

REVIEW OF RECENT HALAKHIC
PERIODICAL LITERATURE

ADOPTION

The numerous halakhic questions involved in adoption are discussed by Rabbi S. Hibner in the Nissan 5720 issue of *Ha-darom*. The Halakhah does not directly treat adoption as we know it, although the Talmud tells us that one who raises a child is as though he has borne him and that it has always been considered a creditable and charitable act to raise an orphan. But it does deal with the question of children who have been abandoned by their parents. Where it seems that the child has been abandoned in order that it perish — and not to be found and raised by some kind person — the Halakhah considers it as possibly illegitimate. It is, of course, incumbent upon the community to care for the child, to raise it, and to educate it as it would any other orphan. But the child is forbidden to marry a legitimate Jew or Jewess. The great scholars of the Talmud, following the law of the Bible, stressed the overriding importance of the Halakhah concerning genealogy and family relationships, and forbade any marriage which might undermine these laws.

Frequently, adoptive parents do not know the precise background

of the child they have so gratefully received. Is such a child in the category of one who has been abandoned by its parents to perish or is it like one who has been abandoned because presumably the parents can no longer care for it and hope that some kind stranger will care for it? In the first case, the child is considered as probably illegitimate. In the second case the child is regarded as legitimate. (It should be remembered that in Jewish law legitimacy and illegitimacy are defined more precisely than in our colloquial use of the terms. Basically, an illegitimate child, according to the Halakhah, is the natural offspring of parents who may not marry because of consanguinity, or the offspring of an adulterous relationship. All other children, even those born out of wedlock, are legitimate.) The Talmud presumes that a woman who has transgressed the laws of the Torah and given birth to an illegitimate child will not attempt to rear it, but rather will seek to hasten its death by abandoning it in a place where it is likely to perish. But where a child is abandoned in a place where it is likely to be found, or where it is evident that the parents wanted it to survive, the child is considered legitimate and may marry freely in the Jew-

ish fold.

Rabbi Hibner points out that an adopted child differs fundamentally from a child who is abandoned in order that it may perish, since the adopted child has *not* been abandoned to die. On the contrary, the parents have sought to keep it alive by placing it in a proper home. Unless there is evidence to the contrary, this would indicate that the child is legitimate.

Thus far we have discussed the adoption of a Jewish child. May parents adopt a non-Jewish child? The author points out that non-Jewish children remain non-Jews even though they may have been raised and educated as Jews, so long as they have not been formally converted. There is thus a problem, especially in the case of a girl, who may later consider herself Jewish — because she has been so brought up, even though she has never converted — and therefore innocently and naturally marry a Jew. Her children will all be non-Jewish. To avoid such a problem, the author recommends that an infant be converted immediately upon adoption. In addition, the adoptive parents should be careful, in the case of a female child, that she not marry a *Kohen* since a *Kohen* may not marry a proselyte, and the fact of the adoption is not usually common knowledge outside of the family.

What is the legal relation, according to the Halakhah, between the adoptive parent and his adopted child? Rabbi Hibner makes a number of points, including the following:

1. The Halakhah does not re-

gard an adopted child as a flesh and blood member of his adoptive family. Therefore, if the adoptive father is a *Kohen*, that does not render the adopted child a *Kohen*, and he may not *duchen* (bless the congregation on festivals) together with the other *Kohanim*, or participate as a *Kohen* at the ceremony of the redemption of the First Born, or receive the *aliyah* reserved for a *Kohen* at the reading of the Torah. Conversely, he is not restricted by the prohibitions which apply to a *Kohen* and he may marry a divorcee and he may go to the cemetery. Of course, if the child's natural father was a *Kohen*, he too is one.

2. If the adoptive father is a *Kohen*, he may not, in the event of the death of the adopted child, participate in the funeral. (A *Kohen* is permitted to participate in funerals of his immediate family only.)

3. Neither the adopted child nor the adoptive parent is required to observe the laws of mourning one for the other, in the event that one dies.

4. The wife of an adopted child is permitted in marriage to the adoptive father and the adopted child is permitted to marry his adoptive mother.

5. The laws concerning honoring one's parents are not binding upon an adopted child in his relationship to his adoptive parents.

6. The adopted child does not automatically inherit any part of the estate of his adoptive parent.

7. When called to the Torah, the adopted child should not be referred to as the son of his adoptive

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father. Rather, the name of his natural father should be used. If his father's name is unknown, he should be called "the son of Abraham," as in the case of a proselyte.

