrim* 5:12.
13. *Mitzvah* 48.
14. *Mamrim* 5:12.
15. *Aruch Hashulchan* Y.D. 240:39.

Therefore, according to this definition, the Rambam rules that a son and daughter must honor even those parents who are consistently violating Torah prohibitions as long as they are not doing so in a spirit of defiance (*לְהַכְעִיט*) or are not in the category of *apikorsim* and *minim*. According to the Ramo, however, one is exempt from the obligation of honoring his parents even if they are not defiantly anti-religious as long as they regularly violate the commandments. Nevertheless, even the Ramo agrees that it is forbidden to cause anguish to such parents.

## 2. Status of Parents

How are we to apply any of the terms used to categorize anti-religious, irreligious and partially-religious Jews in the post-Enlightenment, modern society in which halachic Judaism has to a great extent been abandoned by the majority of Jews? Clearly, the halachic status of a Jew is affected by a number of internal and external factors. R. Yoseph Epstein writes:

In order to determine if a Jew as a result of a sin he committed is still considered a "brother" and "friend" as far as Torah and mitzvot are concerned, it is essential that we know not only the halachot and the nature of the sin committed but also the background of the sin. We must know the essence of the particular individual, his traits, his spiritual strengths and weaknesses, the trials and obstacles in his life at the time of the sin, his attitudes, his education, his past and plans for the future. We must be thoroughly familiar not only with one detail or aspect of the man's life, but the totality of his life.<sup>16</sup>

This subject has rarely been analyzed in a systematic sense.<sup>17</sup> Instead it looms threateningly in the background of a number of common halachic problems. The range of opinions related to this is enormous, varying in degrees of literal as opposed to strict interpretation of the terms *kofer*, *mumar*, *apikores*, *poshea*, etc.

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16. *Mitzvot Hashalom*, p. 301.

Nevertheless, in recent years we have witnessed the emergence or formulation of what may be described as an halachic consensus among contemporary poskim.

The Rambam in *Hilchot Teshuva*, after defining *minim*, *apikorsim* and *kofrim* as individuals who one way or another reject one of many of the principles of Judaism, writes:

There are two types of *mumarim*, a *mumar* for one violation and a *mumar* for the entire Torah. A *mumar* for one violation is a person who has consistently and intentionally violated a commandment... even if it is one of the relatively "minor" prohibitions such as constantly wearing *shatnes* or rounding the corners of his head. This mitzvah has been in his eyes nullified and hence he is a *mumar* for that violation. This is only if he does it in a defiant purposeful manner (*le'hachis*). A *mumar* for the entire Torah is a person who has turned to another religion at the time of persecution and subsequently became devoted to it.<sup>18</sup>

In *Hilchot Shechita* he writes:

If someone is a *mumar* for idolatry, publicly violates the Sabbath or an *apikores* [someone who rejects the Torah and the prophecy of Moses] then he is like a gentile and if he slaughters, the animal is rendered a *neveila*.<sup>19</sup>

The *Shulchan Aruch* rules:

A *mumar l'hachis* [defiantly] even for one commandment or a *mumar* for idolatry or public

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17. There are four notable exceptions:

1. Epstein, *Mitzvot Hashalom*, pp. 279-323.
2. R. Moshe Yechiel Halevi Tzurieli (Weiss), *Beit Yechezkel* 43-84.
3. R. Avraham Weinfeld, *Resp. Lev Avraham* No. 141-142.
4. R. Ezra Bitzri, *Resp. Shaarei Ezra*, pp. 614-625.

18. *Hilchot Teshuva* 3:9. See *Beit Yechezkel*, p. 62.

19. *Hilchot Shechita* 4:14. See also Rambam, End *Hilchot Shabbat*, *Eruvin* 2:16, *Gezeila* 11:2, *Akum* 2:5, commentary on Mishnah beginning of eleventh chapter in *Sanhedrin*, *Rotzeach* 4:12.

desecration of the Sabbath is considered a *mumar* for the entire Torah... and the law considers him a gentile.<sup>20</sup>

Thus the Rambam and *Shulchan Aruch* have described individuals who are either deficient in their actual observance of the commandments or in their beliefs in the principles of Jewish faith. Clearly all nonobservant Jews fall into one of these categories.

This would indeed be the case if not for a crucial distinction made by the Rambam:

To whom does all of this apply? Only to a person who in his mind has willingly denied the sacredness of the Oral Law and instead followed the directives of his own meager mind and haughty heart... However the children [of these people who have gone astray] and the grandchildren who were misdirected and misled by their ancestors and were raised among the Karaites and taught their philosophy are all considered "as babes who were kidnapped and raised by gentiles" and are considered as if they were compelled against their will since they were educated and raised in their mistaken way... Therefore it is proper to retrieve them through *teshuva* and to draw them close with words of peace until they return to the Torah.<sup>21</sup>

Thus the Rambam reintroduces the talmudic concept of *tinok shenishba* — an infant captured and raised by gentiles — and uses

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20. Y.D. 2:5. I am not distinguishing here between the many different types of *mumarim*. See *Tevuot Shor* Y.D. 2:17; *Bedek Habayit* and *Mishmeret Habayit*, First Bayit; *Resp. Chatam Sofer*, Likutim No. 67; *Resp. Maharam Schick*, C.M. No. 9; R. Elchonon Wasserman, *Kuntres Divrei Sofrim* 37; *Simla Chadasha Shechita* 2:2; *Aruch Hashulchan*, Y.D. 251:13.

21. *Hilchot Mamrim* 3:3. At the end of his *Epistle on Martyrdom* the Rambam writes: "It is not right to alienate, scorn, and hate people who desecrate the Sabbath. It is our duty to befriend them and encourage them to fulfill the commandments. The Rabbis legislate explicitly that when an evil-doer who sinned by choice comes to the synagogue, he is to be welcomed, not insulted.

it in order to determine the halachic status of nonobservant Jews. The whole basis of this concept is that it insists that in order to determine the halachic status of any Jew we must first inquire into the many different factors which might have influenced or even completely molded the individual's development and behavior.

This approach has been further developed and employed by *poskim* of the modern era. It is understandable that the extent to which the *tinok shenishba* clause is used is directly linked to the general society in which each *posek* resided. Thus we find a number of very important responsa from two giants of German Jewry, R. Yaakov Ettlinger and R. Dovid Tzvi Hoffman.<sup>22</sup> Both of these authorities agree that the derogatory label of a public desecrator of the Sabbath, which bespeaks brazen rejection of the belief in the Creation of the universe, cannot be attributed to many German Jews who lit candles, made *Kiddush*, etc., yet openly violated the laws of the Sabbath:

The only reason a Sabbath violator is considered a *mumar* is because he who denies Sabbath denies creation and the Creator as well. However, this person confesses his faith by prayer, *Kiddush*, etc. Certainly the children of these people never knew and never heard the Sabbath laws, and they are in all respects... like a *tinok shenishba bein ha'akum*. This is the case unless it is clear to us that a particular individual is familiar with the laws of Sabbath and brazenly desecrates the Sabbath in the presence of ten

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In this ruling they relied on King Solomon's counsel: 'A thief should not be despised for stealing to appease his hunger' (Prov. 6:30). It means do not despise the evil-doer in Israel when he comes secretly to steal some observance." The Ran however wrote: "A person is only called a *tinok shenishba* if he never saw the Torah, but a Jew who lived among Jews and despite that attached himself to the ways of the gentiles is among those who are lowered." (D.M. 85). The *Nimukei Yoseph* concurs with this approach (D.M. 72). See also *Resp. R. Eliyahu Mizrachi* I, No. 57; *Maharam Shick*, Y.D. 238; *Resp. Mabit* 37; *Resp. Minchat Yitzchak*, Vol. I, No. 137, Subsection 2.

22. *Resp. Binyan Tziyon*, No. 23; *Resp. Melamed L'Hoil*, No. 29, Y.D. No. 52.

Jews despite this knowledge. Such a person is definitely a complete *mumar*.<sup>23</sup>

R. Dovid Tzvi Hoffman was informed by a reliable source that the great *posek*, author of *Shoel U'meishiv*, had said that the "Jews in America do not become *pasul* as a result of their desecrating the Sabbath because they are like *tinokot shenishbeu*."<sup>24</sup>

In Lithuania three of the greatest *poskim* of the last generation endorsed this approach: R. Chaim Ozer Grodzinsky, the *Chafetz Chaim* and the *Chazon Ish*. In one of his letters the *Chafetz Chaim* wrote:

Truthfully in our times among the free thinkers and sinners there are many who are not doing so in a defiant manner (*le'hachis*) G-d forbid, but rather they have been led astray by evil doers who cause them to stray from the path. It is a great mitzvah to pity these people and teach them the correct path.<sup>25</sup>

In the *Chazon Ish* we find the following:

A "captive infant" is considered like all other Jews... there is an assumption that if we would tell him and if a sufficient effort were made he would not continue sinning. If, however, such an effort was made and he intentionally sins and refuses to repent, then he is a *mumar*. The amount of effort that must be made depends upon the appraisal of the Judges (Rabbis)... Also these children whose fathers had abandoned Torah and raised them in total ignorance

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23. Ibid., *Binyan Tziyon*.

24. Ibid., *Melamed L'Hoil*. This approach was endorsed by great *poskim* of Poland even before the twentieth century. See Resp. *Beit Yitzchok Y.D.* (2) *Kuntres Acharon*, No. 23; Resp. *Maharsham*, Vol. I, No. 121, Vol. 6, No. 4. At the conclusion of his responsum the Maharsham wrote: "However if someone opens his store on the Sabbath which is something so obvious to all, it is difficult to be lenient." See *Mitzpeh Aryeh* O.C. 37, E.H. 19.

25. *Chafetz Chaim*, *Collected Letters* No. 26 (see *Biur Halacha* 385). Resp. *Achiezer* 3:25; *Chazon Ish* Y.D. 1:6 and end of second *siman*.

of the Torah are considered Jews in all respects, and the level of their knowledge and rebelliousness must be carefully measured.<sup>26</sup>

Both R. Moshe Feinstein and R. Yoseph Eliyahu Henkin also took into consideration as a mitigating circumstance the fact that

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26. Ibid., *Chazon Ish*. See R. Ovadiah Hadaya, *Resp. Yaskil Avi*, Vol. 8, No. 19, who offers a questionable interpretation of the *Chazon Ish*. It is interesting to note that in a letter written by R. Yaakov Yisrael Kanievsky (the Steipler), the brother-in-law of the *Chazon Ish*, we read: "Even if we say that these Jews are classified as 'captured infants' what shall we do if they are suspected of being *minim* and *kofrim* in both the Written and Oral Torah?!" (Cited in *Moadim Uzmananim*, Vol. 8, p. 14). Many attribute to R. Chaim Soloveitchik the statement, "An *apikores* is *nebbich* (unfortunately) an *apikores*." In other words, according to these authorities all of the *heterim* only apply to a person who is lacking in the area of actual religious observance, but if someone is an *apikores* or a *kofer* in his beliefs, his status cannot be changed on account of his background or education.

On the other hand the Rashash (on *Shabbat* 33) wrote: "A person is considered a *kofer* only if he has [denied the truth of the Torah] after a thorough study of all aspects of the matter and then he reached his mistaken conclusion, not someone who simply says he doesn't believe." This approach is substantiated by a statement made by one of the great medieval Jewish philosophers, R. Yoseph Albo, who explained that if a Jew has a general belief in the Revelation at Sinai and as a result of his mistaken understanding of the Torah rejects what we know is a fundamental belief, he is not a *kofer*, since he believes that his belief is according to the Torah (*Sefer Ha-Ikarim* 1:2).

R. Avraham Weinfeld in *Resp. Lev Avraham* (141-142) deals at length with our subject and in summarizing distinguishes between those *kofrim* who were exposed to traditional Judaism in their youth and subsequently abandoned their belief in the thirteen principles, and the children and grandchildren of such people. The former group are indeed *kofrim* and must be treated as such. The latter however are "captured infants." However even in the second category, if someone is actively seeking to draw Jews away from Judaism, he is an *apikores*. He also asserts that if an individual is attempting to believe in the principles of Judaism but is having trouble in his faith he is not in the category of a *kofer*.

In *Tzitz Eliezer* (Vol. 9, No. 41, Subsection 15), R. Waldenberg cites a ruling of R. Yehuda Assad (*Resp. Yehuda Yaaleh* Y.D. No. 50):

An individual who does not believe in the words of the Sages is an *apikores*... but this is only if he purposely and intentionally ridicules their words, not if his heart has misled him into disbelief.

Then R. Waldenberg writes:

much *chilul Shabbat* is the result of the fear on the part of many people that if they observe the Sabbath their livelihood is at stake.<sup>27</sup>

In short, there are very few *poskim* of recent generations who maintain that the literal definition of *mumar* be upheld in regards to Jews in western society.<sup>28</sup>

Based upon this overview it is quite difficult to find *Baalei Teshuva* whose parents can be classified as *mumarim* or completely wicked, let alone *minim* and *apikorsim*. Therefore in almost all cases the obligation of honoring and fearing one's parents is incumbent upon the *Baal Teshuva*.

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Perhaps this can be used to judge favorably the majority of Jews in our generation who have been misled and have grown accustomed to their mistaken way of life... Even if we tell them that such and such is forbidden and they persist it is not called "lechachis," because their denial of *Chazal* seems very insignificant in their eyes.

