

SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

PROSTATE SURGERY

The prostate is a gland which completely encircles the neck of the bladder and the urethra in the male. Enlargement of the prostate and resultant encroachment and partial obstruction of the urethra is a common occurrence, especially after middle age. Partial occlusion of the urethra frequently impedes urination, causes pain and retention of urine and, if untreated, may result in infection of the bladder and kidney and, eventually, even renal failure. This condition can be corrected surgically by means of a transurethral or suprapubic (i.e. abdominal) prostatectomy involving excision of part or all of the prostate gland. One complication which may result from such surgery is postoperative epididymitis, an infection or inflammation of the epididymis which is an oblong tubular body resting upon and beside the posterior surface of the testis. Postoperative epididymitis following transurethral prostatectomy has a reported incidence of 0 to 13.5 per cent.¹ In the 1920s a urologist, Dr. Edwin P. Alyea, recommended that vasoligation, i.e., the binding or tying off of the vas deferens, be performed routinely in conjunction with every prostatectomy in order to prevent bacteria present in the prostate from reaching the epididymis. This procedure, he claimed, markedly reduces the incidence of infection.² Subsequently, vasectomy, or removal of a segment of the vas deferens, became the accepted means of achieving this end.³

1. The Halakhic Problem and the Responsa Literature

From the perspective of Jewish law, sev-

erance of the vas deferens poses a serious problem with regard to the permissibility of resumption of marital relations. The verse "*Lo yavo petsu'a daka u-kerut shafkhah be-kehal ha-Shem*—He that hath wounded testicles or severed membrum shall not enter into the assembly of God" (Deuteronomy 23:2) constitutes a negative commandment prohibiting a person afflicted in this manner from engaging in sexual intercourse. The biblical terms "*petsu'a daka*" and "*kerut shafkhah*" employed in formulating this prohibition are understood by the Gemara as denoting a mauled or severed membrum, testicle or vas deferens. Thus *Yevamot* 75b declares: "Raba stated: 'Wounded' applies to all, 'crushed' applies to all and 'severed' applies to all. 'Wounded' applies to all, whether the membrum, the testes or the cords of the testes were wounded. 'Crushed' applies to all, whether the membrum, the testes or the cords of the testes were crushed. 'Severed' applies to all, whether the membrum, the testes or the cords of the testes were severed." Moreover, seclusion (*yihud*) of a male with a woman with whom intercourse is prohibited is forbidden even if the woman is a lawfully wedded wife (other than with his wife who is a *niddah* with whom intercourse is permitted subsequent to her immersion in a *mikveh*). Moreover, a *kohen* is forbidden to marry a woman who has consorted with a man who has been maimed in this manner.⁴

Halakhic questions associated with prostate surgery have, of late, become the subject of much discussion, particularly among Israeli scholars. The halakhic issues which have now been reopened were first

examined decades ago by a number of rabbinic authorities. Of primary significance are the comments of *Hazon Ish*, *Even ha-Ezer* 12:7. A detailed analysis of these problems is presented by R. Ya'akov Breisch, *Helkat Ya'akov*, II, no.22, and by R. Iser Yehudah Unterman, *Otsar ha-Poskim*, I (3rd edition, 5711), *he'arot*, pp. 326-329. The matter is also addressed by R. Yitzchak Ya'akov Weisz, *Teshuvot Minhat Yitshak*, II, no.123, sec.6 and III, no.97; and by R. Eliezer Waldenberg, *Tsits Eli'ezer*, X no.25, chap 24 and XIV, no.94. Responsa on this subject by R. Zevi Pesach Frank, R. Ovadiah Hedaya and R. Moshe Wasserman appear in the latter's *She'ilat Mosheh*, *Even ha-Ezer*, nos. 20-22. Contributions appearing in the periodical literature include articles by R. Nisan Telushkin, *Ha-Pardes*, Iyar 5715; R. Yosef Eliyahu Henkin, *Ha-Pardes*, Tammuz 5715; Rabbi Dr. Israel Baruch Ness, *Ha-Pardes*, Nisan 5716 and Heshvan 5731; R. Baruch Mordecai Birg, *No'am*, I (5718); R. Menachem Mendel Schneerson, *Ha-Ma'or*, Tammuz 5725; (reprinted in *Otsar ha-Poskim*, IX, 259); R. Ephraim Yolles, *Ha-Ma'or*, Tevet 5731; and R. Moses Feinstein, *Le-Torah ve-Hora'ah*, no.5 (*Shevu'ot*, 5735). Rabbi Feinstein's responsum is reprinted in *Otsar Yerushalayim*, no. 297 (5742). Rabbi Weisz, *Teshuvot Minhat Yitshak*, II, secs. 12-14, also addresses the question of whether or not a patient who has undergone surgery of this nature but is unaware of the halakhic ramifications need be informed of a possible prohibition against resuming marital relations. A precis of some of this material appears as an addendum to *Otsar ha-Poskim*, IX, 257-258. In the opinion of virtually all of these writers, performance of a prostatectomy does not, in and of itself, create a situation in which the patient is prohibited from engaging in sexual intercourse. The earlier-cited statement recorded in *Yevamot* 75b limits the prohibition by including only persons who have been injured in one of three organs: the membrum, the testes or the "cords of the testes." Since the prostate is not enumerated among the organs whose excision or injury results in placing the victim within the ambit of the prohibition forbidding him

to "enter into the assembly of God," removal of the prostate gland does not seem to pose a halakhic problem. The problem arises from performance of an accompanying vasectomy as a prophylactic measure designed to prevent occurrence of epididymitis. Severance of the vas deferens would appear to preclude subsequent intercourse since, ostensibly, it involves cutting the "cords of the testes."

