

REVIEW OF RECENT HALAKHIC PERIODICAL LITERATURE

STOCK OWNERSHIP

In the Shebat, 5717 issue of *Ha-darom*, Rabbi G. Felder discusses "The Prohibition of Dealing in Forbidden Commodities." The specific case at issue is that of a person who received a gift of shares of stock in a firm which sells non-kosher meats. May the recipient retain the shares and receive whatever dividends are declared, or must he sell them at once?

The Halakhah specifically forbids dealing in any item whose consumption is forbidden by the Torah. This is based on a desire to prevent the possibility of eating such materials.

The author cites the halakhic sources available and distinguishes between a person who trades directly in such items and one who acts as a middleman between the buyer and the seller, without actually handling the commodities themselves. In the latter case, he is permitted to engage

in and to profit from the transactions.

The author is of the opinion that the case under examination is certainly to be allowed since the recipient of the shares neither bought the items nor invested his own money in them, but received them as a gift. Moreover, the forbidden commodities are not actually in his possession and he is not dealing in them directly even as a middleman. He has at the most merely invested his funds with others who deal in them. There is thus no need to fear that he may eat any of these materials. In addition, "the prohibition against dealing in these items is, in the opinion of some authorities, rabbinic and not biblical, and therefore the Jew is permitted to function through an agent, where he himself does not buy or sell the forbidden commodities."

Rabbi Felder is of the opinion that for the reasons given above it is permissible to purchase such shares

Review of Recent Halakhic Periodical Literature

directly. "But as a practical matter we ought first obtain the consent of the great scholars."

DIVORCE AND INSANITY

This issue of *Ha-darom* also contains an article by Rabbi D. S. Shapira on the topic "Can a Mentally Ill Person Divorce His Wife?" A man has been diagnosed as a schizophrenic, suffering from delusions, and is confined to a mental hospital. His wife seeks a divorce from him, and he has indicated readiness to grant the divorce. A *get* (divorce) must be freely given and freely received. If a man is not of sound mind, he cannot be entirely aware of the significance of his actions and, therefore, his actions cannot be regarded as entirely free and voluntary.

The patient is a "victim of delusions with regard to his wife and her family, believing that they are hostile to him. The doctor of his ward believes that he has threatened to kill his wife on more than one occasion. . . . He is a young man who is mentally ill. But he seems to understand what is involved in a *get* and he has spoken to his doctor about his wish never again to live with his wife. We are in doubt whether he will ever recover completely from his illness. Perhaps he will be sufficiently well so that he knows what he is doing with regard to his wish to divorce his wife. Whether his reasons for wishing to divorce his wife are based on fact or are the product of his imagination—that is a different problem. It is possible that these reasons are based on delusions."

The author analyzes the halakhic definition of insanity, referring to

sources in the Talmud and in the writings of the accepted commentators and authorities. He reasons that "one who suffers from delusions is at most like a person who has become delirious. When he is free of the delirium, he is again considered normal. This is in accordance with the statement of Maimonides that, to be considered mad, a person must be unsound of mind at all times. We must investigate whether at any time our patient is free of all his delusions." If so, we can authorize him to issue a *get*.

Rabbi Shapira also finds another possible difference between a person suffering from this type of delusion and the unbalanced person discussed in the Talmud. The talmudic discussion concerns people whose mental aberrations fly in the face of logic and common sense, while the delusions under consideration relate to matters which could be essentially based upon fact, "even though in this case they are not factual. . . . Perhaps such a person is not in the category of a (completely) insane person but rather in that of a sick person."

The author concludes that we should permit the patient to give a *get* to his wife in order to keep her from becoming an *Agunah* (a woman tied to a husband who, for one reason or another, does not fulfill his obligations as a husband and cannot or will not divorce his wife).

PROSELYTES

In *Ha-darom* of Nissan, 5718, Rabbi J. Hibner writes on "The Question of Jewish Converts in the State of Israel."

This problem has assumed major significance in the past months and

has had, as we know, repercussions in the political field as well. Primarily the problem has arisen because some of the immigrants who have come to the new State from European countries have brought with them non-Jewish wives whom they married in civil ceremonies in their former homes. Many of these gentile women have already borne children to their Jewish husbands. Many of the women are willing to convert to Judaism but it is not clear whether their conversion will be from conviction, arising out of a desire to accept the Jewish faith, or whether their motive is purely practical. The Halakhah permits conversion of gentiles only if they are actuated by motives of principle in accepting the faith and its tenets. A convert who wishes to accept Judaism solely for the sake of marrying a Jew is rejected.