AUTOPSIES

In an article in the same issue of *Ha-darom*, Rabbi Immanuel Jakobovits deals with Jewish laws as they relate to autopsy. (see TRADITION, Vol. 1, No. 1 for his article on the historical and comparative aspects of dissection in the Halakhah.) He points out that in most Jewish hospitals in New York City, it is customary that in an autopsy the brain and all the inner organs are removed from the body cavity. Frequently, after being inspected and treated, the organs are burnt. As a result, when the corpse is finally handed over to the *Chevrah Kadisha* for burial, it is no more than an empty shell. Jewish law places a stringent obligation upon the close relatives of the deceased to bury him. In a case of this sort, where only *part* of the body has been buried, have the relatives fulfilled this important obligation? It should be kept in mind that Jewish law requires that *all* parts of the body which can be located must be buried.

Two further questions are involved which touch upon the very essence of the Halakhah relating mourners. When a Jew dies, the members of his immediate family are required to neglect all other obligations — religious and otherwise — in order to occupy themselves solely with arranging his prompt burial. During the period before burial, the mourner is called an *onan*. An *onan* is forbidden to

partake of meat and wine and is relieved of the duty of observing all positive commandments. When the deceased has been buried in accordance with Jewish law, the status of *onan* ends and the period of *avelut* or mourning begins. During the mourning period, all Jewish law again becomes obligatory.

We are thus faced with a problem. If only part of the body has been received from the hospital and buried, can we say that the close relatives have lost the status of *onan*? Or, are these relatives required to exert every effort to obtain the other portions of the corpse so that these too may receive a proper burial? After all, nothing stands in the way of burial of all the organs of the body, since these are being examined in the hospital and there is nothing to prevent the relatives from requesting that the organs be turned over to them for burial. "Moreover, according to civil law, autopsies are forbidden, save with the approval of the immediate family. The family is consequently in command of the situation. Therefore, just as the family cannot renounce the obligation of burying a kinsman who has not been the subject of an autopsy, so it cannot despair of burying the organs removed during an autopsy." In this case, moreover, only the family itself can persuade the hospital authorities to release the organs for burial. This, in turn, is the very essence of the state of *onan*, when a person must divest himself of all other pursuits and interests and devote himself exclusively to providing a proper burial for the dead. There is thus

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the possibility that the condition of *onan* may continue until the entire body, including the organs, has been buried.

The second question implicit in this entire problem concerns the period of mourning. Normally, this begins immediately after burial. Since, however, all the organs removed during the autopsy must also be buried, the period of mourning may not begin until a considerable time after death. "Even if the family has already mistakenly begun the period of *shivah* [the first week which is the initial and most rigorous part of the mourning period] immediately after the shell of the body without its organs was buried, this does not count as part of the observance of the period of mourning, and it must begin its mourning period all over again after every part of the deceased has been buried."

The author concludes that his article is meant only as a theoretical halakhic exposition and not as a definitive statement of the laws involved. He calls for an expression of opinion by the outstanding scholars of our time in order to know how practically to apply the Halakhah.

SUPPORT

In *Sinai*, March 1960, there is a most interesting article by Rabbi S. Eliezri discussing the obligation of a father to provide for his children after he has divorced his wife. After divorce, children usually stay with the mother who is willing at times to forego her husband's support for them in order that she may keep them. If a divorced wife

has herself provided for her children's needs, can she later demand that her husband compensate her for what she has spent? Jewish law obligates the husband to support his children until they reach the age of six, even if he is a poor man. If he can afford it, he is obligated to provide for them even beyond this age.

The specific problem dealt with involves a woman who has been divorced by her husband and has retained custody of her daughter, aged four. Fearing that she may otherwise lose the child to her husband, the mother has obligated herself to provide for the child without her husband's assistance. At the end of two years, she appears before the court and requests support from her former husband, including reimbursement for the past two years.

The problem is complicated by the halakhic principle that if a person pays another's debt without the latter's knowledge, the debtor is freed of any further obligation. In our case, the mother has after all paid her divorced husband's obligations to support his children and we should therefore find in favor of the husband.