2. "Cords of the Testes" as Defined by Rashi

The earliest authority to render a permissive ruling with regard to this matter is *Hazon Ish*. The pivotal issue is identification of the anatomical structure referred to by the Gemara as the "cords of the testes." Rashi defines the "cords of the testes" as those cords "from which the testes are suspended in the scrotum." It is virtually axiomatic that Rashi, in commenting upon the text of the Talmud, does not engage in surplusage. His comments are designed either: a) to facilitate comprehension of the plain meaning of the text; or b) to provide halakhic insights which may not be apparent to the student. The comment in question appears to be superfluous since the meaning of the words "cords of the testes" seems to be entirely clear. Rashi's contribution, argues *Hazon Ish*, lies in supplying the phrase "within the scrotum" which is absent in the text of the Gemara. In doing so, maintains *Hazon Ish*, Rashi intended to convey a halakhic point, viz., that the halakhic incapacity under discussion is limited to a situation in which the portion of the cord which is injured lies *within the scrotum*, to the exclusion of an injury to the portion of the "cord of the testes" which lies within the abdomen. Phrased somewhat differently, only damage to the external genital organs renders the individual a *petsu'a daka*; injury to an internal genital organ or to a portion of an organ which is within the body carries with it no halakhic disability. Hence, concludes *Hazon Ish*, if the vas deferens is severed within the body itself no halakhic complications arise.⁵

The editors of *Otsar ha-Poskim*, I, 327, note 3, cite the statement of an Israeli

urologist, a certain Dr. Shapiro, who reports that *Hazon Ish* advised him to sever the vas deferens routinely when performing a prostatectomy in order to avoid possible medical complications. The physician further reported that *Hazon Ish* was entirely convinced of the absence of any halakhic prohibition and hence felt that there was no need to disclose the performance of such procedure to the patient. Interestingly, *Hazon Ish*'s biographers, *Pe'er ha-Dor* (Bnei Brak, 5733), IV, 142-143, write that, when informed by a urologist that he had successfully performed approximately one hundred prostatectomies without an accompanying vasectomy and that none of his patients had suffered from epididymitis, *Hazon Ish* responded that the procedure should be performed nevertheless.

Apart from *Hazon Ish*'s analysis it appears to this writer that Rashi's comment lends itself to two other possible interpretations. The first interpretation is entirely textual and devoid of any halakhic ramification. To be sure, the student of the talmudic text need not be informed that the testes are located in the scrotum. Yet, the anatomically unsophisticated reader may be unaware that the testes are suspended by cords; he may well be under the erroneous belief that the testes fall freely within the scrotum. Ignorant of the existence of spermatic cords, he might well be puzzled by the term "cords of the testes." Hence Rashi may have found it necessary to supply an elementary anatomical fact, viz., that the testes are *suspended* rather than free-floating in the scrotum and, accordingly, Rashi remarks that the phrase "cords of the testes" denotes the spermatic cords from which the testes are suspended. According to this analysis, Rashi intends merely to identify the structure without limiting the reference to the portion within the scrotum; hence the entire length of the spermatic cord including that portion of the vas deferens which lies within the body is also included in this reference. Alternatively, Rashi may well be understood as obviating an erroneous halakhic interpretation born of anatomical sophistication rather than the opposite. Along and beside the posterior surface of

the testis lies a small, oblong body consisting of a convoluted tube known as the epididymis. If stretched out to its full length the epididymis would be some thirteen to twenty feet long. One might well fall into the error of identifying the "cords of the testes" as the epididymis rather than as the spermatic cord.⁶ Hence Rashi points out that in enumerating the "cords of the testes" among the organs whose injury is associated with halakhic restrictions, the Gemara's reference is to the spermatic cords rather than to the epididymis. The latter, in halakhic nomenclature, is deemed to be part of the testes themselves. According to either interpretation there is no reason to assume that Rashi intends to exclude the portion of the cord which extends into the body.

This caveat notwithstanding, *Hazon Ish*'s interpretation of Rashi is followed by virtually all subsequent authorities, including *Helkat Ya'akov* and R. Moses Feinstein. It should also be noted that a similar position was earlier espoused by R. Naphtali Zevi Yehuda Berlin in his *Ha'amek She'alah* in exposition of the comments of *She'iltot*, *Parshat Ki Tetsei*, no. 152. Both Rabbi Weisz and Rabbi Waldenberg also cite the comment of *Kasa de-Harsana* appended to *Teshuvot Besamim Rosh*, no. 340, to the effect that "perhaps" the prohibition does not encompass an individual whose internal procreative organs are maimed.