27. *Perushei Ivara* 5:3; *Iggerot Moshe*, O.C. Vol. I, No. 33. For additional sources that discuss this approach see: *Resp. Yabia Omer*, Vol. 1, (Y.D.) No. 11; *Resp. Tzitz Eliezer*, Vol. I, No. 27, Vol. 2, No. 19, Vol. 9, No. 41 and No. 17. *Resp. Sheerit Yisrael* (Minzberg) O.C. 22-25; *Resp. Chelkat Yaakov*, Vol. 1, No. 45, 71; *Sdei Chemed Mem Klal* 155-156; *Resp. Mahershag* 3:5, 2:110; *Resp. Mishneh Sachir*, No. 70; *Resp. Zekan Aharon* (Walkin), Vol. 1, No. 81; *Resp. Rav Pealim* O.C. 3:12; *Resp. Zecher Yehoseph* D.C., No. 21, *Sheerit Yoseph*, Vol. 2, No. 7.

28. See *Resp. Minchat Elazar*, Vol. 1, No. 75; *Resp. Minchat Yitzchok*, Vol. 1, No. 137; *Resp. Levushei Mordechai*, E.H. 18. R. Binyamin Holzer, *Yelamed Daat*, Monroe, N.Y. Ch. 4.

According to halacha one is obligated to honor even a parent who died. (Rambam, *Mamrim* 6:5, *Shulchan Aruch* 240:2). What is the halacha in the case of the parent of a *Baal Teshuva* who is in the category of a *mumar*? Is the son commanded to mourn the death of such a father, to provide proper burial, recite *kaddish*, etc.?

The *poskim* generally agree that we are obligated to provide even *resha'im* with an halachically approved burial (See *Resp. Rashba* no. 763; *Resp. Chatam Sofer* no. 341; *Resp. Seridei Eish* Vol. 2, no. 123; *Resp. Sheilat Yitzchok* Vol. 3, no. 83). In *Iggerot Moshe* (Y.D. Vol. 1, no. 235) R. Moshe Feinstein ruled that a Jewish woman who had converted to Christian Science has the status of a *mumar* and we don't consider the possibility that maybe before her death she repented. Hence, according to R. Moshe, she should not be buried in a Jewish

### 3. Conflicting Commands

The Sifra states:

"You shall each revere his father and mother and keep My Sabbaths; I the Lord am your G-d [Vayikra 19:3]." Perhaps I might think that one is obliged to obey even if one's father or mother desired that one violate a commandment. Therefore the Torah says

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cemetery. Nevertheless, he agreed with the above *poskim* as far as the preparation of her body for burial is concerned that it, as well as the actual burial, be carried out according to halacha. He concludes by noting that once she has already been buried her body may be removed and re-buried in a Jewish cemetery since her first burial was an atonement (*kappara*). This should not be done until after a period of 12 months have elapsed from the time of the first burial. If however the family is humiliated, the body may be transferred immediately. R. Aharon Walkin (*Resp. Z'kan Aharon* Vol. 2 (Y.D.) no. 80-82) also ruled that a Jew who converted may not be buried in a Jewish cemetery. In the particular case in question there were some indications that the individual regretted the conversion, but R. Walkin maintained that there was not sufficient evidence of repentance. See also R. Herzog's article in *Noam* Vol. 2, pp. 1-13; *Resp. Divrei Malkiel* Vol. 3, no. 87; *Resp. Pri Hasadeh* Vol. 4, no. 51. As far as the location of the *rasha*'s grave in a Jewish cemetery, see *Iggerot Moshe* Y.D. Vol. 2, no. 152, Vol. 3, no. 146; *Tzitz Eliezer* Vol. 10, no. 41; *Resp. Kol Mevasser* Vol. 1, no. 1; *Resp. Minchat Yitzchak* Vol. 6, no. 136.

As far as mourning and kaddish are concerned, the Ramo rules that kaddish is recited by the sons of a *mumar* who was killed (Y.D. 340:4). Both the *Shach* and *Taz* point out that this law applies specifically to a case where the father was killed, not when he died of natural causes. The *Gilyon Maharsha* however disagrees with this interpretation. The *Ketav Sofer* rules that the sons are not obligated to recite kaddish but may do so if they wish. (O.C. no. 109, Y.D. No. 171). His father the *Chatam Sofer* wrote that in the case of a *mumar* kaddish should be recited for 12 not 11 months. (Y.D. *Tzitz Eliezer* Vol. 5, no. 43).

R. Gedalya Felder in *Yesodei Yeshurun* (Vol. 1, p. 393) explains that although kaddish may be recited on behalf of a *mumar*, one does not mourn his death. The presence of kaddish and absence of mourning both help provide a *kappara* for the *mumar*.

In the *Sefer Chasidim* we find: "A Jew who converted and died is not mourned nor eulogized" (no. 1908; see *Mekor Chesed*; *Resp. Lev Avraham* no. 138.). However according to the *Tur* (O.C. 547) and others the customs of mourning (*Kriyah, shiva*, etc.) are observed unless the deceased was a *mumar le'hachis*. In most instances this is not the case.

"And keep My Sabbaths" — you are all required to honor Me.<sup>29</sup>

Herein lies the major point of conflict between the *Baal Teshuva* and his parents. Although as we have seen most parents are not defined as wicked, nevertheless they often make demands upon the Orthodox member(s) of their households that run counter to the requirements of halacha. There is a clear halachic consensus that parents must not be obeyed when in order to satisfy their wish, a son or daughter would have to violate a Torah or even rabbinic law. This applies whether the parents intend the violation of the law and nevertheless insist on obedience or whether the violation would occur unknown to the parents.<sup>30</sup> Naturally in many cases the child would have to consult his or her Rav to determine whether or not a prohibition is involved and also to receive possible advice as to how the parent's wish may be fulfilled without violating the halacha.

There are two particular areas of conflict which commonly arise in the relationship between the *Baal Teshuva* and his parents. In modern times the great majority of *Baalei Teshuva* have pursued their studies in yeshivas in Israel which were created to cater specifically to their type of needs. Very often they attend these yeshivas while on an extended leave of absence from college or graduate school. Much to the dismay of the parents, not only does their son or daughter intend on taking a leave of absence, but they also insist on spending that time in a yeshiva in Israel. Thus commences a battle on two fronts:

1. The parents insist that the child continue his or her secular education (at least on a part-time basis).
2. The parents demand that the child remain in close proximity to the home, where there might be an option to study in a local yeshiva.

A third problem arises often when the child, after completing

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29. *Sifra Kedoshim* 1:10, *Yevamot* 6a, *B.M.* 32a.

30. *Jewish Ethics*, p. 208. All of this applies to rabbinic laws as well. See *Rambam*, *Mamrim* 6:12; *Shulchan Aruch* *Y.D.* 240:15.

a number of years of study in an Israeli yeshiva, announces his or her intention to settle permanently in the Holy Land, contrary to the wishes of his parents.

As far as the question of secular studies as opposed to (or in conjunction with) Torah study is concerned, the ruling of the *Shulchan Aruch* is unequivocal: "Talmud Torah takes preference over honoring one's father and mother."<sup>31</sup>

A number of contemporary *poskim* have been asked this specific question and they have all reached the identical conclusion: the mitzvah of honoring one's parents does not require that a young man or woman take off any time whatsoever from Torah study in order to pursue either a secular education or career.<sup>32</sup>

May the parents at least demand that the child study in a yeshiva within reasonable distance from their home? In response to this all authorities cite a famous responsum of the *Terumat Hadeshen*. The responsum was dealing with the case of "a student who wished to leave his home to study Torah with a certain teacher under whose guidance he was sure he would make great progress and his father objected strongly, saying, 'I know, my son, that if you go you shall cause me great distress...'" The *Terumat Hadeshen* ruled that the young man could pursue his Torah studies in the yeshiva of his choice, stating that just as one may neglect the service of a parent if one is engaged in the performance of a

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31. Y.D. 240:13. See *Megillah* 16b.

32. See *Resp. Minchat Yitzchok*, Vol. 5, No. 69, Vol. 9, No. 103; *Resp. Yechave Daat*, Vol. 5, No. 56; *Yabia Omer*, Vol. 6, No. 40; *Resp. Chelkat Yaakov*, vol. 3, No. 130; *Iggerot Moshe* Y.D. (3), No. 82. See *Journal of Halacha and Contemporary Society*, "Secular Studies," Pesach 5746. Although the obligation of women as far as *Talmud Torah* is concerned is different from that of men, Rabbi J. David Bleich points out: "The question of the technical nature of women's obligations with regard to Torah study may well be irrelevant (to the question under discussion). Torah education serves to instill spiritual values in addition to imparting academic knowledge. Women are enjoined to strive for piety and devotion no less than men." (*Contemporary Halachic Problems*, Ktav, Vol. 1, p. 13). See also *Journal of Halacha*, Pesach 5745, "Teaching Torah to Women."

33. *Terumat Hadashen*, No. 40. See *Pitchei Teshuva*, Y.D. 240:22.

mitzvah so may one cause them pain.<sup>34</sup> He points out that since our rabbis have told us that "a person can only study in a place

34. *Pitchei Teshuva* (Y.D. 230:28) adds that the same provision applies to the choice of a synagogue for prayer. Regardless of parental wishes in the matter a child may elect to worship in whichever synagogue he feels he will be able to pray with the greatest measure of fervor. See Bleich, p. 12. See Blidstein, p. 85.

A problem faced by almost all *Baalei Teshuva* is their difficulty in understanding the Siddur. A number of excellent translations of the Siddur are available which have helped thousands of Jews enrich their *davening*. Nevertheless, a problem still exists, because the typical *Baal Teshuva* is forced to grapple with a language with which he is unfamiliar instead of praying in his native tongue. The question is, may one pray in a language other than Hebrew? In the *Sefer Chasidim* of Rabbenu Yehuda Hechassid we find the following: "If you are approached by a person who does not understand Hebrew, but he is G-d fearing and wishes to pray with *kavana* (intention), you should tell him to learn the prayers in the language he understands. The reason for this is that prayer is meaningful only when the heart understands, and if this is lacking what is accomplished by uttering the words? Therefore it is preferable that he pray in the language he understands." (No. 588. See also *Asara Ma'amarot*, *Em Kol Chai* and *Yad Yehuda* Ad.Loc. part 1 Ch. 31). The Mishnah in *Sotah* (7:1) states: "The following may be recited in any language... *Kriat Shema*, *Tefila*, *Birkat Hamazon*..." The Gemara in providing the reason for this halacha, distinguishes between *Shema* and *Tefila*: "*Shema* (hear) — in any language that you hear. *Tefila* is *Rachamim* (supplication) and you may do so in the language you know best" (*Sotah* 33b, *Berachot* 15a). The *Shulchan Aruch* rules that *Shema* may be recited in any language as long there are no inaccuracies in the translation. (O.C. 62:2). The *Mishnah Berurah* however writes in the name of the *Acharonim* that nowadays one should not recite *Shema* in any language other than Hebrew since we no longer have access to a perfectly accurate translation. Also according to the halacha if a different language is used the person must perfectly understand every word whereas Hebrew is effective even if the person does not understand everything. (See *Biur Halacha* 101 "Yachol L'Hitpalel"). As far as *Tefila* is concerned the *Shulchan Aruch* quotes the opinions found in the *Rishonim*. The Gemara itself made a distinction between public and private prayer and this distinction is cited by the *Shulchan Aruch*. Here too, the *Mishnah Berurah* quotes a number of *Acharonim* who ruled that we may no longer *daven* in any language other than Hebrew. (See the famous responsa of the *Chatam Sofer*, vol. 6 no. 84, 86 and *Aruch Hashulchan* 101:9) On the other hand the *Chayei Adams* writes: "Whoever does not understand Hebrew... should pray in the language he understands, as long as they do so with a complete heart" (22:12). Similarly the *Kaf Hachaim* writes that if it absolutely impossible for someone to pray in Hebrew, he should do so in his own language (101:16). See also commentary

which his heart desires"<sup>35</sup> all measures that can be taken to

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of *Beit Baruch* on *Chayei Adam* (22:106).

In Resp. *Seridei Eish* (Vol. 2 No. 9), R. Yechiel Yaakov Weinberg was asked if it is permitted to insert English verses or songs in the regular service, which one recited in Hebrew. In response, R. Weinberg wrote that although there is no halachic prohibition involved, it should not be done. The *Chatam Sofer* wrote that the *Shulchan Aruch* only permits the occasional use of another language, but it is forbidden to institute non-Hebrew prayers into the actual liturgy, since that would cause the eventual abandonment of Hebrew altogether. R. Weinberg added that in modern times it is especially important to preserve the one place where Jewish tradition and language are still honored by many people — the synagogue. The fact that all services are conducted in Hebrew arouses a sense of awe and respect in the individual as well as the desire to understand the language.

R. Moshe Feinstein wrote that if he verbally translates into another language parts of the prayers as he reads along in Hebrew, it is considered an interruption. This applies to all parts of *davening*, but if it was done intentionally during *Shmonah Esrei* — the entire *Amida* must be repeated. If one wishes to add on personal prayers in English he should do so in the blessing of *Shemayah Tefilah* or *Alouki Zachor*. See also Resp. *Levushai Mordechai* Vol. 1 No. 9; Resp. *Mishpetai Uziel* Vol. 2 (O.C.) p. 221; *Yeshuot Yaakov* (101:3).