The author analyzes the pertinent halakhic literature and differentiates between support which is provided by the mother after her divorce, and support which is provided by people other than the parents. In the latter case, individuals providing for the children are only concerned with the needs of the youngsters and once these are met "the father's obligation to provide for his children is cancelled and

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any claim against him is annulled since this is equivalent to one who pays another's debt without his knowledge." However, when the divorced mother provides for them, "we do not say that the father's obligation to provide for his children has been cancelled, because we understand that the mother's intention was to give a gift to her children and not to remove or to diminish the father's obligations."

The author cites as his primary source a responsum of Maimonides (*Teshuvot Ha-Rambam* 190) from which he deduces:

1. The father is obligated to support his minor children until they are six years of age, even if they have means of their own.
2. The father is obligated to support his minor children even for a past period during which his divorced wife provided for them.
3. Even though the mother, at the time of her divorce, assumed the obligation to support the children, the father is not relieved of this obligation.
4. Even though the mother has supported the children, she may not claim any part of the funds which are afterwards received from her former husband for the period during which she supported the children, but the entire sum of money belongs to the children.

CHANUKAH CANDLES

The *Ha-pardes* of January 1960

contains an interesting article by the late Rabbi J. H. Meskin concerning the use of candles distributed through the mails by Yeshivot and other Jewish institutions prior to the festival of Chanukah. Those who distribute the candles expect, of course, that the recipient will send in a contribution equal at least to the value of the candles. We know that a person cannot pronounce the blessings over Chanukah candles which are not his own. The Talmud therefore tells us that one who is not in his own home must contribute towards the cost of the candles. In our case, can a person who has not remitted any money for the candles use these very candles to observe the law of kindling the Chanukah lights?

Rabbi Meskin cites analogies which do not, however, lead to any definitive conclusion. They are mutually contradictory; one annuls the other. He is thus forced to conclude that when no payment has been sent for such candles "there are arguments to prohibit their use and also arguments to permit their use. Therefore, in my opinion, one who receives such candles is obligated to send immediately the cost of the candles to the Yeshivah. Even if he intends to send the money after Chanukah, he is permitted to say the blessings over these candles and fulfills thereby the commandment to kindle the Chanukah lights. However, if he has no intention of sending any money, then he does not fulfill his obligation when he kindles these particular candles because of the possibility that use of the candles without payment constitutes theft"

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(since he is using what does not belong to him).

THE *Noam* SUMMARIES

The third volume in the *Noam* series (the first two were extensively reviewed in TRADITION) which appeared this year contains a new and valuable feature, a section which gives brief summaries of practical halakhic problems which have been treated in current volumes devoted to Halakhah. Among the summaries derived from the volume *Iggerot Mosheh* by Rabbi Mosheh Feinstein are the following:

Head Covering

In order to recite a blessing, or when walking in the street, one is permitted to wear a small head covering and it is not necessary to cover the entire head, if the abbreviated headgear is commonly recognized as fulfillment of the requirement to cover one's head, as is the case today. People who wear such abbreviated caps should not be considered as deficient in observance.

Synagogue Rental

It is forbidden to rent for use as a synagogue a place which is normally used for frivolous purposes far removed from religion (presumably referring to the frequent practice in this country of renting dance-halls and theatres for High Holy Days services). It is a religious act to pray in a place where the Torah is regularly studied, and so a place devoted to matters alien to religious conduct is "hateful in the Almighty's eyes and it is pref-

erable to pray privately in one's own home," than to pray with the congregation in a place which is not sacred. This is so only if it is a question of renting the area, but if one wishes to buy it and convert it permanently to a synagogue, it would seem permissible.

Kohanim

According to the Halakhah, a *Kohen* is permitted to participate in blessing the congregation on festivals even if he regularly violates the Sabbath. But in actual practice perhaps we should forbid such a *Kohen* to bless the congregation, in order that we not seem to encourage him to continue violating the Sabbath. We should do so even if there is no other *Kohen* in the congregation, thus making it necessary to omit completely the Priestly Blessing. However, the *Kohen* should not be invited to rise and recite the Blessing because if he is told to rise, he must do so. One should not object to such a *Kohen* blessing the congregation if this is the usual practice in that synagogue.

Partnership

One is permitted to go into partnership with a Jew who violates the Sabbath and who will keep the business open on the Sabbath, only if one is a partner for the weekdays alone, and the profit or loss of Sabbaths and Holidays is entirely that of the partner who violates the Sabbath. "This permission is valid only when the irreligious partner can conduct the entire business by himself or when he has other partners. However, if the irreligious

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partner cannot conduct the business by himself and has no other partners to aid him, then the religious partner is not permitted to enter into such a partnership, because in so doing he indirectly causes the other to violate the Sabbath." Even if the observant partner does more than his share during the week, he is forbidden to take any part of the profits derived from conducting the business on Sabbath and Holidays. However, they should set appropriate payment for this additional work.