Rabbi Telushkin, although he does not base his argument upon the earlier-cited comment of Rashi, contends that, at least for some authorities, the restriction against intercourse is limited to instances in which external genital organs have been mutilated. He notes the juxtaposition of the prohibition against causing sterility which is derived from Leviticus 22:24 and the listing of the physical defects which disqualify a priest from performing the sacrificial rituals recorded in the same scriptural section. The latter are limited to external blemishes. The prohibition against mutilating sexual organs, suggests Rabbi Telushkin, is recorded subsequent to the proscription dealing with priestly blemishes as an indication that the prohibition against mutilation, and the

pursuant prohibition against sexual intercourse, are limited to mutilation of external organs.⁷

A comparison of Rabbi Telushkin's argument and the argument based upon Rashi's use of the term "within the scrotum" may yield a significant halakhic difference. It should be noted that the spermatic cord does not ascend directly from the scrotum into the body cavity. Instead, it passes under the skin in the area of the groin and travels horizontally for several inches before entering the body itself. According to *Hazon Ish's* interpretation of Rashi, severing the vas deferens in this area would not disqualify the patient from engaging in intercourse since the injury quite evidently does not occur "within the scrotum." Dr. Ness, *Ha-Pardes*, Nisan 5715, tentatively suggests that, according to Rabbi Telushkin's argument, the opposite conclusion may be drawn. Nevertheless, it may be argued that, according to Rabbi Telushkin's thesis, severance of the vas deferens in this area should not be deemed to have occurred in an "exposed" area (*be-galuy*) since the effect of the procedure can neither be seen nor detected by means of external inspection.

3. "Cords of the Testes" as Defined by Rambam

However, Rambam, *Hilkhot Issurei Bi'ah* 16:33, does not render the term "*hutei ha-beitsim*" employed in *Yevamot* 75b, as "cords of the testes" in accordance with the literal meaning of the phrase. Instead, Rambam speaks of "the ducts in which the semen ripens which are called *hutei beitsim*." There is no language in Rambam's formulation which would indicate that only external portions of the reproductive organs are included in this definition. Indeed, the terminology employed by Rambam would readily accommodate the view that the term "*hutei beitsim*" denotes not only the vas deferens but all the "ducts" through which the various components of the semen flow, including the ejaculatory duct which arises at the junction of the ampulla (which is an

extension of the vas deferens) and the seminal vesicle. Nevertheless, no one (with the exception of Rabbi Birg, see especially p.259) has argued that, according to Rambam, the seminal vesicle and the prostate gland should also be considered to be among "the ducts in which the semen ripens" even though components of the seminal fluid are contributed by each of these organs. Presumably, this is because the term "*hutei beitsim*", defined by Rambam as "the ducts in which the semen ripens", denotes only the structures through which the sperm passes after being produced in the testes. The sperm "ripens" or "matures" as a result of combination with seminal fluid produced in the seminal vesicle and the prostate. The resultant semen is, in its entirety, known as *shikhvat zera*. However, the secretions of those organs prior to their excretion into the ejaculatory duct are not subsumed within the halakhic category of *shikhvat zera* or "semen." Hence it may be assumed that in defining *hutei beitsim* as "the ducts in which semen ripens" Rambam sought to denote only the structures through which the sperm itself and the sperm-bearing seminal fluid pass.

A definitive, permissive ruling with regard to the question at hand would be most unlikely were it to be accepted that severance of the vas deferens renders the prostate patient a *kerut shafkhah* according to Rambam. A ruling contrary to Rambam's position would not be anticipated particularly in view of the fact that Rambam's definition is adopted by *Shulhan Arukh, Even ha-Ezer* 5:2.⁸ Accordingly, the chief concern of writers on this topic has been to demonstrate that Rambam is in agreement with Rashi in finding that severance or maiming of internal organs does not render the patient a *kerut shafkhah*. In doing so they rely heavily upon an *argumentum ad silentium*, viz., both Rashi and Rambam are cited and commented upon by innumerable early and latter-day authorities none of whom remark upon a disagreement or contradiction between Rashi and Rambam with regard to the definition of the term *hutei beitsim*. Nevertheless, one eminent authority, R. David Friedman of

Karlin, *She'ilat David* (appended to his *Piskei Halakhot*, vol. I), no. 1, does posit a controversy between Rashi and Rambam.⁹