A fascinating question was asked of R. Avraham Weinfeld in *Resp. Lev Avraham* (no. 114). A *Baal Teshuva*, living with his nonobservant parents, had always tried to spend Sabbath and holidays at home in order to encourage increased Sabbath observance on the part of the family. Eventually his efforts were rewarded and his parents agreed to completely observe the laws of Sabbath and Yom Tov whenever he would be at home. There is no Orthodox synagogue in the vicinity and for over half a year the young man has worshipped at home, and in doing so has forfeited the mitzvah of public worship as well as listening to the reading of the Torah. All of this was done to prevent his parents from desecrating the Shabbat. However, he realizes that the Shabbat when *Parshat Zachor* will be read is rapidly approaching and he is not sure what to do: Should he leave home for that Shabbat in order to fulfill the Torah commandment to hear *Parshat Zachor* (from a Torah in a minyan), but in doing so indirectly cause his parents to desecrate the Shabbat, or should he remain home for Shabbat *Zachor* as well? In response, R. Weinfeld engages us in a very impressive analysis of the talmudic issue of "Do we tell a man to sin in order to benefit his friend?" (*Shabbat* 4a) and whether it applies to a case where the individual does not actively sin but rather passively fails to observe a positive commandment. He also deals with the mitzvah of rebuke, discussing a Jew's obligation to prevent another Jew from sinning. R. Weinfeld's conclusion is a definite: No! The young man must hear *parshat Zachor* and we cannot permit otherwise in order to "save his parents."

35. See *Avoda Zara* 19a.

enhance the quantity and quality of one's Torah study are included in the mitzvah of *Talmud Torah*.

Clearly it is absolutely essential for most *Baalei Teshuva* to immerse themselves in an environment of Torah and mitzvot away from the distractions of their "previous" lives. This is not merely a luxury they mean to indulge in.<sup>36</sup> The Mishnaic directive instructing us to leave our homes in order to study Torah assumes the necessity of such behavior on the part of a serious student.<sup>37</sup> This is doubly true if the *Baal Teshuva*'s home is one where mitzvot are openly violated. In recent years Israel has been a place of refuge for a great number of *Baalei Teshuva*.

As far as the question of settling in Israel against the parents' wishes is concerned, much has been written, particularly in recent years, since many alumni of Israeli yeshivot have returned there in order to live in the community of these yeshivot. Because this is not the immediate concern of most *Baalei Teshuva* it will not be discussed here in any detail.<sup>38</sup>

It goes without saying that in all cases the halacha does not entitle a son or daughter to deal with their parents in disrespectful manner. Although they are ultimately obliged to observe the halacha if it opposes their parents' will, halacha itself demands that no permissible effort be spared in attempting to appease the parents.

#### 4. Practical Problems

Another problem exists when the *Baal Teshuva* is living at home. Assuming that efforts were made to *kasher* the house, to what extent may he rely upon the assiduity of his nonobservant parents, brothers and sisters, so that he may rest assured that

36. See at length *Resp. Yechave Daat*, Vol. 5, no. 56.

37. See *Avot* 4:14 and commentary of the *Ohr Hachaim*, *Vayikra* 26:3.

38. See Bleich, *Contemporary Halachic Problems*, pp. 9-12. See R. Ovadiah Yoseph's responsa in *Yabia Omer*, Vol. 6, No. 40 and *Yechave Daat*, Vol. 4, No. 49 and Vol. 3, No. 69, who in his usual style presents an exhaustive list of the halachic opinions concerning this issue. This is more complicated than the question of honoring one's parents vs. *Talmud Torah* since there is a great debate revolving around the nature of the mitzvah of living in Eretz Yisrael.

acceptable standards of *kashrut* are being maintained? Naturally if it is a situation where someone in the family is a *mumar le'hachis* who would intentionally cause trouble, his or her word cannot be trusted and many additional problems are created.<sup>39</sup>

In discussing the ruling of Rambam who requires that the knife used for slaughtering by a *mumar letayavon* be checked by a strictly observant Jew, the *Chazon Ish* writes:

Because inspection of the knife requires great concentration and concern, the person who violates prohibitions to satisfy his desires cannot be relied

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39. There is a very lively debate among the *Acharonim* concerning the question of whether wine that was touched by a "public desecrator of Shabbat" may be drunk. The basic questions involved are: 1) What is the nature of the original decree that was made prohibiting the drinking of wine touched by gentiles? Is a new decree included in the original decree or the subject of a new one? 2) What is meant by "public?" 3) Are the *mehalot Shabbat* of modern times considered *mumarim*? Detailed discussions of this topic may be found in: *Resp. Maharsham*, Vol. 1, No. 121; *Daat Torah* Y.D. 2:27 30; *Resp. Zecher Yehoseph* O.C. No. 21; *Resp. Rav Pealim* O.C. (3) No. 12; *Sdei Chemed Maarechet Mem* No. 86; *Chazon Ish* Y.D. 13:16; *Resp. Yabia Omer* Y.D. Vol. 1, No. 1, Vol. 5, No. 10; *Tzitz Eliezer*, Vol. 9, No. 41, Vol. 12, No. 55; *Resp. Minchat Elazar* 1:75; *Resp. Beit Yisroel* (Veltz) O.C. No. 105; *Resp. Sheerit Yisroel* O.C. No. 22-25; *Resp. Yehuda Yaale* Y.D. 31; *Resp. Arugat Habosem* O.C. No. 77.

R. Yoseph Wahrman in *Sheerit Yoseph* (Vol. 2, No. 7) responded to the following: "I have been asked by a G-d fearing young man who is studying in a yeshiva in New York and would like to visit his parents (for the holidays), what he should do in his parents' home when it comes to Kiddush and the four cups at the Seder. Even though they are very careful when it comes to *kashrut*, the father has a store which is open on Shabbat and he publicly violates the Shabbat, despite the fact that he attends synagogue earlier Sabbath morning. May he drink this wine? R. Wahrman analyzes the extensive sources as well as the young man's particular situation and finds no less than eight reasons why the wine is permissible.

This problem has also been raised in connection with the rabbinic decrees forbidding kosher food cooked by gentiles (*bishul akum*) and baked goods made by them (*pat akum*) as far as a "public desecrator of Shabbat" is concerned. R. Ovadiah Yoseph and R. Eliezer Waldenberg devote lengthy responsa to this subject (*Yabia Omer*, Vol.5 (Y.D.), No. 10; *Yechave Daat*, Vol. 4, No. 41; *Tzitz Eliezer*, Vol. 9, No. 41) and conclude that no such prohibition exists in modern times and the food is permissible as long as the *kashrut* is

upon to do a proper job even if the sin which attracts him is not related to *kashrut*.<sup>40</sup>

The *Chazon Ish* points out that even when dealing with a Jew who respects halacha, if he is not scrupulous in its observance, he is lacking in reliability as far as *issur veheter* are concerned. Although we don't suspect him of lying or purposely neglecting a

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carefully supervised and the person is not an *apikores*. R. Yoseph suggests that whenever possible an Orthodox Jew should ignite the oven or throw a match in.

R. Moshe Sternbuch sent an interesting question to the Steipler and the *Tzitz Eliezer*: A *mumar lechallel Shabbat befarhesia* is considered a gentile in many respects. If that is the case how is one permitted to have such a guest eat over on Yom Tov (together with Orthodox family and friends)? The *Mishnah Berurah* based upon earlier *poskim* ruled that although we are permitted to cook on Yom Tov we may not do so for gentiles and public desecrators of the Sabbath. R. Sternbuch's question dealt specifically with Orthodox hotels preparing food for non-Orthodox guests, but it applies to other situations as well. Both of these authorities found what they considered sufficient halachic evidence to warrant this behavior (*Moadim Uzmanim*, Vol. 8, pp. 14-19; *Tzitz Eliezer*, Vol. 8, No. 17).

There are however other serious problems that may be involved in inviting non-Orthodox Jews to one's house for Shabbat and Yom Tov. For instance, very often a Jew who has expressed interest in Judaism has agreed to be a guest in an Orthodox home for Shabbat. Nevertheless, he has made it clear that he will have to drive home at some point before Shabbat has ended. Is one permitted to invite him and indirectly cause *chilul Shabbat*, hoping that by his experiencing Shabbat in the home of an Orthodox family he might be encouraged to become a *Baal Teshuva*? There are many such questions that arise. Because of the great differences that exist in each case and the danger that exists in issuing a *psak* in this matter, all questions of this type must be asked of a *posek* on an individual basis.

Another problem that has been posed when dealing with potential *Baalei Teshuva* is that of renting an apartment or dormitory room to a person who is still desecrating the Sabbath, a common policy in *Baalei Teshuva* yeshivot. See *Resp. Pri Hasadeh*, Vol. 3, No. 97; *Resp. Mahersham*, Vol. 2, No. 184; *Resp. Sheilat Yitzchok*, Vol. 2, No. 43. This is related to the question of whether or not you are allowed to give or sell food to a person who you know will not recite a blessing. This too is a common problem in the "Baal Teshuva scene." See *Magen Avraham* 163:2; *Resp. Torat Chesed* O.C., No. 5; *Resp. Ktav Sofer*, Y.D. No. 83; *Resp. Minchat Shlomo* (R. Shlomo Zalman Auerbach), No. 35. Again, each situation must be discussed with a competent *posek*.

40. *Chazon Ish*, Y.D. 2:11.

law, nevertheless he is unreliable because of his occasional failure to pay careful attention to the letter of the law. We suspect that he will simply not be sufficiently enthusiastic to make sure that "all angles are covered" when halachic technicalities which he might consider of minor importance are involved.

In our modern day and age when most meats are already salted and livers broiled, it is not overly taxing to keep control of a kosher home. There are not too many activities which require the "concentration and concern" of a slaughterer's knife inspection. However, there are still a number of problems that come up in a kosher kitchen that a nonobservant person might either overlook or ignore even if he has a positive attitude towards halacha. The same is true when it comes to *shmirat Shabbat* and, in Israel, the removal of *terumot uma'asrot*. To what degree a person may be trusted depends on the particular person and other factors involved.<sup>41</sup>

Another sensitive spot in the relationship between the *Baal Teshuva* and his family often involves what appears to be his "fanatical" refusal to engage in harmless physical contact with almost all of the members of the family. This is particularly upsetting to them since it can be the cause of embarrassment at family get-togethers. What in fact are the halachic guidelines in such matters? Briefly:

1. Children may kiss their parents at all times.<sup>42</sup> It is forbidden to be strict in such a matter since according to many authorities such a display of affection is included in the mitzvah of honoring one's parents.<sup>43</sup>
2. According to all authorities grandchildren, before they are married, may kiss grandparents.<sup>44</sup> According to many they may

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41. There is another question of reliability which can crucially affect the life of a *Baal Teshuva*. May a nonobservant father be relied upon as the sole witness that he comes from a family of *kohanim*? See *Iggerot Moshe, Even Haezer* (Vol. 4), No. 11, 39 and *Chazon Ish* E.H. 87:24.

42. *Rambam Issurei Biah* 2:17; *Shulchan Aruch* (E.H.) 21:7; *Resp. Beer Moshe* Vol. 4, No. 145. *Resp. Az Nidberu*, Vol. 3, No. 70.

43. See *Beer Hetev*, O.C. 262:2.

44. *Chelkat Mechokek* E.H. 21:10; *Beit Shmuel* 21:4; *Resp. Beer Moshe*, Vol. 4,

continue to do so even after they are married.<sup>45</sup>

3. A brother may kiss a sister who is still a minor but should avoid physical contact with a sister who is adult.<sup>46</sup>

4. Physical contact is completely forbidden with all other relatives (aunts, uncles, in-laws, cousins, etc.).<sup>47</sup>

Naturally in all cases as much discretion as possible should be used in order to avoid making a spectacle of oneself.

### 5. "Mixed Couple"

With the remarkable rise of the *Teshuva* movement we have often seen entire families suddenly change the direction of their lives. Unfortunately this is not always the case. Frequently there are members of a particular family who are not at all prepared to accept upon themselves the "Yoke of heaven," or at least not to the degree of the *Baal Teshuva* of the family. Although this is an uncomfortable situation for all involved, it is often tragic when a husband and wife don't enter the *Teshuva* movement simultaneously. When a man and a woman marry it is usually because they share similar ideas about how one's life should be led and how children are to be raised. Since they are mature adults

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No. 145; *Resp. Mishne Halachot*, Vol. 4, No. 173. R. Moshe Feinstein *Iggerot Moshe* (E.H., No. 60) writes that such behavior should be avoided unless it would cause an argument.

45. *Ibid.*, *Beer Moshe*.

46. *Ibid.*, Rambam, *Shulchan Aruch*, and commentaries. There is a debate as to how to define *ketana* and *gedola* in these matters. Most *poskim* rule that these laws take effect from the time the girl is three. Others say that it depends on the individual's particular physical maturity. See *Ibid.*, *Beer Moshe, Chazon Ish* O.C. 16:8.