At every point in his reasoned presentation, the author makes the reader aware that the Halakhah does not operate in some bloodless vacuum, removed from the realities and issues of daily life and issuing its pronouncement *ex cathedra*.

The problem facing us is divided into two issues:

1. Is it permissible to receive a convert whose reasons for conversion are not entirely clear as acceptable?
2. May a Jew who has had relations with a gentile woman marry her if she subsequently converts?

Rabbi Hibner writes:

- a. "There are grounds for believing that the conversion of these women may be out of religious conviction and not merely to remain married to their Jewish husbands."

- b. The present situation is Israel constitutes a state of emergency, and there is an axiom that a state of emergency renders a situation a *fait accompli*. (Although Jewish law may forbid marriage to a convert in certain cases, this ruling applies only where no action has been taken and the issue is now presented for a ruling. Where the marriage has *in fact* taken place, the law does not require that it be dissolved. The state of emergency facing Israel, surrounded by enemies, confronted by a largely hostile world opinion, and opening her doors to the gigantic influx of long-lost sons, creates a situation similar to a *fait accompli*, allowing the sanctioning of such marriages).

- c. "Through the conversion of these women we keep their husbands from continuous violation of Jewish law (which results from cohabitation with a non-Jewish woman)."

- d. In theory, the *Bet Din* is forbidden to convert a gentile woman in a case such as this. But since the couple has already been living together for a long period of time and is already married in a civil ceremony, the *Bet Din* has an obligation to save the husband from repeated sin. "Since the *Bet Din* really does nothing during the actual process of conversion save to make certain that the proper ritual immersion takes place, it violates no halakhic principle.

"If we add to these the argument that compelling the husband to part from his wife may cause a profanation of the Name of Heaven, it becomes just and proper to rely on

Review of Recent Halakhic Periodical Literature

those who permit the conversions and to convert these women according to the laws of the Torah."

"May the Lord enlighten us through His Torah and preserve us from errors."

SALE OF A SYNAGOGUE

Rabbi Felder has contributed another article to *Ha-darom* of Elul, 5718, dealing with the Jewish law involved in "Selling a Synagogue." May a synagogue located in an area which has lost its Jewish population be sold?

The basis of the Halakhah concerning sale of synagogues is found in the Talmud (*Megillah*, 25a): "Rabbi Simeon bar Nachman said in the name of Rabbi Jonathan that the sale is permissible only in the case of synagogues situated in villages, not of those located in metropolises."

Maimonides (Laws of Prayer, II:17) writes: "A synagogue in a metropolis is built for people throughout the world, so that all who come there may visit and pray in it. Since it has been built for all Jews it can never be sold." The explanation given by the commentators is that since such a synagogue is built for all Jews, in a sense, therefore, it is owned by Jews throughout the world. Consequently its sale is forbidden, since this would require the consent of Jews everywhere. But when the original intention was to limit its use largely to a small group, the sale is permitted. This is so even if the synagogue is situated in a metropolis. This is the opinion of the *Turei Zahab* who cites the agreement of the Gaon of Vilna and *Rashba*.

Rabbi Felder notes that "our synagogues are usually built by

individual congregations which raise the funds for them. They are built primarily for the members of the congregation who elect a small group to supervise all the affairs of the congregation including its finances. Even though non-members come to worship and also contribute monetarily to the synagogue, nevertheless such a synagogue is in the category of one located in a village. . . . Moreover, it is the opinion of *Ritba* and *Meiri* that a synagogue where each individual has his own special seat is to be treated as a village synagogue even though it is situated in a large city. In our synagogues, each member has his own particular seat, especially during the High Holidays. A non-member who wishes to pray there must pay for a seat and he is then considered as having a special seat of his own . . . the officers of the congregation may refuse admission to a person who does not pay for a seat. In such a case, the *Penei Yehudah* says that even in a metropolis we may permit the sale."

The author concludes that we can rely on these authorities who permit the sale, "particularly in an area which has lost its Jewish inhabitants and it has become impossible to find a sufficient number of worshippers (to continue services therein)."