Helkat Ya'akov cites an anonymous physician—described as non-observant but conversant with rabbinic sources—who interpreted the phrase “ducts in which semen ripens” as referring solely to the epididymis. This interpretation was prompted by consideration of scientific realia. The sperm do indeed undergo a process of development and maturity or “ripening” in the epididymis. Fluids secreted by other organs are added thereafter, but the sperm themselves undergo no further change. Hence this anonymous physician felt that any reference by Rambam to ducts in which “ripening” takes place must be understood at denoting the epididymis. Use of the term “duct” in describing the epididymis presents no difficulty since, as noted earlier, the epididymis is indeed, structurally, a convoluted tube. Despite its scientific cogency, it is unlikely that this interpretation reflects Rambam’s intent. Rabbinic literature gives no evidence of a distinction between sperm themselves and the seminal fluid. Thus, for example, while latter-day responsa discuss whether or not the prohibition against “destroying the seed” applies to “seed which does not procreate” (*zera she-eino molid*) no authority seeks to restrict the prohibition to “destruction” of sperm or even to sperm-bearing semen specifically. Hence Rambam’s use of the term *shikhvat zera* undoubtedly denotes semen in its entirety rather than only the sperm; semen in its totality certainly does “mature” or “ripen” in structures other than the testes and epididymis. Moreover, the Gemara, *Yevamot* 76a, declares that semen which passes through the urethra does not “ripen.” This statement seemingly indicates recognition of a process of maturation or a development which takes place beyond the epididymis. *Helkat Ya'akov* attempts to resolve this difficulty by declaring that *Yevamot* 76a speaks of “ripening” only in the sense of making the act of ejaculation possible and adds that only mutilation of the genitalia can render a person a *petsu’a*

daka on that account. Neurological disorders which render ejaculation impossible certainly do not render the victim a *petsu’a daka*. Similarly, argues *Helkat Ya'akov*, mutilation of internal sexual organs with resultant inability to experience ejaculation does not render the patient a *petsu’a daka*.

In a somewhat similar vein Rabbi Feinstein argues that Rambam’s reference to “ducts in which semen ripens” can denote only the spermatic cords and not the internal structures since, he asserts, semen “ripening” only within the spermatic cords but not within the internal procreative organs. Rabbi Feinstein is cognizant of the difficulty posed by *Yevamot* 76a which speaks of “ripening” outside of the scrotum. This difficulty is dismissed by Rabbi Feinstein since, in his opinion, the anomaly described in *Yevamot* 76a occurred within the membrum and hence was external to the body itself. Rabbi Telushkin, on the other hand, assumes that the injury described in *Yevamot* 76a was internal. Nevertheless, in his permissive ruling, Rabbi Telushkin relies upon the position of R. Eliezer of Metz, author of *Sefer Yere'im*, who understands the Gemara as declaring, not that a person afflicted in this manner may not legitimately contract marriage, but that any putative children must of necessity be regarded as illegitimate because such injury renders the victim incapable of siring children. Rabbi Telushkin argues that *Sefer Yere'im* rejects the usual interpretation precisely because that authority is of the opinion that the maiming of internal organs does not render the victim a *petsu’a daka*.

Rabbi Feinstein notes, however, that it is unlikely that “ripening” of the sperm ceases while the sperm traverses the internal procreative organs only for the “ripening” process to commence anew in the membrum. Accordingly, he remarks—as did *Helkat Ya'akov*—the sperm themselves become fully mature and fertile in the scrotum with no further “ripening” taking place internally. In his opinion, the “ripening” described in *Yevamot* 76a refers to a form of development necessary, not to assure fertility of the sperm, but to make

possible the act of ejaculation.

The difficulty with Rabbi Feinstein's explanation is that it is contrafactual on three counts: (1) No development or maturation takes place within the spermatic cords; (2) production of seminal fluid which makes ejaculation possible does take place within the body with various components of the seminal fluid entering the vas deferens and the ejaculatory duct as they traverse internally; and (3) no further components of the seminal fluid are generated within the membrum, nor does any other physiological process occur in the membrum which can even remotely be termed maturation, development or ripening.

Helkat Ya'akov finds support for the view that Rambam does not intend to disagree with the position espoused by Rashi in Rambam's incorporation of the phrase "which are termed *hutei beitsim*." According to *Helkat Ya'akov*, this phrase is to be understood as constituting words of limitation, i.e., only mutilation of those ducts in which the semen "ripens" and which are also known as "cords of the testes" disqualifies the individual from engaging in marital relations. Since it is self-evident that the "cords of the testes" are located wholly within the scrotum, argues *Helkat Ya'akov*, it may be concluded that Rambam is in agreement with Rashi's position.

It should, however, be noted that in his *Commentary on the Mishnah, Yevamot* 8:2, Rambam employs somewhat different terminology. There he writes: "It is necessary for you to know that when the membrum is wounded or, similarly, [when] the cords of the testes [are wounded] or the testes are severed or the membrum is perforated or the testes are perforated or, in general, [when] any malady arises in the organs of the semen of a nature which natural science decrees that as a result [the victim] will not emit semen he is disqualified." Rambam's broad reference to the "organs of the semen" (*klei ha-zera*) would certainly seem to include more than simply "the cords of the testes," i.e., the spermatic cords. Minimally, this phrase would appear to include the vas deferens

and, arguably, the prostate itself, since removal of the prostate, although it does not impede erection, nevertheless usually makes ejaculation of semen impossible. Similar language is used by Rambam in his *Sefer ha-Mitsvot, mitsvot lo-ta'aseh*, no. 360. Curiously, *Helkat Ya'akov* cites the comment found in the *Commentary on the Mishnah* without noting that it apparently contradicts his thesis. Perhaps *Helkat Ya'akov* assumed that the term "organs of the semen" is used only in apposition to the antecedent phrase "membrum or cords of the testes."