47. R. Moshe Feinstein points out that according to the Rambam a prohibition from the Torah only exists when the contact is made "*derekh chiba*" — with affectionate intentions. If however only casual contact is made it is a rabbinic *issur*. Therefore in a situation where one sees that it will be useless to explain these matters to the family and relatives it is best not to make an issue of avoiding physical contact between a brother and an older sister or an aunt. All other cases are forbidden. See also *Resp. Mishne Halachot*, Vol. 9, No. 269; *Resp. Yaskil Avdi*, Vol. 6 (E. H.) No. 1; *Resp. Heichal Yitzchok* E.H. (2), No. 23.

they are usually quite set in their ways. When either the husband or the wife makes the monumental decision to reconstruct his or her life, he/she has been deeply inspired. Of course, such inspiration is not sufficient according to the Torah. Together with *Teshuva* comes a complex system of halachot which regulate every moment of the individual's life. If the uninspired half of the couple is not willing to make substantial concessions to the *Baal Teshuva*, a divorce is imminent. Even if such concessions are made, the marriage has been destabilized. The question is: How does the Torah deal with this situation?<sup>48</sup> When does the halacha view this relationship as one which should be terminated? This is an extremely complicated and sensitive issue which is worthy of more extensive consideration than can be given here, although we will try to introduce the subject.

The Rambam rules: "If a woman is corrupt and is not modest in the manner of the daughters of Israel it is a mitzvah to divorce her."<sup>49</sup>

What exactly is the Rambam referring to? The *Shulchan Aruch*, based upon the mishnah in *Ketubot*, is more specific:

These women do not receive the money of the *ketubah* [upon divorce]: one who violated *dat Moshe v'Yehudit*. What is *dat Moshe*? She served her husband food which has not had the tithes removed or any other forbidden food, or she deceived him into

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48. A considerably less complicated version of this problem exists when a couple has been dating and are considering marriage. In the interim one of the two has become a *Baal Teshuva*. R. Avrohom Dovid Horowitz, author of *Resp. Kinyan Torah B'Halacha*, was asked about a young man who had become a *Baal Teshuva* and wished to marry a girl who was nonobservant but had expressed a desire eventually to become an Orthodox Jew. R. Horowitz writes that his advice is that such a marriage not take place. First of all the eventuality of her becoming a *Baalat Teshuva* is a *Safeik* – in doubt. Since the young man had just recently become a *Baal Teshuva* it is just as likely that she will influence him to become less observant or to abandon Orthodoxy altogether. Secondly, it is not certain that she will be careful to observe all the laws of family purity which for the most part are left up to the discretion and care of the woman. (*Kinyan Torah B'Halacha*, Vol. 1, No. 57, Subsection 5).

49. *Hilchot Gerushin* 10:22; *Tur Shulchan Aruch* 109:14.

having relations with her while she was still a *niddah*... what is *dat Yehudit*? She goes to the marketplace with her hair uncovered, etc.<sup>50</sup>

The husband, according to this, will have grounds for demanding a divorce if his wife knowingly misleads him into "transgressing the law of Moshe," as when she has relations with him at a forbidden time and conceals this from him or when she causes him to transgress the dietary laws, knowing that he observes them. Similarly he may claim a divorce if his wife shows habitual immodesty according to the halachic definition of what that is.

There is a debate among the *Rishonim* as to whether or not he is obligated to divorce her or if it is only a mitzvah to do so but if he prefers he may remain married to her.<sup>51</sup> The *Shulchan Aruch* rules that although he is not forced to divorce her it is a mitzvah to do so.<sup>52</sup> The underlying rationale of this halacha has been explained by the *Rishonim*: If a woman is habitually immodest it causes us to suspect that in the future she might be unfaithful to her husband. The Rosh writes: "She loses her *ketubah* because we suspect adultery."<sup>53</sup> As far as her misleading her husband in other areas of halacha, it is obvious that he cannot, as an observant Jew, continue living with a woman who might continuously be causing him to violate major halachic prohibitions.

A crucial point is made by R. Ovadiah Yoseph:

Even if there are witnesses who testify that when

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50. *Even Haezer* 115:1-4. See *Principles of Jewish Law* edited by Prof. Menachem Elon, Keter, 1975, p. 418.

51. According to the *Chelkat Mechokek* (E.H. 115:18) this is a dispute between the Raavad and the Rashba. According to the *Beit Shmuel* the Rashba agrees that it is a mitzvah to divorce her. See *Chidushai HaRashba*, *Gittin* 89a.

52. E.H. 115:4. Whether or not he can divorce her against her will, thereby suspending the *Cherem* of Rabenu Gershom, is debated. The Ramo (115:4) rules that the *Cherem* does not apply in this case. The Maharshal however disagrees (Resp. No. 33). See *Resp. Chelkat Yaakov*, Vol. 1, No. 148.

53. *Piskei HaRosh Ketubot*, Ch. 7, No. 9. There is a debate between the *Mishne L'Melech* and *Beit Shmuel* whether the suspicion of promiscuity relates only to the future or to the past as well. See *Beit Meir* 115:1.

they married each other both the man and woman were irreligious and only at a later point he repented and began to demand that his wife stop violating *dat Moshe v'Yehudit*, we don't accept the wife's claim that "he knew and didn't care." If he warned her before witnesses that if she continues to behave in such a way he will divorce her and not grant her the money of *ketubah*, and she ignored his warning, she leaves without her *ketubah*, since almost all the *poskim* agree that it is a mitzvah to divorce her and according to some it is forbidden to continue living with her.<sup>54</sup>

In the case of a *Baal Teshuva* the nonobservant wife will naturally claim that she has not deceived her husband in any way since when she married him (and possibly for many years afterward) her husband was nonobservant himself. R. Yoseph however insists that despite this claim the husband has every right to demand that she accept a divorce at the present time, because at the present time her behavior as far as family purity, *kashrut*, etc. are concerned make it impossible for him to live under one roof with her.<sup>55</sup>

Therefore all *poskim* agree that if the woman misleads her husband and causes him to transgress and she refuses to alter her behavior, a divorce is in order. However, although the halachic requirements have not, and cannot be changed, nevertheless as far as the halachic classification of immodesty is concerned a number of contemporary halachic authorities have written that the halachic ramifications of immodesty must be re-evaluated in our modern, more permissive society. We have seen that one is encouraged to divorce a woman who is immodest because we suspect her of unfaithfulness. Is such a suspicion reasonable or fair in modern times?

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54. *Resp. Yabia Omer*, Vol. 3, No. 21, Subsection 11. See *Resp. Dovev Mesharim* 124, Subsection 2.

55. See *Resp. Beit Dovid*, E.H. No. 28; *Resp. Pri Hasadeh*, Vol. 2, No. 22; *Resp. Chatam Sofer* Y.D., No. 149.

R. Yoseph writes:

And now it can be said that only in previous generations it could be judged this way since in those times the vast majority of Jewish women dressed very modestly, so any woman who was immodest spoiled her status of *kashrut* and raised suspicions of *zenut* (adultery). However, in our times when tragically many Jewish women dress in "modern" clothing in order to observe the laws of Paris, it would be unfair to suspect all those women of promiscuity, G-d forbid. They only dress immodestly because they are accustomed to it, and they are not suspected of being unfaithful to their husbands.<sup>56</sup>

R. Moshe Feinstein and the Tchebiner Rav both made a similar distinction.<sup>57</sup> R. Yoseph concludes that if the husband insists on a divorce and the woman continues with her refusal to change her behavior, then his request should be honored. However, writes R. Yoseph:

It seems that the above *heter* [due to change of times] can be used in the case of a *Baal Teshuva* whose wife wears immodest clothing and uncovers her hair in public and she refuses to change, and it is difficult for him to conceive of divorce (particularly if they have children), then he may remain married to her. Even those *poskim* who wrote that it is a mitzvah to divorce such a woman and one should not live with her, in modern times they would also agree to be lenient.<sup>58</sup>

56. *Ibid.*, *Yabia Omer*.

57. *Iggerot Moshe E.H.* (1) No. 114. *Dovev Mesharim* 124, Subsection 2. See opinion of R. Ovadiah Hadaya as quoted in *Yabia Omer*.

58. *Ibid.*, *Yabia Omer*. R. Avraham Weinfeld in *Resp. Lev Avraham* (No. 105) concludes his analysis of this subject with the following summary:

1. If someone marries a woman knowing that she won't cover her hair he has violated the prohibition of "placing a stumbling block" since he is the cause of her being responsible to cover her hair.

2. He is not continuously violating this prohibition as the marriage proceeds.

R. Avraham Weinfeld in *Responsa Lev Avraham* questions whether or not it is even a mitzvah at all to divorce such a woman. His reasoning is: "In a situation where a divorce might be the

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3. He is obligated more than any other person to cause her to stop this transgression since he is the cause of it.
4. If he cannot convince her to change, he is not obligated to divorce her.
5. If divorcing her might cause her to transgress other prohibitions it is not even a mitzvah to divorce her.
6. It is said in the name of the *Chazon Ish* that if someone when he was first married did not insist that his wife cover her hair and later on he changed his mind, he should remain married to her, providing that in all other matters she is observant.

A similar approach may be detected in a fascinating responsum written by R. Yitzchok Isaac Liebes in *Beit Avi* (vol. 4, No. 128). Rav Liebes was presented with a case of a woman who at some point in her marriage became a *Baalat Teshuva*. Her husband however remained basically non-observant. He is prepared to make some concessions particularly in the area of family purity. Although he consents to remaining separate during her actual period he refuses to wait an additional seven days until his wife goes to the mikvah as is required by the halacha. The woman wants to know if for the purpose of preserving her marriage it is possible to be lenient since the "seven clean days" is of rabbinic origin and is an additional stringency which Jewish women accepted upon themselves. She also has strong hopes that eventually he will accept the idea of the "seven clean days." Unfortunately, R. Liebes fails to render a clear decision. He notes that when the woman is definitely not a *safek zava* (no discharge after fifth day) perhaps a *heter* can be considered. He concludes by noting that the laws of family purity protect the sanctity of the Jewish people and it is very difficult to search for leniencies even in an emergency situation.

This raises an important question: At what point does one inform the individual who is in the process of becoming a *Baal Teshuva*, that unless the laws of family purity are observed, he and his wife may no longer live together? It must be remembered that we are dealing with an extremely volatile situation. To a large extent this person has been attracted to Judaism because "the ways of the Torah are pleasant and all its paths lead to peace." Suddenly he or she is informed that unless the spouse complies with the stringent laws of *Taharat HaMishpacha*, the marriage cannot continue. Individuals who are involved in the *Teshuva* movement know full well that premature revelation of such halachot has often been the cause of a potential *Baal Teshuva*'s rejection of Orthodox Judaism.

There is an halachic principle which states: "モטב שייהי שוגגן ולא ייהי מזידן." It is preferable to allow a person to remain uninformed about a prohibition and to sustain his status of an unintentional sinner, than to

transform that person into an intentional sinner by informing him" (*Shabbat* 148b, *Beitzah* 30a). This is supported by the statement in the Gemara: "Just as it is a mitzvah to say something (rebuke) that will be heard, so it is a mitzvah not to say something that will not be adhered to" (*Yevamot* 65b). When and how this principle is used is the subject of much debate. In his gloss to the *Shulchan Aruch* the Ramo rules: "Such is the law: Regarding all prohibitions, we say 'It is preferable... etc.' However this is only said in the case of a prohibition, even on a Torah level, which is not clearly specified in the Torah itself, but if it is clearly specified in the Torah, we must rebuke the transgressor" (O.C. 608:2 quoting the Rosh in the name of the *Baal HaIttur*). The underlying rationale of the distinction between what is clearly or not clearly specified in the Torah is explained by the Rashba in *Beitzah*: "It is a prohibition which is generally little known and considered insignificant, and subsequently people sin without intention." Similarly the Meiri writes "A prohibition which is not widely known to the masses." The Chida in his authoritative *Birkei Yoseph* (O.C. 608) explains that even if we are dealing with a prohibition clearly specified in the Torah, the principle of "It is preferable" is applied in a situation where we are unable to actually force an individual to observe the halacha. (See the *Biur Halacha* 608 who rejects the Chida's reasoning, and R. Tehuda A. Henkin in *Techumim* Vol. 2, pp. 272-280, who cites additional sources substantiating the Chida's interpretation).

Based upon the above it appears reasonable to suggest that in modern society there is hardly any halacha which is considered "specified in the Torah," aside from the "rational laws" adopted by Western Civilization (theft, murder, etc.). The existence of the vast majority of Torah laws is unknown to most Jews. Even in cases where the existence of a law is known, its severity is most certainly not. Hence, in a case involving the complicated laws of family purity the principle of "it is preferable" in each case must be carefully studied.

In the laws of conversion the halacha specifies the procedure that must be followed when dealing with a prospective convert: "We tell him about the principles of the religion, which include the unity of G-d and the prohibition of idolatry. This is discussed at length. Then we briefly bring to his attention some of the *mitzvot kalot* (minor) and *mitzvot chamurot* (capital)... We are careful not to be excessive or overly strict [in mentioning the punishment of transgressors] since this might frighten the person and cause him to veer from the correct path he has chosen. In the initial stage a person may be drawn only with encouraging words of tenderness and goodwill..." (Rambam, *Issurei Biah* 14:2, based upon *Yevamot* 47a). If this approach is suggested when dealing with individuals whose admission into the fold of Judaism we are not actively seeking, how much more so should it be implemented in the case of estranged Jews whose return is desperately sought. Besides this, according to many authorities no individual is *obligated* to remove another Jew from a state of *issur*. (See *Minchat Chinuch* #48). In conclusion, each situation demands much discretion and common sense on the part of all of those well-meaning people who are guiding the *Baal Teshuva*. See also R. Adin Steinsalz "All or Nothing at All" in *El Hamekorot* Vol. 3, pp. 263-266.

cause of her transgressing more prohibitions, it appears to me that it is very questionable if it would be a mitzvah at all.<sup>59</sup>

It is important to note that these halachot are applicable (with certain adjustments) to a reverse situation where the woman becomes the *Baalat Teshuva* and her husband is the nonobservant one. The Ramo writes:

Some say that we should have the gentiles force a *mumar* to grant his wife a divorce. Others say that we don't force a *mumar* or any other violator of the law to do so unless he is sinning against her, e.g., he forces her to eat nonkosher food, etc.<sup>60</sup>

Here too distinctions must be made depending upon intent, knowledge, environment, etc.