SUPPORT OF A WIFE

The Chief Rabbi of Israel, Rabbi Yitzchak Isaac Halevi Herzog, contributes an article on "The *Get* (Divorce) Given Under Duress" to *Ha-darom* of Shebat, 5717. Since the problem of the *Agunah*, the woman tied to a husband from whom she cannot obtain a Jewish divorce, has always aroused the greatest compassion and solicitude of Jewish

scholars, and is of deep concern today as well, we shall cite Rabbi Herzog's article although it was published over a year ago.

The Halakhah requires that the husband (who gives the divorce) and the wife (who receives it), must agree to the procedure of their own free will. Only in certain specified cases can a husband be compelled by a *Bet Din* to issue a *get* to his wife.

If a wife appears before the *Bet Din* and states that her husband is repulsive to her and creates in her a feeling of aversion, what may the *Bet Din* do? If there is the slightest suspicion that her statement stems from a desire to dissolve the marriage so that she can be free to marry another man who has captured her fancy, the court will reject her request for a *get*. The *Bet Din* will not compel the husband to divorce his wife merely to enable her to marry another. Even if there is no reason to suspect that she is harboring any ulterior motive, most authorities still deny the power of the *Bet Din* to compel the issuance of the *get* by the husband in most cases. But a great area of uncertainty exists relative to the status of such a wife if she refuses to continue a normal married existence with her husband. Rabbi Herzog discusses in his article whether the *Bet Din* may compel the husband to support his wife financially while she maintains a separate residence because of the intensity of the aversion which she feels towards him. The danger halakhically is that the husband may decide to grant the *get* in order to be free of the burden of financial support, raising the issue whether this *get* should be considered as one granted not freely but under duress, caused in this case by economic pressure. Most of the

authorities, as has been noted above, deny the *Bet Din* the power to compel the issuance of a divorce in the case we are considering. Hence, this *get* may be invalid.

Rabbi Herzog cites in detail all the sources in order to clarify the issues involved, and he concludes that in this case the *Bet Din* may compel the husband to support his wife in accordance with his means. If as a consequence the husband should decide to grant the *get*, we need not be concerned with the question of duress.

Among the reasons advanced by Rabbi Herzog are:

1. A *get* given in such circumstances is freely granted because the husband himself benefits as a result. The divorce granted to his wife permits the husband too to remarry, perhaps to a more sympathetic and understanding woman, and puts an end to his anomalous status of "married but living alone." We need have no fear that the pressure of financial burdens played any part in the decision to grant the *get*.
2. "As the *Rashba* has written, aversion is not dictated by the intellect. The experts in psychology of our time have already determined that this is a malady whose roots are in the hidden places of the psyche. We must also be concerned lest the woman go hungry. Consequently we must compel him to support her, since her inability to live with him is to be considered a sickness. Although the sickness is not physiological, nevertheless, a psychological illness is also real and at times more severe than an illness which is physical.

"We must therefore consider her

Review of Recent Halakhic Periodical Literature

as a person who is ill. If a wife has become ill, and has for a long period of time been confined to her bed so that she is unable to perform any of the normal duties incumbent upon a wife, he remains responsible for her support and care, regardless of the amount of money involved. Is this woman to be held responsible for succumbing to a psychological malady as a result of which she cannot tolerate her husband, and whose only cure is release from him through divorce, a cure which he refuses to provide for her?"

This is a particularly striking example of the manner in which the Halakhah adapts itself normally and logically to the changing times. This adaptation takes place not by truncation of the law nor by enforced changes so that it will approximate the standards and desiderata of each changing age. Rather, it is accomplished by a growing understanding of the nature of modern problems so that the appropriate halakhic principles may be applied to the problems at issue.

The author adds that if the wife has persisted in her stubborn behavior and in her attitude towards her husband for a number of years, we must assume that the condition will not improve with time. The husband's refusal to issue the *get* places him in the position of one who "without purpose binds a Jewish woman to himself . . . and therefore he has an obligation in the sight of Heaven to free her from this bond to an unwanted husband. . . . Since he has an obligation in the sight of Heaven to give a *get*, he also has the obligation, in a situation where he

refuses to give the *get*, at least not to allow her to starve or to be compelled to turn to others for assistance so that the world becomes a dark and cheerless place for her."

Rabbi Herzog concludes that even if the woman can perform some kind of work and thus support herself, the court may still compel the husband to provide her support. The court's authority in this instance derives from his refusal to divorce a woman who need not, according to the ruling of the *Bet Din*, continue to live with him. Since he is the obstacle to her complete freedom, his wife has the right to request that he support her. "This responsibility rests upon him as long as he refuses to release her from her status as his wife."