At least one prominent authority did find that severance of the vas deferens engenders a halakhic disability. Dr. Ness, *Ha-Pardes*, Heshvan 5731, reports an oral communication alleging that the renowned R. Shimon Shkop of Grodno ruled that patients who have undergone surgery may not subsequently engage in intercourse. Presumably, this ruling applies only to patients in whom the vas deferens has been severed.

4. At the "Hands of Heaven"

Rambam's formulation of an entirely different provision of Jewish law may have the effect of obviating any problem arising from his definition of *hutei beitsim*. According to Rambam, *Hilkhot Issurei Bi'ah* 16:9, damage sustained by any of the organs in question as a result of illness or physiological disorder, as distinct from traumatic injury, does not disqualify the victim from engaging in intercourse. This is so, according to many commentators on Rambam's position, even if the diseased organ is excised surgically.¹⁰ Rabbi Telushkin notes that a number of latter-day authorities cited by *Pithei Teshuvah, Even ha-Ezer* 5:7, understand Rambam's ruling as encompassing even situations in which an organ has been excised merely because of incipient disease. According to these authorities' understanding of Rambam, even though the organ is still functional at the time of its removal, the fact that it will become dysfunctional as a result of disease renders the injury in the class of those sustained "at the hands of heaven" rather than

"at the hands of man."¹¹ Accordingly, Rabbi Telushkin argues that, according to Rambam, no problem results in performing a vasectomy upon patients suffering from a malignancy of the prostate gland since the malignancy, if untreated, would spread to the vas deferens as well. In actuality, however, malignancies metastasize either through the lymphatics or through the blood stream; hence malignancies of the prostate spread to other organs, but very rarely to the vas deferens despite the proximity of the latter.

Rabbi Telushkin further states that even when the prostate is removed solely because of partial obstruction or occlusion of the urethra by the enlarged prostate, the patient suffers no halakhic disability as a result of severance of the vas deferens. Failure to perform the procedure, asserts Rabbi Telushkin, will result in disease and ultimate destruction of the procreative organs. Hence the patient, according to Rambam, must be deemed to have been afflicted "at the hands of heaven" and, in accordance with Rambam's view, is not forbidden to engage in intercourse even if the organs are removed or severed surgically. A similar view is expressed by R. Zevi Pesach Frank in a brief responsum published in R. Moshe Wasserman's *She'ilat Mosheh, Even ha-Ezer*, no. 22. Rabbi Henkin accepts this argument but points out that a prostatectomy performed in order to alleviate problems caused by incontinence, rather than by reason of urine retention, does not fall into this classification. Rabbi Henkin flatly forbids performance of a vasectomy when the prostate procedure is designed to prevent the embarrassment and inconvenience of incontinence and expresses grave reservations with regard to the premissibility of marital relations by those patients subsequent to such procedure.¹²

In point of fact, even when surgery is necessary to alleviate urine retention, failure to remove the enlarged prostate may lead to infection of the kidney and to renal failure but is unlikely to cause the procreative organs to become diseased. This point is alluded to *en passant* by Rabbi Weisz who expresses reservations with regard to this matter.¹³

Dr. Ness and Rabbi Feinstein both assert that, in the absence of malignancy, a prophylactic vasectomy for the purpose of preventing epididymitis cannot be justified on the basis of Rambam's definition of an injury "at the hands of heaven" since the infection is not yet present and, indeed, in the vast majority of cases will not occur. A similar view was earlier advanced by *Helkat Ya'akov* and Rabbi Hedaya. However, neither Rabbi Telushkin, Rabbi Henkin nor Rabbi Frank draws such a distinction. Indeed, in a brief comment published in *Otsar ha-Poskim*, I, addenda, p.6 and in his *Har Zevi* on *Tur Even ha-Ezer* 5 (published as an addendum to the Jerusalem 5718 edition of *Tur Even ha-Ezer*) Rabbi Frank advances the novel opinion that one is rendered a *petsu'a daka* only as the result of wanton mutilation (*peshi'ah*) but not as the result of any justifiable medical procedure. It follows, then, that according to Rabbi Frank's thesis, even a vasectomy which is entirely prophylactic in nature entails no halakhic disability. Moreover, Rabbi Waldenberg, *Tsits Eli'ezer*, XIV, no.94, correctly notes that, according to Rabbi Frank, no problem arises even if the vasectomy is performed in the scrotum. This position is espoused by Rabbis Waldenberg and Wasserman as well. It should, however, be noted that *Yam shel Shlomoh, Yevamot* 8:9, expresses a view antithetical to that of Rabbi Frank. Rabbi Frank's view is also rejected in the rebuttal of his comments by R. Iser Zalman Meltzer, *Otsar ha-Poskim*, I, addenda, p. 7.