Until this point we have discussed a situation where either the husband or the wife refuses to observe the halacha in areas which directly affect the spouse who is a *Baal Teshuva*. However, in many cases the nonobservant spouse will observe the laws of modesty, family purity, *kashrut*, etc. if only for the sake of preserving the marriage. Nevertheless that person remains personally nonobservant in areas which do not directly affect the other's adherence to halacha. For instance, perhaps there is a case where the woman maintains a strictly kosher kitchen for the sake of her husband, while she herself continues to eat nonkosher foods outside the home.<sup>61</sup> Is this conflict grounds for divorce? Is the observant spouse permitted to live with such a person?

In a responsum written by the Rosh we find the following:

It appears to me that a woman is only classified as a violator of *dat Moshe* [and forfeits her *ketubah*] if she causes her husband to transgress in the specific areas mentioned in the Mishnah [serves him

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59. *Resp. Lev Avraham* No. 105.

60. *E.H.* 154:1. See *Hagahot R. Akiva Eiger* and *Rashba* (Responsa Vol. 1, No. 1,162).

61. Naturally many other problems arise if the house is not kept strictly kosher or the Shabbat is openly violated in the house of the *Baal Teshuva*.

nonkosher food, etc.]. But if she herself eats nonkosher fats and blood, then even according to the opinion that classifies her as a *mumar* for the whole Torah, we don't suspect her of the things mentioned in the Mishnah, because she fears her husband [and is afraid she will be caught].<sup>62</sup>

The Radbaz makes the same distinction and adds:

However, may any man who allows his wife to transgress the laws of the Torah and doesn't cause her to repent be cursed. If he is unable to bring about her repentance and yet he refuses to divorce her, it should be known that any woman who ignores prohibitions of *karet* is certainly not concerned with the prohibition of "placing a stumbling block before the blind" and she would not hesitate to deceive him into having relations with her while she is a *niddah* or to feed him nonkosher food, and he will never know!<sup>63</sup>

In other words, the Radbaz agrees that according to the halacha, if one's spouse is nonobservant in areas which do not affect him then a divorce is not required, and in the case of a woman the *ketubah* is not forfeited in the event of divorce. However, the Radbaz maintains that if all attempts have failed to influence the behavior of that individual, the intransigence would be sufficient grounds for us to suspect that she will neglect to carefully observe those halachot which do affect the religious spouse.

R. Ovadiah Yoseph contends that the Radbaz is not claiming that in all cases such a suspicion should be raised and a divorce sought. The Rosh clearly wrote that because she fears her husband an average woman is not suspected of placing a "stumbling block before him." Each person must determine the nature of his particular situation. R. Yoseph continues:

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62. *Resp. Rosh Klal* 32, Subsection 8.

63. *Resp. Radbaz*, Vol. 1, No. 445. See *Chochmat Shlomo* E.H. 115:1.

However, it is clear that even according to the Rosh if the woman is publicly desecrating the Sabbath or she defiantly (*le'hachis*) eats nonkosher food, she is worse than a violator of *dat Moshe*, she is like a gentile in all respects... and she is certainly suspected of having relations with him while she is a *niddah*... Since she is completely unreliable he may not continue living with her.<sup>64</sup>

We have seen that in modern times it is difficult to label any Jew a *mumar* for Sabbath or a *mumar le'hachis*. Perhaps in the case of a husband and wife it is easier for one to determine the nature of the other's negligence in observance of Torah and mitzvot. Needless to say, in a case where there are children in the home the problem is great exacerbated, since the presence of a nonobservant parent is likely to deter them from remaining observant themselves.

Perhaps this is what our Sages meant when they said: "If they [husband and wife] are worthy, the *Shechina* [Spirit of G-d] rests 'between them' — meaning that the secret of marital happiness is when the awareness of the *Shechina*'s presence is shared by both of them.<sup>65</sup>

### Marrying A Baal Teshuva — Yichus

Many modern-day *Baalei Teshuva* encounter what is for them an extremely puzzling and frustrating paradox once they have

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64. *Yabia Omer*, Vol. 3 (E.H.), No. 21, Subsection 18. See also *Resp. Levenshei Mordechai*, Vol. 2 (E.H.) No. 52, Vol. 1 (E.H.), No. 9; *Resp. Pri Hasadeh*, Vol. 2, No. 22.

65. This raises another possible problem in such a family. Usually the *Baal Teshuva* will insist upon moving to a neighborhood which has all the institutions and facilities necessary for an Orthodox Jew, whereas the spouse will prefer to remain in the environment that he or she is accustomed to. In *Mishpetei Shmuel*, R. Shmuel Baruch Werner enters into a detailed analysis of this problem (pp. 106-122). See also *Resp. Levenshei Mordechai* (E.H.) No. 12; *Chatam Sofer* (E.H.) No. 150; *Resp. Sheilat Chemdat Tzvi* (Vol. 1, No. 44) who analyzes the halachic obligation that a Jew live in a religious neighborhood.

reached their intended destination — Torah observant Judaism. During the long years of introspection and spiritual development they are constantly reminded of their privileged status as *Baalei Teshuva*. The famous statement of *Chazal* is repeatedly invoked: "In the place where *Baalei Teshuva* stand, even complete *Tzaddikim* cannot stand" (*Berachot* 34) in order to encourage them to continue on their spiritual "voyage." However, to their dismay, once they have become full-fledged Orthodox Jews and seek to be accepted in the close-knit world of Orthodox Judaism they often encounter extreme apprehension on the part of the "frum from birth" (Orthodox) community. This apprehension is manifested in a number of ways, the most painful of which is the hesitance of Orthodox Jews to marry *Baalei Teshuva*.

The question is a disturbing one and the answer to it is crucial to thousands of dedicated and unique men and women: Is there any halachic justification for avoiding or prohibiting a marriage between a born-Orthodox individual and a *Baal Teshuva*?

### 1. Possibility of Mamzerut

In the Gemara we are told: "When the Holy One, blessed be He, causes His presence to descend, He rests it only upon the families of Israel that are in possession of *Yichus*."<sup>66</sup>

What exactly is meant by *Yichus* (literally, genealogy) a word which is often used when a match is being sought and invariably causes the *Baal Teshuva* a considerable amount of anxiety? Rashi defines *Yichus* as "Families whose members are completely Jewish."

The *Tosafot Yom Tov* elaborates: "The term *Yichus* is used in reference to the knowledge one has regarding his genealogy as well as the status of his own birth."<sup>67</sup>

In his classic commentary on the *Sheiltot*, the *N'tziv* writes:

Rashi in his commentary wrote "Families whose members are completely Jewish" in order to exclude

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66. *Kiddushin* 70b.

67. *Tosafot Yom Tov*, beginning fourth chapter of *Kiddushin*.

converts. However, it appears to me that the same term [Yichus] is used to exclude families that are Jewish but have a *psul* [blemish].<sup>67</sup>

The Ran quotes Rashi and adds "A family that has no *psul*."<sup>68</sup>

Because of the existence of various individuals who are classified as *psulim* and in different degrees are excluded from entering the main body of the "Community of Israel," many Jewish families kept careful records of their ancestry known as *Megillot Yuchasin*. These records were used as documented proof of *psul-free yichus* when one of the members of a family was being considered for marriage.<sup>69</sup> Families of *kohanim* (priests) were particularly meticulous in preserving such *megillot* because of the additional precautions *kohanim* must take before they marry.<sup>70</sup>

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67a. *Haamek Sheila, Sheilta* 41, Subsection 2.

68. *Ibid.*

69. See *Pesachim* 12b, *Bereshit Rabbah* 98.

70. See *Even Haezer* 6-7 and *Otzar Haposkim*. Under "normal circumstances" the Rambam rules: "All families are presumed unimpaired and it is completely permissible to marry into them." However the *Tur* records a debate among the *Rishonim*: "We don't have to investigate the background of a man or a woman who comes to get married. However, according to Rashi if a man wants to marry a woman he must first be 'checked.' The meaning of 'all families are presumed unimpaired' is that we needn't investigate a family that has a known *chezkat kashrut*. But if a family is not known the *yichus* must be proved." (Rabbeinu Tam only required investigation in connection with *kohanim*.) This dispute eventually developed into an argument in the *Acharonim*. See *Resp. Maherit* 1, No. 149; *Beit Shmuel* 2:2; *Pitchei Teshuva* 2:2; *Beit Meir* 2:1. In the *poskim* we find that many communal *takkanot* were enacted in order to make sure that Jews arriving from distant lands and whose families were unknown would be obligated to provide some concrete evidence of their *yichus*. See *Chochmat Adam* 124:2; *Shulchan Haezer* II, p. 22; *Resp. Mahershach*, Vol. 2, No. 87. Naturally at the time that these *takkanot* were made communication between the *kehilot* was very difficult. In the *Aruch Hashulchan* written at the turn of the twentieth century we already find: "It appears to me that if an individual comes and he has a family we needn't investigate his *yichus* at all. Only a single person coming from a distant place about whom we know nothing should be checked." (E.H.2:13) The *Chazon Ish* wrote: "It is our custom to permit marrying even those men whose families are unknown to us, although it is not advisable to do so. If the man is a *talmid chacham* it is even advisable to do so." (E.H. 2:20) See *Otzar Haposkim* 2:4

The form of *psul* which is most common in modern society and often plagues the *Baal Teshuva* is *mamzerut*. The *Shulchan Aruch*'s definition of a *mamzer* is: "A child who is born of a couple whose sexual relationship is forbidden according to the Torah [Arayot] and punishable by *karet* or death."<sup>71</sup>

The most commonly found type of *mamzer* is the child who is the product of the forbidden relationship between a married woman and any Jewish male other than her husband. This state of *mamzerut* is being created in ever-increasing numbers in situations where upon separation from her husband the wife receives only a civil divorce, which is invalid according to the Torah. This woman then remarries (relying upon her civil divorce) and will very likely give birth to children, who are considered *mamzerim*. In the eyes of Jewish law, she remains married to the first husband until she gets a religious divorce (*get*). In recent years many *Baalei Teshuva* have confronted this tragic reality. The consequences of *mamzerut* are two-fold: 1) a *mamzer* is only permitted to marry another *mamzer* or a convert; and 2) the offspring of any couple where even only one of them is a *mamzer* are all *mamzerim* for all time.

Ironically many situations of *mamzerut* have been avoided because of the fact that the parents are nonobservant Jews. In most cases the parents of the *Baal Teshuva* were not married according to halacha, which may mean that their marriage was not halachically legal — and therefore may not require a Jewish divorce. The vast majority of *poskim* agree that although it is preferable to obtain a *get* upon the dissolution of a marriage which was originally performed by a Reform or Conservative rabbi, yet if it is not granted, the offspring of the second marriage are not

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who quotes *Kiryat Chana Dovid*: "Even according to the *poskim* who say that we needn't suspect [a problem in *yichus*] that is only in a situation where the particular individual behaves in accordance with the laws of Moshe and Israel in all respects. But if this is not the case we do suspect a problem and he shouldn't be married [until after an inquiry is made]." Naturally this *psak* was made when the great majority of Jews were observant. The ruling of the *Chazon Ish* takes the unfortunate changes into account.

71. E.H. 4:13.

*mamzerim*, since their parents were never considered legally married to begin with.<sup>72</sup>

It is ironic that in many cases the parents of the *Baal Teshuva* were indeed married according to halacha.<sup>73</sup> Even if they themselves were not observant at the time, one set of grandparents often insist that their children's wedding ceremony be conducted according to Orthodox tradition. If that was the case, then the consequences can be very unfortunate for the *Baal Teshuva*, for if his mother divorced and remarried without a Jewish divorce, he is a *mamzer*.

There is another *mamzerut*-related problem that may confront the Jew raised by nonobservant parents. Obviously, the fact that both parents are nonobservant indicates that for the most part they have adapted to a lifestyle whose standards are set by the secular

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72. Virtually every book of responsa written in the last fifty years has a section dealing with this issue. For an overview see R. Gedalya Felder, *Nachalat Tzvi*, pp.231-240; *Journal of Halacha and Contemporary Society*, Succot 5745, pp. 118-128. In our generation it has evolved into a halachic dispute between R. Yoseph Eliyahu Henkin and R. Moshe Feinstein. There is no point in entering into any of the details of this subject at the present time.

73. This does however raise a question crucial for many *Baalei Teshuva*. If a man and a woman were originally nonhalachically married and at some point during their marriage they both become *Baalei Teshuva*, must they be remarried "according to the laws of Moshe and Israel"? R. Avrohom Dovid Horowitz in *Resp. Kinyan Torah B'Halacha* (Vol. 4, No. 130) addresses this question and rules that the couple must certainly remarry and a new *ketubah* must be written and signed. He does however hesitate when it comes to the question of reciting the seven blessings under the *chupah*. In a case where *kiddushin* never took effect because the groom mistakenly used a borrowed ring, the Radbaz ruled that the seven blessings should not be repeated (Resp. No. 372). R. Horowitz makes a distinction that in the case of the Radbaz there was at least the semblance of *kiddushin*, whereas in the case of the *Baalei Teshuva* the first ceremony was meaningless. In spite of this, R. Horowitz writes that the Radbaz apparently believes that whereas the original *kiddushin* didn't take effect and a second one must be performed, the seven blessings are not recited. Therefore in the case of the *Baalei Teshuva* it is advisable to recite the blessings without mentioning G-d's name.