FERTILITY TEST

In the *Ha-pardes* of January, 1958, an article by Rabbi C. S. Horvitz deals with a halakhic aspect of the problem of the infertile woman. Jewish law most strictly forbids seminal emission by the male other than during coitus. Is it permissible to induce such emission in order to test the potency of the sperm? Such a procedure is often followed by doctors so that they may prescribe some special diet or drugs in order to increase potency.

Rabbi Horvitz quotes with approval from *Tiferet Adam* by Rabbi Ostreicher of Tchimpa that "the only permissible way (to obtain male sperm) . . . is for the doctor to remove some of the semen from the vagina immediately after coitus in order to test it. This is not to be considered a serious violation because of the urgency of the matter."

HEARING AIDS

Rabbi Zvi Pesach Frank of Jerusalem discusses in *Ha-pardes* of June, 1958, a most interesting question which could only have arisen in the modern age. May a person wearing a hearing aid walk with it into the street and other public places on the Sabbath? The Halakhah forbids the carrying of any object within a public place (as well as from private to public places) on the Sabbath. One is however permitted to wear anything which is considered a garment. Is the hearing aid to be considered halakhically in the same category as a garment which may be worn?

Rabbi Frank first discusses the more widely treated problem of wearing spectacles on the Sabbath. After citing the authorities, he concludes that *carrying* spectacles in a public place is forbidden, but *wearing* them is permitted. In the second case, the spectacles are considered a garment or a facial adornment (presumably in the case of women).

But this does not apply to a hearing aid "which has two parts, one the electric battery which is kept in the pocket, and the other which is inserted in the ear." Neither of these parts can be considered as falling within the category either of a garment or of an adornment and it is unquestionably forbidden to go about with them in a public place.

The Talmud teaches that one is permitted to carry an object in the ear on the Sabbath because this is not the usual manner of carrying, and only the usual manner of performing the action is prohibited. But in the case of the hearing aid, on the contrary, the usual method of

carrying it is in the ear and so the person who wears it on the Sabbath, outside of his home, is guilty of violating the Sabbath law.

"But now a new hearing aid has been invented which is not recognizable as a hearing aid at all because it is in the form of spectacles with two ear-pieces which support it at the ears. In the thickness of one of the ear-supports a small hearing battery is imbedded and a thin wire runs from the ear-piece to the ear. . . . Since the people involved customarily wear spectacles, this hearing aid may be considered another type of spectacle" and may be worn on the Sabbath.

ISRAELI SHIPS

An interesting issue which has arisen since the establishment and development of the State of Israel is discussed in two letters written by Rabbi M. M. Schneerson (the "Lubavitcher Rebbe") and printed in the *Ha-pardes* of July, 1958. The responsa concern "The Question of Sailing in Israel Ships."

The primary question is "whether the owners of the vessels may arrange sailings which will require that the motors function and the vessel continue on its course during the Sabbath; or is this forbidden, and sailings must be arranged which will permit the vessel to cease its operation on the Sabbath, either by stopping at a harbor or by anchoring in mid-ocean."

This primary question is divided into two parts:

- a. Does the operation of the motors and the continuation of the vessel on its journey constitute a violation of the laws of Sabbath?
- b. If the above does involve a trans-

Review of Recent Halakhic Periodical Literature

gression, is there present any element—such as danger to life of the passengers and crew—which would permit operating the vessel despite any violations involved in so doing?

Rabbi Schneierson analyzes the operation of a motor vessel and is satisfied that operating the vessel does involve the violation of several specific Sabbath regulations. "With regard to operation of the motors, one violates the prohibition against making a flame, cooking, and other laws. In addition, there are other violations which arise from guiding the vessel, from practices required by maritime companies, and from the rules and customs of transportation in general. A number of times each day, various specific readings are taken and entered in the log, and telegrams are sent and received concerning and determining the course of the vessel. It should be noted also that part of the above-mentioned activities involve kindling electric lights and extinguishing them." He also notes that all the services and comforts which are provided for the passengers, such as provision of drinking water and electricity for the cabins, involve violation of Sabbath laws.