Rabbi Schneerson prefers that, if necessary, the vasectomy be performed subsequent to the actual removal of the prostate rather than prior to completion of that procedure. Although he does not clarify the considerations which prompt this suggestion, it may be assumed that Rabbi Schneerson is under the impression that epididymitis results from the surgical procedure itself. Since, according to Rambam, an already diseased organ may be removed without causing halakhic complications, the vas deferens should be severed only after the infection has been contracted. A similar view predicated upon this consideration is expressly formulated by Rabbi Walden-

berg. However, since, in reality, even subsequent to removal of the prostate the procedure is entirely prophylactic, there does not appear to be any halakhic difference in this regard. Medically speaking, there is at least a marginal advantage in performing the vasectomy prior to instrumentation in order to prevent any possibility of contracting an infection during the course of the prostate removal procedure itself.¹⁴

5. "Doubtful" Injury

The status of a "doubtful" *kerut shafkhah* or *petsu'a daka*, i.e., of a person who may or may not have received an injury which results in this status, is the subject of dispute among latter-day authorities. R. Joseph Hazan, *Hikrei Lev, Even ha-Ezer*, no.7, argues that, according to many authorities, such an individual may not engage in sexual intercourse, just as it is forbidden for anyone to commit any act which involves a "doubtful" transgression of a biblical prohibition. Other authorities, however, maintain that this general rule does not apply to a person who has sustained an injury which "doubtfully" disqualifies him from engaging in marital relations. The Gemara establishes that, in terms of the biblical prohibition, only a person known with certainty to be a bastard is forbidden to contract a marriage with a person of legitimate birth. Many authorities maintain that this rule applies equally to persons disqualified by reason of maimed genitalia. It is true, however, that a "doubtful" bastard is forbidden to enter into such a marriage by virtue of rabbinic edict. It might well be assumed that such rabbinic proscription applies to a "doubtful" *petsu'a daka* as well. Nevertheless, many authorities argue that the rabbinic restriction placed upon "doubtful" bastards is designed solely to protect the genealogical purity of future progeny. This consideration, they maintain, is not germane in the case of a "doubtful" *petsu'a daka* since one who has indeed suffered such an injury cannot sire children. Some authorities maintain that a "doubtful" *petsu'a daka* may engage in marital relations only if the

"doubt" is factual in nature, but not if the "doubt" is rooted in an unresolved question of Jewish law; others maintain that such a person may engage in intercourse even if the doubt is with regard to the applicable halakhah. A list of the various authorities espousing each of these positions is presented by Rabbi Birg. In light of the permissive views with regard to the status of a "doubtful" *petsu'a daka*, both *Helkat Ya'akov* and Dr. Ness advise a patient undergoing a prostatectomy to request his surgeon not to sever the vas deferens. Minimally, it is to be anticipated that such request will engender "doubt" with regard to whether the surgeon considered it prudent to follow those instructions. The patient may then rely upon the authorities who rule that no restrictions apply to a "doubtful" *petsu'a daka*.

6. Current Procedures

But, unfortunately, much of the preceding discussion is entirely academic. With the exception of the earlier noted position of Rabbi Frank and Rabbi Waldenberg, the permissive opinions expressed in the past are based on the assumption that the vas deferens is severed within the body. In point of fact, a transurethral prostatectomy is the procedure of choice unless contraindicated because of localized carcinoma of the prostate or in the case of an unduly enlarged prostate.¹⁵ Since no incision is made into the abdominal cavity the vasectomy is performed by severing the vas deferens within the scrotum.¹⁶ Even when other methods are employed in removing the prostate, it is usually more convenient to perform the vasectomy within the scrotum. This procedure renders the patient a *petsu's daka* according to almost all the authorities. The sole exceptions are Rabbi Frank and Rabbi Waldenberg who deem any procedure performed for medical reasons to constitute an injury at the "hands of heaven" with no ensuing disqualification.

A recent issue of *Otsrot Yerushalayim*, no. 297 (5742), edited by R. Zevi Moskowitz, contains statements by R. Yitzhak Ya'akov Weisz, R. Shmuel ha-Levi Wos-

ner, Rabbi S. Y. Nisim Karelitz and the *Bet Din* of the Jerusalem *Edah ha-Haredit* declaring that the permissive rulings based upon the position of *Hazon Ish* do not apply to prostate surgery involving a vasectomy performed in the scrotum. An advertisement to this effect appeared in the January 28, 1982 issue of *Ha-Modi'a*, an Israeli newspaper published by Agudath Israel.