74. See R. Yitzchok Isaac Leibes' innovative attempts to assist *Baalei Teshuva* who are *mamzerim*. (*Resp. Beit Avi*, Vol. 4, No. 147). See *Resp. Maharsham*, Vol. 2, No. 110.

society in which they live. Unfortunately, assimilation has brought in its wake a weakening of the sacred institution of marriage. What is the halacha if the mother of the *Baal Teshuva* had been reputedly involved in an extramarital relationship at the time preceding her child's conception and birth?

R. Aharon Walkin of Pinsk was asked this question:

Can an Orthodox young man marry the daughter of Reform Jews who is herself now behaving in the manner of all "kosher" Jewish girls? Perhaps in such a case we need suspect *mamzerut* or another defect in parentage which would render her unfit for marriage, because I have received a report that the girl's mother is a *perutza* (promiscuous woman) who is suspected of being unfaithful to her husband. Perhaps this girl was born of such an illicit relationship?<sup>75</sup>

R. Walkin's conclusion is that there is absolutely no suspicion of *mamzerut* as far as the girl is concerned. He bases his ruling upon a crucial discussion in *Sotah* (26b-27a):

Shmuel said: It is preferable that a man marry a *doma* and not the daughter of a *doma*, since the former comes from an unimpaired seed while the latter is from a defective one. R. Yochanan said: Let a man marry the daughter of a *doma* and not a *doma* since the former has a *chezkat kashrut* (unimpaired status) while the latter does not."

Rashi interprets *doma* as: "Her promiscuity is known and discussed by everyone."

According to Shmuel it is preferable to marry a girl with a poor reputation than the impeccable daughter of a promiscuous woman since the daughter might be the child of a nonJew or a *mamzer*. R. Yochanan, on the other hand, maintains the opposite. The Gemara concludes that the halacha follows R. Yochanan and it provides the following rationale: "Even if a woman is adulterous her children's status is unimpaired since the majority of times, a

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75. *Resp. Zekan Aharon*, Vol. 1, No. 65.

woman cohabits with her husband, and the offspring is presumed to have been fathered by her husband.”

Subsequently, the *Shulchan Aruch* states: “If a voice has been heard and all are saying that a certain woman was unfaithful to her husband, we do not suspect that the children are *mamzerim*, since the majority of times a woman cohabits with her husband.”<sup>76</sup>

However, there is an exception to this rule as the *Shulchan Aruch* stipulates: “If a woman is habitually promiscuous the children are suspected [of *mamzerut*].”<sup>77</sup>

In other words, if the mother of the *Baal Teshuva* was involved in a number of affairs in addition to her living with her husband at the time of the conception of the child, then the majority rule no longer applies and a suspicion of *mamzerut* does exist.

R. Walkin attempts to solve this problem as well by suggesting that the principle of “double doubt” (ספק-ספק) can be implemented: “It is possible that the child is the husband’s, and even if it isn’t his, it may be that of a gentile.”<sup>78</sup> If it is the offspring of a nonJew the child is not rendered a *mamzer*.

In a responsum written in 1969 R. Moshe Feinstein declared a girl free of suspicion of *mamzerut* despite the fact that, at the time she was conceived, her mother had been living with three men, besides regularly cohabiting with her husband whom she visited weekly in an asylum. This *heter* is also based upon the principle of “the majority of times a woman cohabits with her husband” and a lengthy *pilpul* was required in order to prove that

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76. *E.H.* 4:15.

77. *Ibid.*

78. R. Walkin cites the comment of the *Beit Shmuel* that we don’t suspect a woman of having relations with a nonJew because Jews and gentiles keep a distance from one another. However R. Walkin explains that unfortunately in modern times many nonreligious (Reform) Jews consider it a status symbol to assimilate with nonJews and hence we may suspect that the woman might have had relations with a gentile.

A major dispute in halacha revolves around the question of whether or not the *kiddushin* of a *mumar* take effect. See *Nachalat Tzvi*, Vol. 2, pp. 224-229; *Responsa Yabia Omer* 1 (Y.D.) No. 11, Subsection 4.

even in such incriminating circumstances the principle is still in effect. What is of major importance is the way R. Moshe defines "habitually promiscuous" (פרוצה ביותר).

It appears that "habitually promiscuous" refers to a woman that is not ashamed at all, not before her husband or others... In this case she does not have such status since she tried to conceal her actions.<sup>79</sup>

Thus unless there is clear evidence that at the time of conception the woman was not living with her husband at all, it is unlikely that the children will be tainted with the stigma of *mamzerut*.

It must be emphasized that in all cases where a question of *mamzerut* is involved an authoritative *posek* must be consulted and the complication should not be revealed to anyone other than that *posek*. We must also remember that when dealing with questions of *mamzerut* there is a fundamental halachic principle under which we are operating:

All of this [מומרות מושת] applies only in a case where it is known that a particular individual is a *mamzer*. However, if there is a family into which a *mamzer* has mixed and it is not generally known who that child is then once he is unidentified [mixed in] he remains unidentified, and whoever is aware of his defect is forbidden to reveal it to others. The status of *kashrut* is maintained... However, it may be revealed to people of great discretion.<sup>80</sup>

79. *Iggerot Moshe* E.H. (3), No. 9-10.

80. Ramo, E.H. 2:5. See *Otzer Haposkim* who quotes the *Levush*: "If you see someone about to marry a person who might have a blemish in family status (פסול פסול) you needn't prevent the marriage nor reveal the secret, but if it is someone who is definitely *pasul* you must make it known." In a case where the family is already in the category of *ונטען* (blended) but a particular member of that family knows for a fact that he is a *mamzer* the *Chazon Ish* rules leniently. (E.H. 87:32). See Epstein, *Mitzvot Habayit*, pp. 90-93.

What is the definition of *tz'nuin* (צונען) to whom the status of the *mamzer* may be revealed? In the Gemara we find: "The wise men transmit this information to their sons and students" (*Kiddushin* 71a). See the *Aruch*

## II. Ben Niddah

Since most modern day *Baalei Teshuva* were raised by parents who were either totally nonobservant or marginally observant Jews, it is very rare to find an instance when the complicated laws of family purity were even nominally adhered to. One of the sexual unions prohibited by the Torah is that between a man and woman who is halachically unclean.<sup>81</sup> The woman's status of *niddah* is in effect until she immerses herself in a body of water which conforms to the halachic specifications of a *mikvah*. The Rambam states:

Who is a *mamzer* according to the Torah? It is a child born of a couple whose sexual relationship is forbidden, except for one who is born of relations with a *niddah*. He is considered *pagum* (blemished or defective) but is not a *mamzer*.<sup>82</sup>

The *Shulchan Aruch* concurs with this ruling and adds that a *ben-niddah* is not even considered a *mamzer mi'derabanan* (rabbinic level of *issur*).<sup>83</sup>

What is the definition of *pagum*? The *Beit Shmuel* quotes the *Darchei Moshe*:

He is tainted and his family is not *meyuchas* [genealogically pure] and it is proper to keep a distance from them [in terms of marriage]. Nevertheless, he is not *pagum* in terms of any actual *issur* and [if it is a girl] she can marry a *kohen*.

Here we are told of the effects of the imperfection but not the nature of the *pegam* itself. The *Bach* quotes the Maharshal: "He is tainted and corrupted and is one of the *azei panim* (brazen), the

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*Hashulchan* who reminds us that when it comes to the question of *psulei Kehuna* most of the *heterim* don't apply.

81. Rambam, *Issurei Biah* 4:1.

82. *Issurei Biah* 15:1. In the Gemara itself there is no mention of a *pgam* — *Yevamot* 49b. See also *Kiddushin* 68a.

83. *E.H.* 4:13.

rebellious and sinful.<sup>84</sup> The source of this shocking statement has been traced by many to the Gemara itself. In *Nedarim* (20b) we find: "And I will purge from among you the rebels and them that transgress against me" (*Yechezkel* 20:38). R. Levi said this verse refers to children of people who exhibit nine undesirable *midot* (traits) which are: *Bnei ayma*, *bnei niddui*, etc. According to Rashi, Ran, the Rosh and others, *bnei niddah* are not included on this list. However, the Raavad and *Tur* understood *bnei niddui* as *bnei niddah* – children conceived while the mother was a *niddah*.<sup>85</sup> The question is to whom does this classification of "rebellious and sinners" refer to? The answer to this is the subject of considerable debate among the *Rishonim*. There are those who say that it in fact refers to the children themselves who are literally born with this stigma of "rebellious and sinners."<sup>86</sup> Others contend that the parents are those who receive this infamous title because of their neglecting to observe the prohibitions of the Torah.<sup>87</sup> Nevertheless, all the *Rishonim* agree that a *ben-niddah* is more likely than another person to diverge from the path of Torah observance and acceptable ethical behavior because of the qualities inherited from his parents.<sup>88</sup> They, therefore, concur that it is preferable to avoid marrying an individual who is known to be the child of a *niddah*.

84. *Bach, Tur, Shulchan Aruch*, E.H. 4:4. See *Otzar Haposkim* 4:40.

85. See at length *Beit Yoseph* O.C. 240. The Rambam is problematic because in his ruling regarding the "children of the nine *midot*" his version is *bnei niddui* (*Issurei Biah* 21:12). Therefore he does not count a *ben-niddah* as one of the *bnei tesha midot*. Nevertheless he does consider the *ben-niddah* a *pagum*. It is difficult to determine what is the nature of the *pgam* according to the Rambam. See *Atzei Arazim* E.H. 4:21: *Resp. Mishne Halachot*, Vol. 7, No. 213.

86. *Beit Yoseph's* understanding of *Tur* O.C. 240. See also *Zohar, Shmot* 3; *Rokeach, Lech Lecha, Shaar Haneelam*.

87. *Ibid. Beit Yoseph's* understanding of Raavad. See also *Shita Mekubetzet Nedarim* 20b.

88. It is well known that according to *Chazal* the spiritual and physical development of a child is to a great extent determined by the qualities of his parents, particularly the father. A detailed discussion of this type is beyond the scope of this article. See R. Shlomo Yoseph Zevin, *L'or Hahalacha*, pp. 188-196; Epstein, *Mitzvot Habayit*, Vol. 2, pp. 97-133. According to Kabbala the

Taking the above into consideration, is, in fact, an Orthodox Jew to be deterred from seeking a match with a man or woman whose parents did not observe the laws of family purity?

R. Yaakov Yisrael Kanievsky, known as the Steipler Gaon discussed this issue in his *Kehilat Yaakov*<sup>89</sup> and reached the conclusion that according to halacha it is absolutely permissible to marry a child of parents who did not observe these law. He bases this *heter* on two major points:

1. It appears that when *Chazal* determined that *bnei niddah* are "corrupt and sinners," etc., they were making a general statement that in most cases the *ben-niddah* will possess these negative characteristic traits. Those *bnei niddah* who even slightly exhibit such qualities should by no means be considered acceptable candidates for marriage into Orthodox families. However, when we encounter *bnei niddah* of exemplary character we must assume that they are exceptions to the rule. Free choice is one of the fundamental principles of Judaism and certainly even a *ben-niddah* can overcome his "genetic" predisposition and thereby rid himself of this stigma. In other words, the Steipler suggests that the *pegam* of a *ben-niddah* is not a *din* — an absolute halachic classification — but rather a statistical likelihood. The indication that a particular individual has succumbed to his predisposition is that he or she behaves in a way which betrays characteristics of *chutzpah*, rebelliousness, etc. If, however, none of these "warning signals" have surfaced, then the person is not considered *pagum* as far as his or her eligibility as prospective mate is concerned.<sup>90</sup>

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nature of the child is greatly affected by the thoughts and behavior of the parents at the time of conception. See Ramban, *Iggerot Hakodesh* Ch. 4-5; *Birkei Yoseph* O.C. 240; *Derech Pikudecha Mitzvah* 1, *Chelek Hamachshava*.

89. *Likutim*, Vol. 2, No. 23. The Steipler when responding to R. Menashe Klein's rejecting of his opinion claims that he never intended to make an halachic ruling nor is he competent to do so. (*Resp. Mishne Halachot*, Vol. 7, No. 212). Nevertheless, one of the greatest *poskim* of our generation, R. Weiss of Jerusalem, relies almost exclusively on the Steipler to reach his halachic decision.