Wrist Watch

It is logical to consider a wrist watch as a garment because it is worn on the body, even though its purpose is functional and not decorative. Hence it is not considered a violation of the law forbidding carrying on the Sabbath. However, learned and religious people should refrain from wearing wrist watches in order that they may not err and permit the use of pocket watches as well.

Gas Stove

On festivals, one may kindle the burners in a gas stove from the pilot light, if the pilot was lit before the festival began, because this does not create any new flame but is rather a flame which derives from one already in existence, and is therefore permitted on festivals. This case differs from that of electricity where we consider that we may be creating a new light. One is also permitted to reduce the gas flame under food in order that the food shall not spoil or burn. But it is forbidden to reduce the flame,

and certainly to turn it off altogether, if the purpose is only to avoid wasting gas.

Thermometers

One may take the temperature of a sick person on the Sabbath because this is a measurement to aid in performing a commandment of the Torah, that of healing the sick. Taking the temperature with a thermometer does not fall under the category of preparing medicines on the Sabbath (a prohibition which applies only to ordinary ailments, not to serious cases) because in itself the taking of a temperature is not a medicine.

Critical Illness

We know that one may violate the Sabbath for a patient who is seriously ill. There is, however, no precise criterion to determine whether an illness is serious or not. "It is not necessary that a precise temperature be specified, because in cases of doubt we are also obliged to violate the Sabbath in case of illness. Therefore, whenever the individual is concerned that perhaps the temperature is too high, we must violate the Sabbath in his behalf. Only when we are certain that the temperature is definitely low are we forbidden to violate the Sabbath." Generally a temperature of 102° F. is considered high and we must in such a case violate the Sabbath if necessary to aid the sick person. If the patient requests that the Sabbath be violated for him, this should be done even if his temperature only approaches 101° F. In the case of a child, the Sabbath may be violated so long

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as the temperature is above 100° F. if we observe that he is in pain or shows other signs of illness. If the fever comes from illness in an internal organ, such as the lungs, the Sabbath may be violated regardless of the temperature.

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Several interesting decisions are also summarized from the volume *Teshuvat Lev Aryeh*:

Trailers

Is one required to place a *mezuzah* on the door of a trailer which is used as one's permanent home? The question basically is whether the *regular use* of a domicile or the *type* of domicile is the determinant in requiring a *mezuzah*. If the latter, then a home which is normally used only infrequently by most people would not require a *mezuzah*, even in a case where some people use it regularly. "As for the Halakhah, it appears that since there is doubt as to the law, it is necessary to place a *mezuzah* on the door-post, but no blessing should be pronounced upon doing so."

Adultery

A woman has received a civil divorce from her husband after she has confessed to adultery and after the supposed adulterer has also confessed. Now she wishes to marry the adulterer and insists that her confession was false, because this was the only way she could obtain a civil divorce. The adulterer too denies that adultery was ever committed and states that his confession was given only to help the woman obtain her decree.

This is a situation rather common in a number of states. Jewish law forbids a woman ever to marry a man with whom she has committed adultery. May these two now marry? The reason they give for their confession to adultery is adequate, and since there is no independent proof that adultery was ever committed they may marry.

Human Skin

A *Kohen* who has received books from Germany which are bound in the skin of concentration camp victims may not bring them into his home because he is not permitted to defile himself by contact with any part of a corpse. He is also not permitted to sell them to anyone. He must bury the binding because it is part of a human body.

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Instant Foods

From the volume of responsa entitled *Minchat Yitzchak* comes the question whether one is permitted to pour boiling water, from a pot taken directly from the flame, over instant coffee on the Sabbath. The author states that one is definitely permitted to pour hot water which is not boiling over instant coffee but that one should avoid using boiling water (for this would be considered cooking on the Sabbath).

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Radio

From the volume *Teshuvot Mi-mayenei Yeshuah* we find the question whether one is permitted to put on the radio before the Sabbath so that it can be heard during the Sabbath "since there are times of tension and crisis when one wishes

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to hear the news." The author writes that listening to the radio is certainly not characterized by or consonant with sanctity in any way and is therefore unbecoming the Sabbath.