Rabbi Schneierson disputes the opinion that ships today can be guided automatically for any length of time without requiring occasional adjustments and correction by a human agent. "To say that it is possible to set the engines before the commencement of the Sabbath so that they will function automatically during the entire Sabbath day and will need no adjustment or change at any time—this is, from the point of view of a person familiar with engines, the height of ignorance."

He then treats the element of mortal peril (*pikuach nefesh*) which would permit operation of the vessel and its machinery despite possible Sabbath violations. On all counts he sees no danger to life even if the vessel remains motionless on the high seas during the entire day. "The preservation of a vessel in the face of storm winds does not depend upon its motors but upon its construction, and only rarely (does its preservation require) fleeing from storms. . . . In addition, information about an approaching storm is nowadays received many hours before the storm arrives at any particular spot, and there is sufficient time to start the engines if they had been stopped previously because of the sanctity of the Sabbath."

The author also states his belief that there is less danger of two vessels colliding when one is standing motionless than when both are approaching each other at the great speeds of modern ships, because of the great difficulty in changing direction suddenly or stopping completely. Also, "ships travelling on the high seas send radio messages to all vessels in their path in order to prevent collisions. These messages and the lights on ships are the means by which collisions are prevented." Parenthetically, it is difficult to understand how a vessel will receive radio messages if all motors are shut down, which would seem to indicate that generation of electricity would cease. Perhaps the author envisages the use of battery-operated radios.

Rabbi Schneierson concludes that operating a vessel on the Sabbath is forbidden in all respects and there are no factors which might mitigate this prohibition. Of course, this

applies only to vessels owned and operated by Jews.

He adds the reservation that only two halakhically permissible alternatives are available—anchoring on the high seas or laying over in a port. The first of these is, from a practical point of view, undesirable. It is doubtful whether the crew will observe all Sabbath regulations properly. Even with the cooperation of the crew, there are the problems of radio messages and the proscribed activities involved in supplying comfort and service for passengers and crew.

“Therefore, the only solution is to lay over in a port.”

The author then turns to a related question. Let us assume that a Jewish vessel is being operated on the Sabbath in violation of the Sabbath law. May one embark for a voyage on such a vessel? Does the prohibition apply only to the crew, who operate the vessel, or does it extend also to the passengers who use the facilities of the vessel? He concludes that this too is forbidden. First, the traveller can use a non-Jewish boat to reach his destination. Secondly, even if one should insist upon the use of a Jewish owned vessel, he can so arrange his voyage that he will leave the Israel vessel at some port before the Sabbath and wait there for another Israel vessel after the Sabbath. Admittedly, this will involve difficulties and inconvenience. Thirdly, he can travel in an Israel airplane, which flies only on weekdays.

Interestingly enough, the same problem is discussed by Rabbi A. Pechenik in an article entitled “The Halakhah and the State of Israel” in *Hadoar* of September 5, 1958. Although *Hadoar* is not a

halakhic journal but a Hebrew weekly, the article is in a sense a direct reply to certain aspects of Rabbi Schneierson’s responsum. Rabbi Pechenik, editor of the halakhic journal *Or Ha-mizrach*, quotes portions of an article by Rabbi B. J. Waldenberg of Jerusalem which appeared in *Or Ha-mizrach* of December, 1955. Rabbi Waldenberg has written a volume concerning the halakhic principles involved in sailing and is considered by Rabbi Pechenik one who “has studied and delved deeply into the subject until he has become an expert.”

In his article, Rabbi Waldenberg wrote: “In my opinion it appears that we may permit travelling on an Israel ship whose sailors are Jews, even though it be impossible to stop the voyage during the Sabbath.” Rabbi Waldenberg quotes early authorities who “permit such travel even when it is absolutely clear that they will afterwards have to violate the Sabbath, and this is the case even when the vessel belongs to a Jew and its sailors and crew are all Jews and they themselves do the work.”

Rabbi Pechenik relates that “two years ago Rabbi Isaac Meier Heschel of Medziboz visited Israel and approached the *Gaon* Rabbi Zvi Pesach Frank, head of the Jerusalem *Bet Din*, to ask him this very question. He answered that ‘without delving into the question of operation of the ships on the Sabbath, there is certainly no violation insofar as the passengers of such a ship are concerned.’ This responsum has been made public.