90. R. Weiss in *Minchat Yitzchak* (Vol. 7, No. 107) substantiates the Steipler's

2. The Steipler cites an opinion which originated in the work *Apei Zutrei*, who claims: "He [the actual *ben-niddah*] is *pagum* and all of his descendants take after their ancestor."<sup>91</sup> This implies that the blemish of a *ben-niddah* is literally inherited by each generation and continues indefinitely. If this is true, writes the Steipler, then it would be almost impossible to find any man or woman who is not *pagum* even within the "born-Orthodox" community itself, since it is very unlikely that somewhere along the line there wasn't one set of parents who fell into at least one of the categories of nine unworthy *midot*. According to this there is no reason why a "born-again" Jew's halachic status should be considered less noble than that of a Jew born in an Orthodox family.<sup>92</sup> <sup>93</sup>

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approach with a statement of the Maharsha (B.B. 109b). See also R. Yitzchok Isaac Leibes, *Resp. Beit Avi* (Vol. 4, No. 144) who writes: "It is difficult to say that as a result of their father's sin a permanent blemish remains upon these children who are *Baalei Teshuva*. If G-d has brought upon them a spirit of holiness to repent sincerely, it must be that the blemish has been completely removed." R. Ovadiah Hadaya cites numerous sources in Kabbala which concur with this line of reasoning (*Resp. Yaskil Avdi*, Vol. 1, No. 3). See R. Menashe Klein, *Resp. Mishne Halachot* (Vol. 7, No. 213) who attempts to prove from the Rambam, Meiri and Ran that all of the sons are "rebellious and sinners." The Steipler did not respond to this claim, and I believe it is obvious that the Steipler agrees that all *bnei niddah* have a certain negative predisposition. He simply claims that it can be overcome.

91. The *Apei Zutra* quotes this in the name of the Maharshal, but it is not found in any of his writings. R. Weiss contends that this one sentence is the *Apei Zutra's* own addition. (*Minchat Yitzchok*, Vol. 7, No. 107).
92. According to most *poskim* the view of the *Apei Zutra* is not acceptable. R. Weiss cites numerous sources which prove that any deficiency in *yichus* is not traced back further than three generations. The *Darchei Moshe* wrote that the *ben niddah* is *pagum* and his family (descendants) are not *meyuchasim*. This seems to indicate that the following generations are not *p'gumim*, they merely lack in *yichus*. See *Chatam Sofer E.H.* (1), No. 103. Based upon this the Steipler's calculation regarding all prospective brides and grooms is inaccurate. Furthermore, the Ran in *Nedarim* wrote: "There is a sinful element in their creation." According to this only the children conceived as *bnei niddah* are tainted, but if anywhere along the line a set of parents carefully observed the laws of family purity, their children are no longer tainted. Every time the *Zohar* mentions a *ben-niddah* it refers specifically to the child himself. This is

A fascination solution to the problem of *bnei niddah* was suggested by R. Moshe Feinstein in the most recent volume of *Iggerot Moshe*.<sup>94</sup> He begins with the premise that the characteristics of the *ben-niddah* are in fact passed down from generation to generation. He writes: "In reality even if we see a girl who is a *bat-niddah* and yet she is modest and possesses wonderful traits in the manner of any worthy Jewish woman, nevertheless one should avoid marrying her. The reason for this is that although, because of her fear of G-d, she is able to overcome her natural instincts, we must fear that these negative characteristics will appear in her children and perhaps they will not succeed in overcoming them." R. Moshe then continues to explain that this is the case only when it is absolutely certain that the mother was in the halachic state of *niddah* at the time of conception. This, R. Moshe claims, is rarely the case. In the Gemara there is a debate as to whether or not *tevila* (immersion in a *mikvah*) requires specific intent for removing the state of *niddut*.<sup>95</sup> The *Shulchan Aruch* rules: "A *niddah* who immersed herself without any intention [to change her status], i.e., she fell in the water, or simply entered the water to cool off, is permitted to her husband." The Ramo notes: "There are those who are strict and require her to immerse again. It is preferable to follow this opinion a priori."<sup>96</sup>

He continues that, since *Chazal* provided us with a number of

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verified by the opinion of the Ari as recorded in *Shaar Hagilgulim*, *Shaar Hapesukim*, *Sefer Iyov*.

R. Yoseph B. Epstein suggests that the blemish of a *ben-niddah* is not a result of the evil nature of his parents but rather occurred as a result of the *tummat niddah* — impurity of *niddah* involved in the actual conception. He therefore contends that there is no genetic transmission at all. If this is the case then certainly *teshuva* and Torah have the power to reconstruct the *kedusha* of the family and even of the individual (*Mitzvot Habayit*, Vol. 2, p. 106).

93. R. Menashe Klein insists that according to the Steipler's reasoning even at the time of the Ramo and Maharshal, most Jews were *bnei tesha midot* and yet he rules that *bnei niddah* should not be married to a "born Orthodox" Jew. (*Mishne Halachot*, Vol. 7, No. 214).

94. *E.H.* (4), No. 14.

95. *Hullin* 31a.

96. *Y.D.* 198:48.

identifying traits of the *ben-niddah* and many *Baalei Teshuva* appear not to possess any of them, we can safely assume that although the mother never immersed herself in an actual *mikvah*, she most probably had gone swimming in a lake or ocean and in doing so became permitted to her husband before the child was conceived. The fact that the mother had no intention to "purify" herself halachically makes no difference. Even the *Ramo* agrees that a second *tevila* should be performed only if it is possible, and certainly if the status of the child is at stake he would accept the unintentional *tevila* as valid. If this particular *Baal Teshuva* is in all respects a fine person, we may assume that immersion took place at the proper time.

At the conclusion of the responsum, R. Feinstein qualifies his *psak* by adding that it only applies in a case where it is known that the woman is in the habit of going swimming on a regular basis.

R. Yitzchok Isaac Leibes raises a number of objections to R. Moshe's *heter* (lenient ruling). First of all the entire *heter* could only be considered in the case of a child born in the winter or early spring since most people only go swimming (in the ocean, not in a swimming pool) regularly in the summer. In all other cases such an assumption would be absurd. Secondly, even if we assume that the woman did go swimming, many women do not immerse themselves completely in the water and if they do they often wear tight-fitting bathing caps which constitute a barrier between the person and the water.<sup>97</sup>

Despite this, R. Leibes himself rules liberally without relying upon R. Feinstein's novel suggestion, by insisting that the stigma can be overcome, as is evidenced by the individual's behavior.<sup>98</sup>

A more conservative *heter* was reached by R. Weiss of Jerusalem:

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97. *Resp. Beit Avi*, Vol. 4, No. 144. See *Badei Hashulchan* 198:363 — *Tevila* without intention only works if it is known that all of the requirements of *tevila* were carefully adhered to. This includes *chafifa* — the removal of all possible obstructions from her hair as well as the rest of the body.

98. *Ibid., Beit Avi*.

As far as the halacha is concerned I agree with R. Wosner [of Bnei Brak, author of *Shevet Halevi*] that it is impossible to entirely ignore the fact that a *pegam* exists. Therefore, the one who intends to marry the *Baal Teshuva* must be told of this halacha. Nevertheless, it is permitted to tell that person not to be overly concerned with it and it is very likely that the marriage will be a very successful one.<sup>99</sup>

In conclusion, according to halacha, it is absolutely permissible to marry an individual who is most likely or even definitely a *ben-niddah* or *bat-niddah*, but there is some measure of debate among the *Acharonim* as to whether such a marriage is advisable. The majority of contemporary *poskim* agree that one need not hesitate in marrying a *Baal Teshuva* who displays the exemplary qualities of a Torah-observant Jew.

### III. Other Possible Problems

We have already noted that a *kohen* must be particularly careful in choosing a wife since there are number of additional restrictions which apply to him.<sup>100</sup> One of the women whom a *kohen* is forbidden to marry is a *zona*. A *zona* in this context refers to a woman who is either not Jewish by birth, such as a convert, or a Jewish woman who has cohabited with a man to whom she must not be married by virtue of a general prohibition, such as a non-

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99. *Resp. Minchat Yitzchak*, Vol. 7, No. 107. See also R. Yitzchok Oelbaum, *Resp. Sheilat Yitzchok*, Vol. 3, No. 116 and 133. Only R. Menashe Kiein and R. Aharon Walkin remain opposed to the marriage of *bnei niddah*. In reference to R. Walkin's ruling, R. Yitzchok Oelbaum writes: "Since the Gaon wrote that responsum the generation has been corrupted as a result of the horrible persecutions (which have caused a spiritual digression). If that Gaon [R. Walkin] were alive today he would certainly agree [that one can be lenient]." He then concludes: "If the girl conducts herself according to the Torah and certainly if she studied in yeshiva, she should not G-d forbid be spurned. The truth is it's a mitzvah to encourage her." (*Sheilat Yitzchok*, Vol. 3, No. 133). See also *Resp. Yaski Avdi*, Vol. 7, No. 3, *Peer Avi Hador*, (Biography of the *Chazon Ish*), Vol. 4, p. 91.

100. See *Even Haezer* 6-7.

Jew or a *mamzer*.<sup>101</sup> Consequently many *Baalot Teshuva* are forbidden to *kohanim*.

In a remarkable responsum, R. Moshe Feinstein responds to a *Baalat Teshuva* who has informed him that while she was nonobservant she had been involved in a sexual relationship with a man she had intended to marry. Now she is a *Baalat Teshuva* and wishes to know if she is permitted to marry a *kohen*. R. Moshe deduces that the individual with whom she had relations was a Jew who was permitted to her according to halacha, for the *Shulchan Aruch* rules:

If someone cohabits with an unmarried woman, even one who has abandoned herself to promiscuity... this does not cause her to become a *zona*, and hence she is not unfit for a *kohen* since she was permitted to marry him [the man with whom she had relations].<sup>102</sup>

Thus her having relations with a Jew would not render her unfit for a *kohen*. R. Feinstein, however, refers to another part of the letter which disturbs him:

I am somewhat disturbed about what you wrote in your letter that it once happened that two witnesses saw you and the man go into a room alone knowing full well what you were doing there. It sounds as if you were involved with a group of promiscuous and immoral men and women who had no shame before one another. Most Jews of this type would not object to having relations with non-Jews as well.<sup>103</sup>

Relations with a non-Jew does create the status of *zona*. R. Moshe, though not accusing the women, does raise some doubts as to her status. Nevertheless he trusts her sincerity as a *Baalat Teshuva* and leaves it up to her to review her past and to observe any resultant halachic restrictions that might apply to her. He

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101. *E.H.* 6:8-18.

102. *E.H.* 6:8.

103. *Iggerot Moshe E.H.* (4), No. 40.

concludes his letter: "From him who blesses you with a life of *Teshuva* and fear of Heaven."<sup>104</sup>

In the same volume of *Iggerot Moshe*, R. Feinstein responds to the desperate inquiry of a *Baal Teshuva* who is also a *kohen*. This particular individual was raised by parents who were completely nonobservant. They were also both admittedly involved in many sexual relationships with various men and women before and during their marriage. This *kohen* now has a son who would like to marry a convert. Under normal circumstances such a marriage is forbidden according to halacha. However, the man's mother had openly admitted that before her marriage (to the *kohen's* father) she had once had sexual relations with a non-Jew. If this is true, then her son (the writer of the letter) is considered a *chalal*, a profaned priest who is unfit for priesthood. Consequently, his son is permitted to marry a convert. R. Feinstein enters into a lengthy discussion regarding the reliability of the mother's statement concerning her past, and concludes by ruling that the *kohen's* son may indeed marry the convert (providing of course that the conversion was a valid one). He also informs the *kohen* that since apparently he is a *chalal* he should no longer participate in the priestly blessings nor should he be called up as a *kohen* to the Torah.<sup>105</sup>

Until this point we have discussed halachic defects which can affect the status of the *Baal Teshuva* as far as marriage is concerned. Even if these problems never existed or have been overcome, it does not necessarily follow that the *Baal Teshuva* will be granted equal status. The reason for this is the existence of a list of individuals of "preferred status" which is found in the Gemara, *Shulchan Aruch* and the *poskim*. One's inability to be included on this list is also viewed as a type of blemish.

*Chazal* in general repeatedly emphasized the importance of marrying into a family which is "well bred" both in matters of *bein adam lamakom* (ritual observance) and *bein adam l'chavero*

104. See *Otzar Haposkim* 6:40 in name of *Minchat Pitim*.

105. *Iggerot Moshe*, Vol. 4, No. 12. See also *Resp. Kinyan Torah B'Halalcha*, Vol. 3, No. 13.

(interpersonal relationships). For example, we find the following:

A man should always try to marry the daughter of a *talmid chacham* [Torah scholar] and to arrange that his daughter marry a *talmid chacham*. If one is unable to find a daughter of a *talmid chacham* he should marry the daughter of the *gedolei hador* [Rashi — *tzaddikim*, men of great deeds], etc. One should not marry the daughter of an *am haaretz* [ignoramus].<sup>106</sup>

The Ramo adds: "This was only written concerning an *am haaretz* who is not scrupulous in the observance of the mitzvot."<sup>107</sup> Very often young Torah scholars are hesitant to marry girls whose fathers fall into the category of *am haaretz*. A yeshiva *bachur* might therefore prefer to avoid a *Baalat Teshuva* even if her parents are somewhat observant. However, the yeshiva *bachur* who is not an *am haaretz* himself will have already studied the crucial note of the *Taz*:

In explaining Rashi it seems that the nature of many women is to deter their husbands from the study of Torah, hoping that in doing so their husbands will have more time to engage in business and they will become wealthier and thus benefit from this world, whereas the study of Torah only reaps its reward in the next world. In truth, it is not like that. The study of Torah grants life in this world and long years in the next world. We have learned from Rashi that if an *am haaretz* has a daughter who is wise and understands that which I have written, there is no prohibition to marry her in spite of her father.<sup>108</sup>

Obviously, most modern-day *Baalot Teshuva* fall into the superior category which the *Taz* refers to.