A number of these statements refer to this procedure as a newly introduced innovation and recommend that, if a vasectomy is deemed necessary, the vas deferens be severed internally. Actually, transurethral procedures have been widely employed for over forty years.¹⁷ Alternative procedures increase the risk to the patient and should not be readily advised simply to overcome halakhic problems. It is apparent that many of the rabbinic discussions dealing with this matter were predicated upon information already obsolete at the time of publication.

Particularly in light of these recent statements it is necessary to emphasize that it may be possible to avoid this problem entirely. A number of medical studies have shown that routine vasectomy in conjunction with prostate surgery is unnecessary and is of little or no value in preventing epididymitis.¹⁸ As a result this procedure has been abandoned in a number of major medical centers. In some hospitals antibiotics are administered prophylactically in order to accomplish the same result.¹⁹ In other hospitals even this is considered to be superfluous. In a note appended to Rabbi Unterman's contribution to *Otsar ha-Poskim*, I, 327, the editors comment that Dr. Shapiro reported that for a period of ten years he had refrained from performing prophylactic vasectomies without untoward effect in any patient. Similarly, Dr. Ness, who was himself a physician, advises that performance of a routine vasectomy in conjunction with prostate surgery is medically unnecessary. Several urologists consulted by this writer have concurred in this advice. Dr. Daniel Wiener, a member of the faculty of the Albert Einstein College of Medicine, added that, in his opinion, performance of a vasectomy may actually increase the likelihood of epididymitis since severance

of the vas deferens blocks egress of bacteria which may already be present in the epididymis after instrumentation and hence should not be performed as a routine procedure.

7. "Cup of Roots"

The halakhic problems associated with prostate surgery are not limited to the question of resuming marital relations, nor are they limited solely to the performance of a vasectomy. The biblical injunction, "neither shall you do thus in your land" (Leviticus 22:24) constitutes a prohibition against castrating or otherwise maiming an individual in a manner which renders him a *petsu'a daka*. Hence a surgeon is forbidden to perform such a procedure other than for reasons of grave medical necessity.²⁰ *Hazon Ish* points out that drinking a "cup of roots", i.e. a potion which induces permanent sterility, is forbidden by rabbinic edict. Similarly, it is forbidden to perform any procedure which leads to permanent sterility since all such procedures are analogous to drinking a "cup of roots." Rabbi Birg points out that some authorities maintain that drinking a "cup of roots" is forbidden by biblical law. *Tosafot, Sukkah* 26a, posits a view ascribed to Rashi to the effect that one who becomes sterile as a result of drinking a "cup of roots" is also forbidden under biblical law from engaging in intercourse. Rabbi Birg lists the various authorities who disagree with regard to this issue. A patient who has undergone a prostatectomy, even without an accompanying vasectomy, although he suffers no diminution of libido and is capable of sustaining an erection, cannot ejaculate and hence is sterile. Accordingly, performance of prostate surgery is halakhically equivalent to drinking a "cup of roots."

It is, of course, clear that even actual castration must be performed if there is any danger to the life of the patient which can be averted thereby.²¹ Whether or not rabbinic prohibitions forbidding actions leading to sterility are suspended for considerations of health even though the patient's life is not endangered is a subject of dispute among halakhic authorities.²²

Accordingly, Rabbi Birg advises that, when there is no danger to the life of the patient, the prostate procedure be performed by a non-Jewish urologist. This procedure is permissible even though *Shulhan Arukh, Even ha-Ezer* 5:14, rules that it is forbidden to direct a non-Jew to perform an act of castration. Such a directive is forbidden either because non-Jews, according to some authorities, are forbidden to perform acts of castration by virtue of the provisions of the Noachide Code or because of the general rabbinic prohibition against directing a non-Jew to perform a proscribed act on behalf of a Jew. Nevertheless, R. Moshe ha-Levi Epstein, *Bet Mosheh, Even ha-Ezer* 5:13, permits such acts on the part of a non-Jew for therapeutic purposes since the intended result is to effect a cure while the resultant castration or sterility is entirely unintended (*davar she-eino mitkaven*). To be sure, when the concomitant forbidden effect is a necessary one (*pesik reisha*), the act is forbidden to a Jew even under such circumstances. Nevertheless, *Magen Avraham, Orah Hayyim* 253:41, rules that non-Jews may perform—and be directed to perform—otherwise forbidden acts even under such circumstances.²³ *Dvar Eliyahu*, no. 17, similarly permits such a procedure to be performed by a non-Jew, albeit on somewhat different grounds. *Dvar Eliyahu* reasons that the non-Jewish physician acts on his own initiative rather than at the behest of the Jew. Although a Jew may not direct a non-Jew to perform a forbidden act on his behalf he need not seek to prevent a non-Jew from performing such acts (other than acts involving violations of Sabbath restrictions) on his behalf.