“Before writing this article, the author purposely approached this Rabbi (the *Medzibozzer Rebbe*) and the latter confirmed for the second time that he had come to Rabbi

Review of Recent Halakhic Periodical Literature

Frank accompanied by an outstanding Rabbi of Jerusalem and that Rabbi Frank answered his question in the presence of the Jerusalem Rabbi and in the presence of the *Bet Din*, stating clearly that there is no violation insofar as the passengers are concerned and that this may be stated publicly."

Rabbi Pechenik concludes that "if the Rabbi of Lubavitch wishes nevertheless to adopt a more stringent point of view, he may. But we must not conclude from this that there is therefore a conflict between the Halakhah and the interests of the State of Israel."

GIFTS TO MOURNERS

Rabbi S. Y. S. Halberstam contributes an article of interest in this same issue of *Ha-pardes* in which he discusses the modern practice of sending gifts to mourners during the period of *Shibah*, the seven days of mourning. Usually the gifts consist of sweets, fruits, and other food-stuffs or liquors.

The author tells us that his first reaction was that it was forbidden because it is an imitation of the gentile custom to send or bring such gifts to one in mourning, and because Jewish law generally forbids sending gifts to a mourner for a parent during the entire twelve-month period.

The author cites an interesting comment by a medieval authority, Rabbenu Yerucham, who quotes R. Asher as saying "and therefore the custom is to provide food for all mourners during the entire seven days of mourning. This is done on account of the poor and needy Jews who cannot do their accustomed work during the period of mourning (and will therefore go hungry during this

period of enforced idleness). In order that they not be embarrassed, this is done even for those who are not in need." (What a wonderful example of the ethics of Halakhah!)

Despite this, the author decides that the sending of gifts is forbidden, basing his decision largely on the prohibition against sending gifts of a festive nature to a mourner. It would however seem that we could distinguish between gifts sent to please and to give joy, and gifts sent to feed one who (as R. Asher writes) "laments his dead and does not desire to eat because he himself wishes to die."

Rabbi Halberstam is aware of this difficulty and draws a distinction between food sent to provide nourishment and sustenance and the current custom of giving "liquors, sweets, and dainties which are not designed primarily to feed the mourner." He concludes that the custom should be abolished.

However, the mourner need not return the items which he has received from his well-meaning friends, just as the mourner who receives Purim gifts may keep them. "But in order not to appear to approve of the practice, it would be proper not to display the gifts. The more pious usually let it be known that they do not wish that gifts be brought and that they prefer that the value of the gifts be contributed instead, in memory of the departed, to institutions devoted to charity and to the study of Torah."

The author quotes a letter from Rabbi J. E. Henkin who relates that "when I was in the Caucasus, I observed the Sephardi custom in this matter, and I approached the *Gaon*, author of *Dibrei Malkiel*, and he answered that this custom stems

from the *Gemara* when it was the practice to provide food for the mourners during the entire seven days of mourning and eat together with them and say the special blessing of mourners. . . . Obviously the food was not provided by the mourners but by those who came to comfort them."

Rabbi Henkin adds that the custom among us is entirely different since those who send the gifts do not eat together with the mourners but "send gifts out of a sense of respect." Also, the situation is different because in many instances flowers and other gifts symbolic of joy are sent. Consequently, the halakhic provision forbidding the sending of gifts to a mourner apply, since gifts bring joy and dispel the sorrow which is obligatory for a mourner.

ISRAEL INDEPENDENCE DAY

The April-May, 1958, issue of *Sinai*, published in Israel, offers an interesting article by Rabbi Yitzchak Nissim, the Sephardi Chief Rabbi of Israel. Is the Day of Independence of the State of Israel, which occurs on the fifth day of Iyar, a festive day on which the customary period of semi-mourning (*Sefirah*) may be interrupted? The *Sefirah* period, which comes between the festivals of Passover and Shabuot, is traditionally one of sorrow, commemorating the sudden death of many of the pupils of Rabbi Akiba in the second century C.E. Just as a mourner is forbidden to marry or to cut his hair during the period of mourning, so is it our custom to refrain from these activities during these days when all Israel is in mourning, as it recalls the national

disaster which led to the dispersion of the Jews from their homeland. The fifth of Iyar always occurs during the *Sefirah* period. Has the character of this day changed since the establishment of the State of Israel in 1948?