106. *Pesachim* 41b.

107. *E.H.* 2:6. See *Rivash* No. 15.

108. *Taz* 2:3-4 quotes *Beit Yoseph* and explains that what the Ramo meant by *אינו מודרך במצוות* was a husband not sufficiently knowledgeable in the complicated laws of family purity and therefore unable to instruct his wife in

The Gemara states: "One should always attach himself to *tovim* [literally, "good people]."<sup>109</sup> Therefore, *Chazal* always advised that before a marriage takes place the respective parents, sisters, brothers, grandparents and other family members be "inspected."<sup>110</sup>

What is it that one checks for and how are the results of this investigation to be judged in the case of a *Baal Teshuva* or *Baalat Teshuva* seeking to marry a member of the "frum from birth" community?

In one of the classic works of responsa literature, the *Noda Bi'yehuda*, we find a fascinating *psak*. Two families reached an agreement regarding the *shidduch* (marriage) of their children. At some point after the agreement took place the grandfather of the intended bride converted to Christianity. The *Noda Bi'yehuda* ruled that although a *shidduch* is an halachically binding agreement, in this particular case the young man and his family may certainly renege on their agreement without any penalty, on the grounds that the behavior of the grandfather had created a serious *pegam* in the family.<sup>111</sup> The *Noda Bi'yehuda* concludes that although one is not forbidden to marry the daughter or granddaughter of an apostate Jew, it is not advisable.<sup>112</sup>

However, the Maharam Schick and others have concluded that the marriage to the daughter of an apostate is forbidden according to halacha. This decision is based upon an interpretation of a statement of the Ran.

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that area. See *Resp. Teshuva Mahava*, Vol. 1, No. 8. See *Birkei Yoseph* (2:2) who writes that if one has a choice it is preferable to marry the daughter of a G-d fearing Jew who is not a Torah scholar as opposed to a scholar of great *yichus* who is lacking in fear of G-d. See also *Chochmat Adam* 123:10.

109. *B.B.* 109b.

110. See R. Binyamin Adler, *Hanisuin K'hilchatan*, pp. 45-47. See *Resp. Maharam Brisk*, Vol. 1, No. 130 who contends that there is no such law; it is merely a mitzvah to do so.

111. *Noda BiYehuda*, Vol. 1, No. 69.

112. See *Resp. Chatam Sofer*, Vol. 1, No. 103. According to the *Har Carmel* (No. 3) even if the individual who had become an apostate repented the *pgam* is not removed from the family. This is also the conclusion of *Resp. Marbit Y.D.*, Vol. 4, No. 49.

Therefore if a *mumar* for idolatry is a *mumar* for the whole Torah since he is like a gentile, he is included in the decree [forbidding wine touched by gentiles] even though the Torah does not forbid marriage with his daughters.<sup>113</sup>

The Maharam Schick derives from the above that although the Torah does not forbid marriage to the daughter of an apostate Jew, a rabbinic prohibition does exist. The reason for this is that the rabbinic decrees which were enacted in order to prevent intermarriage apply to *mumarim* as well, who in this respect are considered as non-Jews.<sup>114</sup> The Maharam Schick takes his interpretation one step further by claiming that it would be forbidden to marry the daughter of one who publicly desecrates the Sabbath, who is also classified as a *mumar* for the entire Torah and is "like a non-Jew".<sup>115</sup> The application of the label "public Sabbath desecrator" in modern times is very limited, as we have seen; nevertheless, the fact that the parents of most *Baalei Teshuva* openly and unashamedly violate the Sabbath would clearly seem to create at least a *pegam*.

Most *poskim* disagree with the Maharam Schick's interpretation of the Ran. Both R. Ovadiah Yoseph and R. Eliezer Waldenberg cite numerous sources which clearly contradict the Maharam Schick's conclusion.<sup>116</sup> Rabbi Waldenberg points out that both the Maharam Schick and R. Yehuda Assad failed to mention the *psak* of their *Rebbe*, the *Chatam Sofer*, who writes:

The reason that a person who openly desecrates Shabbat causes wine to be forbidden is not because of the decree of marrying non-Jews since it is permitted to marry his daughter... It is because the Rabbis

113. *Chidushei Haran Hullin* 4b.

114. Maharam Shick *E.H.* 14. See also O.C. 305, *Yehuda Yaaleh* Y.D. No. 31.

115. See *Hullin* 5a, Rambam end of *Hilchot Shabbat*, *Eruvin* 2:16, *Shechita* 4:14, *Gezeila* 11:2.

116. *Resp. Yabia Omer*, Vol. 5 (Y.D.) No. 10, Subsection 3. *Resp. Tzitz Eliezer*, Vol. 9, No. 41, Subsection 8.

imposed a penalty upon him by labeling him "like a gentile who worships idols."<sup>117</sup>

A crucial distinction is made by the *Chatam Sofer* in another responsum:

As far as their daughters are concerned we must distinguish between a *mumar* who has completely assimilated into gentile society, who is certainly like a gentile himself, and an individual who although he is a *mumar* acknowledges that he is a Jew, and there is a possibility that his children will not follow in his footsteps.<sup>118</sup>

This very relevant statement was made regarding an apostate. *Chatam Sofer* clearly permits marrying the daughter of such a *mumar* under certain conditions, and he certainly excludes the children of Sabbath violators from the decree banning intermarriage. Similarly R. Mordechai Leib Winkler, author of *Levushai Mordechai*, cites the Maharam Schick and expresses his amazement that this formidable authority failed to mention the above statement of the *Chatam Sofer*. He also notes a distinction made by R. Yaakov Emden:

The *Gaonim* were only referring to a *mumar* who was warned and despite that continued brazenly in his ways, or to a Jew who had actually become a priest or a monk. [Then, the decree of intermarrying applies]. But if a Jew is led by his evil inclination or an ulterior motive [to gain favor in the eyes of gentiles, etc.] no decree was enacted.<sup>119</sup>

Because of the amount of attention *Chazal* devoted to the importance of marrying into a family of unimpeachable reputation and *yichus*, we find that the *poskim* view the presence of any

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117. *Resp. Chatam Sofer* Y.D. No. 120. See also notes of *Chatam Sofer* Y.D. 124:4.

118. *Chatam Sofer, Likutim*, No. 83.

119. See *Levushai Mordechai* E.H. (1), No. 18. All of this does not mean that there is no *pgam* whatsoever. See *Yad Yehuda* Y.D. 2:9.

apostate or known sinner in the immediate family as a blemish in the family (הנִזְקָה מִשְׁפָּט) <sup>120</sup>. Unfortunately, "untainted" *yichus* to this degree is very rare in modern society. In a responsum written by R. Yoel Sirkes, known as the *Bach* (1561-1640), we find the following:

Worthy and outstanding Jews did not refrain from marrying with one in whose family there is an apostate or other sinners, as long as the groom himself is a worthy and upstanding person.<sup>121</sup>

#### IV. Must I Tell?

An important question remains to be answered. Is a *Baal Teshuva* obligated to reveal his or her personal *pegam* to the person he or she intends to marry?

R. Moshe Feinstein was asked this question by a young woman who was a *Baalat Teshuva* but unfortunately had lost her virginity at an earlier time in her life. She asked R. Moshe if she would be obligated to reveal her past sins to a man who would like to marry her.

In a fascinating responsum which reveals R. Moshe's great sensitivity, practicality, and sincere concern for a *bat Yisrael*, he first encourages the woman to change her environment and to make an effort to get married as soon as possible. He reminds her that *teshuva* is a very personal matter and she should in general avoid revealing her past to anyone. As far as a *shidduch* is concerned, R. Feinstein emphasizes that the *must not* tell the young man anything until the point where she is certain that he

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120. For a detailed list and references see Adler, *Hanisuin K'hilchatan*, pp. 43-48. See *Resp. Dvar Shmuel* (No. 372) who ruled that it is preferable to avoid marrying a woman who has children from a previous marriage who are nonobservant. The reason for this has nothing to do with *yichus*. Instead, we must consider the negative influence these children might have upon the future children of this couple. This situation is also quite common in the world of *Baalei Teshuva* and has been the cause of a considerable amount of concern.

121. *Resp. Bach*, No. 8. See *Resp. Chelkat Yaakov*, Vol. 3, No. 7, *Kehilat Yaakov*, *Likutim* 2, No. 23.

would like to marry her, and marriage has actually been discussed. At that point she is in fact obligated to tell him that she is not a virgin, but it must be done in such a way that he will be reassured that her *teshuva* is sincere and that he can certainly expect her faithfulness in the future.<sup>122</sup>

Also in response to her question if the word *betula* (virgin) must be omitted from the *ketubah*, R. Moshe replies that once the groom knows her past he can consent to grant her the *ketubah* of a *betula* although she is not actually a *betula*. As long as she does not deceive him, he is obligated to give her a *ketubah* whose value is that of a *ketubah* for a *betula*.

R. Meir Arik in *Responsa Imrei Yosher* deals with a complicated case in which he permits a girl of questionable status to marry. Nevertheless, he writes that it is forbidden to conceal the facts from her fiance', even though according to halacha he is permitted to marry her. In fact, whoever knows the facts and fails to tell the groom violates the prohibition of "placing a stumbling block in front of the blind." Since it is possible that one day the man will discover the truth, he might very well feel that he was deceived, and the girl may be brought to great shame. Thus, it is forbidden to conceal the truth from him.<sup>123</sup>

Rav Weiss of Jerusalem, in discussing this question,<sup>124</sup> cites the following halacha:

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122. *Iggerot Moshe* O.C. (4), No. 118. See however *Resp. Maharsham*, Vol. 7, No. 152. In a responsum written two years before this one, R. Moshe responded to the question of a woman who had come from an Orthodox family and married a *ben Torah* never having told him that before the marriage she had been physically involved with another man (she never had sexual relations with him). In the meantime she had repented and did not know whether she was obligated to tell her husband what took place. R. Feinstein replied: "All confessions must be before G-d alone. It is forbidden to publicize one's sins and no one should know what happened." (*Ibid.*, No. 117). A famous question which has been discussed by many *Acharonim* is: If a man had relations with a married woman and he later repented, is he obligated to tell her husband that he is no longer permitted to live with his wife? See *Resp. Divrei Chaim* O.C. No. 35; *Resp. Machane Chaim* E.H. Vol. 2, No. 58, No. 1; *Yabia Omer*, Vol. 2, No. 2.

123. *Resp. Imrei Yosher*, Vol. 2, No. 114.

In order to be a *shaliach tzibbur* [one who leads the prayers] one must be *hagun* [worthy or fit]. What is considered *hagun*? He must be sinless, and it must be that he never had a poor reputation even as a child [O.C. 53:4]. The Ramo comments: "If someone mistakenly sinned, such as by accidentally killing someone, and he then repented, he may be a *shaliach tzibbur*. If, however, he sinned intentionally he may not be a *shaliach tzibbur* since his reputation was spoiled before he repented."

R. Weiss writes that the concept of a *pegam* remaining even after *teshuva* may be found in the halachot of marriage as well. The *Beit Yoseph* (Y.D. 228) quotes the *Hagahot Mordechai*:

[In the case of] a man and a woman who accepted upon themselves the *cherem* of the *kehilot* to marry one another [and not renege after the *shidduch* was made official], and the man subsequently converted to Christianity and afterwards repented, R. Meir of Rothenburg ruled that the woman is not even required to be released from her oath by a *chacham*, even after he repented.

The *Beit Yoseph* then adds: "And I say... that although he repented, a *pegam mishpacha* remains, and the woman certainly did not anticipate this when she accepted the *cherem*." R. Weiss quotes a number of authorities including the Ramo in *Darchei Moshe* who concur that this ruling applies even in a situation where an individual became involved in other types of sinful behavior (and not apostasy). He then explains that according to R. Shmuel Di Modena (Maharshdam) this entire halacha in *Shulchan Aruch* (concerning a *shaliach tzibbur*) is only referring to an individual whose sins are public knowledge, but if that is not the case then *teshuva* removes the *pegam* as far as being a *chazan* as well as marriage is concerned.

R. Weiss concludes by distinguishing between a person who had once committed a grave sin and then repented and someone who was a "steady" sinner. In the first case, if the individual is

now Torah observant, the one sin should not be mentioned (unless it involved the loss of virginity). In the second situation, however, if one is asked he must reveal the truth about the person. However, if he knows that as a result of this revelation the wedding will be canceled, he should simply refuse to respond altogether.<sup>124</sup>

The *Chafetz Chaim* devoted an entire section of his classic work on the prohibition of *lashon hara* to the question of when one is forbidden, permitted, or commanded to reveal information known about a prospective bride or groom.<sup>125</sup>

Considering the many hurdles which the *Baal Teshuva* has to overcome in finding his way back into the fold of Torah-true Judaism, it is perhaps understandable that our rabbis arrived at the conclusion that even total *tzaddikkim* cannot stand on the summit which a *Baalei Teshuva* attains. Nevertheless, as we have seen, it is a very difficult undertaking for a person to change not only his own lifestyle but also the whole fabric of his personal and social relationships. The courage and strength of character demonstrated by the *Baal Teshuva* merit the admiration, respect, sensitivity, and loving welcome of the entire Jewish community.

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124. *Resp. Minchat Yitzchok*, Vol. 6, No. 139.

125. *Chafetz Chaim Klal 9, Tziyur 3*. See *Resp. Beit Avi*, Vol. 4, No. 176.