NOTES

1. See J. Melchior *et al*, "Transurethral Prostatectomy and Epididymitis," *Journal of Urology*, CXII (1974), 647. An incidence of 20 per cent reported in *Otsar ha-Poskim*, IX, 257, note 1, is undoubtedly an exaggeration.
2. See Edwin P. Alyea, "Vaso-ligation: A Prevention of Epididymitis before and after Prostatectomy," *Journal of Urology*, XIX (1928), 65-80.
3. See B. Abeshouse and S. Lerman, "Vas-

ectomy in the Prevention of Epididymitis following Prostatic Surgery," *Urologic and Cutaneous Review*, LIV (1950), 385-391.

4. See Rambam, *Hilkhot Isurei Bi'ah* 18:3.
5. *Helkat Ya'akov, Tsits Eli'ezer* and Rabbi Feinstein find support for this position by noting that terminology identical to that of Rashi is utilized by *Tur Shulhan Arukh, Even Ha-Ezer*. In point of fact, *Tur* defines "*hutei beitsim*—cords of the testes" simply as "the cords from which the testes are suspended;" the crucial phrase "within the scrotum" does not appear in *Tur's* formulation. Quite to the contrary, it would appear to this writer that *Tur* did not understand Rashi as limiting the *hutei beitsim* solely to the section within the scrotum.
6. As will be noted later, one physician (erroneously, in this writer's view) ascribes such an opinion to Rambam.
7. In point of fact, the regulation governing disqualification of priests suffering from physical defects is recorded in Leviticus 21:16-23. Rabbi Telushkin may have expressed himself unfelicitously but actually may have intended to note the juxtaposition of Leviticus 22:24 with the immediately preceding regulations disqualifying animals marred by certain physical blemishes from being brought as sacrificial offerings. The latter regulations are found in Leviticus 22:19-23.
8. Rabbi Feinstein's quotation of *Even ha-Ezer* 5:2 which includes a reference to Rashi and a citation of Rashi's phraseology is most puzzling since not only does such a statement not appear in *Shulhan Arukh* but, on the contrary, *Shulhan Arukh* adopts Rambam's definition.
9. *She'ilat David* presumably understood Rashi as expressing the position ascribed to him by *Hazon Ish*.
10. See *Yam shel Shlomoh, Yevamot* 8:9; *Teshuvot Hatam Sofer, Even ha-Ezer*, I, no. 17; and *Otsar ha-Poskim* 5:56.
11. See, however, *Teshuvot Maharsham*, III, no. 95; R. Iser Zalman Meltzer, *Otsar ha-Poskim*, I, addendum, p.7; as well as other conflicting sources cited by Rabbi Birg.
12. In actuality, a prostatectomy is indicated in cases of incontinence only when that condition occurs as a result of a significant underlying problem, usually urine retention.
13. Rabbi Weisz' mention of this matter is all the more remarkable because it occurs

- in a discussion of a case which almost certainly involved a malignancy, although the diagnosis is not explicitly stated.
14. See *Urologic Surgery*, ed. James F. Glenn, second edition (New York, 1975), p.500.
 15. See *Campbell's Urology*, fourth edition, (Philadelphia, 1979), III, 2361.
 16. *Ibid.*, p.2368, fig.79-8; and *Urologic Surgery*, pp.500-501, figs. 37-21 and 37-22.
 17. See *Cambell's Urology*, p.2361.
 18. Jack M. Lynn and Reed M. Nesbit, "The Influence of Vasectomy upon the Incidence of Epididymitis Following Transurethral Prostatectomy," *Journal of Urology*, LIX (1948), 72-75; and George Haralambidis and Anthony N. Spinelli, "Vasectomy: An Evaluation," *Journal of Urology*, LXXXIX (1963), 591-594.
 19. See James J. Plorde *et al.*, "Course and Prognosis of Prostatectomy; With a Note on the Incidence of Bacteremia and Effectiveness of Chemoprophylaxis," *New England Journal of Medicine*, vol. 272, no.6 (February 11, 1965), pp.269-277.
 20. *Minhat Hinnukh*, no.291, opines that, unlike the prohibition concerning "rounding the corners of the head" which applies equally to the barber and to the person whose hair is cut, this transgression does not apply to the patient undergoing such procedure. This view is disputed by R. Pinchas Horowitz renowned as the author of *Hafla'ah*, in his *Netivot la-Shevet, Even ha-Ezer* 5:7, and is a subject of doubt to R. Eliyahu Klatzkin, *Dvar Eliyahu*, no.17. All agree, however, that the patient commits a prohibited act in "assisting" the surgeon who is prohibited from performing the act.
 21. Cf., however, the opposing view of *Sho'el u-Meshiv, Mahadura Tinyana*, III, no.44. This surprising position is rebutted by *Ta'alumot Lev*, II, no.4. Moreover, *Ritva, Yevamot* 65b, explicitly permits castration in cases of *pikkuah nefesh*.
 22. See *Contemporary Halakhic Problems*, I, 96-99.
 23. Cf., however, R. Benjamin Silber, *Brit Olam*, no.16.

Editor's Note: To the sources cited on p. 255, add R. Schneerson, *Likkutei Torah*, Vol. 17, pp. 503-504 (SC).