Rabbi Nissim quotes a letter which he received from an unnamed scholar. "We should permit marriage and cutting of the hair on the fifth day of Iyar, the day on which our independence was proclaimed, because it has been decreed a holiday for all Israel. After all, the custom not to marry or to cut one's hair during the period between Passover and Shabuot is not mentioned in either of the Talmudim. . . . This custom to commemorate the students of Rabbi Akiba was accepted, it seems, in later generations. It is logical, then, that the mighty event which has occurred in our own day should outweigh an ancient sorrow based on custom alone and should transmute this day from one of mourning to one of joy."

Rabbi Nissim rejects this line of reasoning. "These statements concerning the establishment of the custom are in my humble opinion not acceptable. Even if we should assume that the custom only began in later generations, this is no reason to take it lightly . . . many generations have observed it. . . . Moreover it is my opinion that this custom dates from the time of Rabbi Akiba because the Geonim mention it, and whatever they say is based on transmitted tradition."

The author cites R. Yerucham who says, "As regards betrothal and marriage, R. Hai Gaon wrote in a responsum that a *betrothal* is permitted because the element of joy is present only in the marriage and the

Review of Recent Halakhic Periodical Literature

marriage feast. However, if a person should *ask* if he may *marry* (during this period) we say to him, 'you may not, because of the students of Rabbi Akiba.' But if despite our ruling he does marry, we neither flog him nor fine him."

R. Natrunai Gaon also wrote in a responsum: "You asked why we neither betroth nor marry in the period between Passover and Shabbat. . . . Let me inform you that this is not because there is any legal prohibition involved, but because we have a *custom* of mourning, in accordance with the statement of the scholars, 'Rabbi Akiba had 24,000 students, etc.' and from that time on it was the custom to forbid marriages (during this period). But if a person went ahead and did marry we do not punish him in any way. However, if he first comes to ask the law we do not tell him that he may marry."

Rabbi Nissim states his belief that the people of Rabbi Akiba's time who observed the destruction which befell his pupils adopted voluntarily certain customs of mourning, among them the customs not to marry or to cut one's hair.

The author concludes after a study of the source material that if during this period a person celebrates "his miraculous deliverance from some danger or is a participant in a joyous religious ceremony (such as a circumcision) we may permit him to marry and to cut his hair."

The same reasoning applies obviously to the Day of Independence. The author's *heter* (permission) is based not upon deprecating the *Sefirah* custom, but upon the nature of the celebration. He completes his article with the following observation: "As for Independence Day:

indeed it was our hope that the establishment of the State might be accompanied by a spiritual redemption; that the conduct of the State and our own way of life might be based upon the principles and values of Judaism. We have not been worthy of this. However, this should not becloud our joy over the national rebirth itself, since the defects will surely disappear in time. It is our prayer that the Lord may soon consider us worthy of a full and real redemption."

THE HOLY TONGUE

Rabbi Israel Stepanski contributes an article to *Or Ha-mizrach* of September, 1958, in which he discusses "The Commandment of Learning the Hebrew Language."

The author disagrees with the opinion, noted in these columns in the last issue of *TRADITION*, that today there is no longer any obligation to teach Hebrew to children. He cites the comment of Maimonides on the statement in *Abot*, "Be as careful in observing a minor commandment as in observing a major commandment." Maimonides interprets this as meaning that "one should be as careful in observing a commandment which is considered minor, such as the commandment to rejoice on a festival and to learn the Holy tongue, as one is in observing a commandment whose importance has been explained." It is thus evident that to Maimonides the Jew is obligated to study and learn Hebrew.

The author notes that in the Talmud the laws concerning the Hebrew language are two-fold. First, there is the advice that adults speak Hebrew. Thus we find in the Jerusalem Talmud: "Rabbi Meir

said, 'One who lives in the land of Israel and speaks the holy tongue . . . and reads the *Shema* in the morning and in the evening is assured that he has a share in the world-to-come'." Secondly, there is the command that fathers teach the language of the Torah to their children from the time they begin speaking. In commenting on the verse, "And you shall teach them to your children speaking of them . . ." (Deut. 11:19), the *Sifre* comments, "This is the source whence we learn that when the child begins to talk, his father shall speak with him in the holy tongue and teach him Torah; and if he has not done so, it is as though he has buried him." Similar statements are found in the *Tosefta* and in the Jerusalem Talmud.

PUBLIC WELFARE

"The Halakhah and the Public Welfare" is the title of an article by Rabbi N. Z. Freedman which appeared in *Or Ha-mizrach* of December, 1958.

Rabbi Freedman's thesis is that "the laws of the Torah take into account the public welfare and its natural needs, and the primary purpose of these laws is to direct man's deeds, his traits of character, and his behavior into channels which are desirable for the individual and for society." Examples of such laws are the command to rest on the Sabbath, the laws prohibiting immorality, those concerning forbidden foods, and laws defining man's relation to his fellows. Among the latter, he lists the commandment to love one's fellow and the laws forbidding gossip and slander. "Once these laws became fixed in the Torah, no one, whether an individual or an

entire society, has the power to change them. It is incumbent upon us to observe them in their entirety."

Aside from the laws stated in the Torah, there are others which are entirely of rabbinic origin. These may be divided into three groups:

a. *Decrees*. These deal with certain rabbinic prohibitions, such as that against using bread baked by a non-Jew, or milk provided by non-Jews. With regard to decrees, the scholars were commanded to consider the actual real situation in which the people lived because "one may not issue a decree unless the majority of the people can endure it." Whether the majority favors the decree is not important. Whether the majority can exist if the decree is obeyed is all important. This power of the scholars to issue decrees derives ultimately from the Torah and must be wielded with a constant regard for the common good.

b) *Ordinances*. These are positive enactments of the Rabbis. "With regard to ordinances, the scholars must take into consideration the welfare of the community and the needs of the time. The ordinances of the scholars of each generation are promulgated in the light of the actual situation." Among the ordinances, the author lists the *Prozbol*. He cites the discussion in the Talmud (*Gittin*, 36), "What is *Prozbol*? Rabbi Chisda said, 'An ordinance for *Boule* and *Boute*. *Boule* are the wealthy and *Boute* are the poor'." Rashi in his comment says that it was an ordinance for the wealthy so that they should not lose the money they had lent, and an ordinance for the poor so that lenders would

Review of Recent Halakhic Periodical Literature

not refuse to lend. "Therefore the scholars ordained the *Prozbol* when they observed that through it the need of the entire community and the welfare of both the rich and the poor would be served."

- c. *Customs*. "These are largely the result of the influence of the community at large, whether of outstanding personalities or of the masses of the community, who out of a healthy instinct have introduced for the nation as a whole the glorious practices which have fashioned its spiritual image throughout the generations."

Biblical law issues from the knowledge which the Creator possesses of man and his needs. Rabbinic law derives from the needs of the people at specific moments in history. In both cases, an understanding of man is at the basis of the law.

PILGRIMAGE

Is the *mitzvah* of pilgrimage in effect today? In the days before the destruction of the Temple, the *aliyat regel* was mandatory on the three festivals—Passover, Shabuot, and Sukkot. Every male Jew was to appear in Jerusalem in the Holy Temple on these occasions. But is this practice halakhically necessary in modern days when there is no Temple? Rabbi Mordecai Hacohen (*Sinai*, vol. 21, no. 11-12, Ab-Elul, 5718) turns to the literature on this subject for the solution to the problem (which could conceivably have interesting and highly beneficial effects, economically on the State of Israel and educationally on the Diaspora communities) and finds that the one who dealt with it most

extensively is the renowned latter-day talmudist Rabbi Zevi Hirsch Chayut.

Rabbi Chayut, like his predecessors, treats the problem only incidentally, as a sort of after-thought to the main question whether it is mandatory, permissible, or forbidden to offer up the obligatory sacrifices (such as the Passover sacrifice) on the Temple mount, were it possible and practicable to do so. In dealing with the pilgrimage question, as with the question of sacrifices, Rabbi Chayut concludes emphatically that even if these religious practices are not absolutely obligatory in modern days, yet they are desirable and worthy of reinstitution by us.

Rabbi Chayut's opinion, recorded in each of his four works and in his commentaries on the Babylonian Talmud, and later published in one work called *Abodat Ha-mikdash*, met vigorous opposition from his contemporaries who denied the possibility of either the *korban tzibbur* or the *aliyat regel* without a functioning Temple. Rabbi Chayut cited not only halakhic justification for his position, but historic proof as well. The proofs are not all of uniform quality. A number of them seem forced and can be easily interpreted otherwise. But others are clear proof of a point of view favoring the continuation of the pilgrimage even into modern times. Certainly this is still an open question, with the preponderant weight of authority against declaring *aliyat regel* obligatory in our days, but with a possibility that while pilgrimage to Jerusalem may not be *chobah* (an absolute obligation), it is in the category of *mitzvah* (desirable).