

## Survey of Recent Halakhic Periodical Literature

### USE OF AUTOMATIC TELEPHONE ANSWERING AND FAX MACHINES ON SHABBAT

The propriety of the use of a fax machine on *Shabbat* has been the subject of numerous discussions over the course of the past decade or so. The question has been addressed by R. Baruch Leizerowsky, *Ha-Pardes*, Iyar 5750; R. Pinchas Abraham Meyers, Chief Rabbi of the Hague, *Ha-Pardes*, Tishri 5751; R. Israel Meir Lau, presently the Ashkenazic Chief Rabbi of Israel, *Tehumin*, vol. XII (5751); R. Levi Yitzchak Raskin of London, *Oholei Shem*, Elul 5751; R. Shlomoh Yitzchak Birnbaum, *Ha-Ma'or*, Tishri-Heshvan 5754; R. Meir Brandsdorfer, *Mevakshei Torah*, vol. 2, no. 8 (Tishri 5754); R. Shimon Moshe Diskin, *Mevakshei Torah*, vol. 2, no. 9 (Heshvan 5754); R. Yisra'el Pesach Feinhandler, *Oraita*, vol. XVII (5756); R. Yechezkel Grubner, *Knesset Yehezkel*, (Jerusalem, 5756) nos. 25-27; R. Mordecai Savitsky, *Or Yisra'el*, II Adar 5759; and R. Ya'akov Shlomoh Moseson, *Or Yisra'el*, Tishri 5759, as well as by R. Chanoch Dov Padwa, *Teshuvot Heshev ha-Efod*, III, no.86 and R. Isaac Liebes, *Teshuvot Bet Avi*, V, no. 75.<sup>1</sup> A brief treatment of this question is also presented by R. Meir Just, formerly Chief Rabbi of Amsterdam, in chapter three of a recently published slim volume of responsa entitled *Imrei Me'ir* (Amsterdam, 5760). Use of telephone answering machines on the Sabbath, a matter that involves essentially the same issues, has previously been addressed by R. Ya'akov Breisch, *Teshuvot Helkat Ya'akov*, III, no. 94; R. Yitzchak Ya'akov Weisz, *Teshuvot Minhag Yitzhak*, V, no. 14; R. Isaac Liebes, *Teshuvot Bet Avi*, II, no. 54 and IV, no. 69; R. Moshe Stern, *Teshuvot Be'er Mosheh*, VI, no. 3; and R. Shmu'el ha-Levi Wosznier, *Teshuvot Shevet ha-Levi*, V, no. 28. Both issues are discussed by R. Abraham David Horowitz, *Kinyan Torah be-Halakhah*, VI, no. 17.

While in the assessment of this writer the weight of rabbinic opinion permits use of these devices, the published discussions merit analysis. Those discussions focus upon a variety of issues concerning Sabbath laws that are themselves both interesting and significant.

## I. PROBLEMS IN CONNECTING THE DEVICE

## 1. Forbidden Labor

In *Helkat Ya'akov*, III, no. 94, Rabbi Breisch expresses tentative willingness to permit use of an answering machine provided it is not set on Friday for use on *Shabbat*. Rabbi Weisz, *Minhat Yizhak*, V, no. 14, similarly finds the use of an answering machine to be somewhat problematic if it is specifically connected in order to operate on *Shabbat*. As recorded in *Shulhan Arukh*, *Orah Hayyim* 265:4, it is forbidden to place water in an oil lamp before *Shabbat* so that the flame will be extinguished upon reaching the water during *Shabbat*. *Helkat Ya'akov's* concern is that use of an electric answering machine on *Shabbat* entails creation and extinguishing of sparks.<sup>2</sup> Despite the fact that in *Helkat Ya'akov*, I, no. 49, R. Breisch permits use of an automatic timer to turn electric lights on and off on *Shabbat*, he asserts that such use of a timer is permitted only for the "honor" and "delight" of *Shabbat* but not for other purposes.

Assuming that sparks are indeed generated in the course of completing electric circuits in such an apparatus, *Helkat Ya'akov's* reasoning is nevertheless difficult to follow. Connecting the answering machine is not at all the proximate cause of extinguishing sparks on *Shabbat* as is the case with regard to placing water in a lamp so that the water will extinguish the flame. The sparks produced by an answering machine are caused, not in the act of attaching or setting the machine, but by the person telephoning on *Shabbat*. Moreover, *Helkat Ya'akov* concedes that, once the answering machine has been attached for use during the week, it need not be disconnected before *Shabbat*. Accordingly, use of such a machine should always be permitted since it is certain that the answering device will perforce be connected some time before *Shabbat* and thus is designed to answer any incoming call from the moment of connection.

Rabbi Horowitz, *Kinyan Torah be-Halakhah*, VI, no. 17, cites a highly novel comment of *Hatam Sofer* in the latter's novellae on *Shabbat* 18a on the basis of which he forbids the use of both automatic answering and fax machines. Although a Jew need not be concerned that his utensils "rest" on the Sabbath, *Hatam Sofer* asserts that this is only the case when the utensil performs an act of labor without human assistance. However, argues *Hatam Sofer*, a Jew may not permit his property to be utilized in conjunction with an act of labor performed on *Shabbat* by a person even if that act of labor is performed by a non-Jew. Since answering and fax machines are designed to perform acts of labor initiated by the caller or

the sender of the fax, use of such devices is inconsistent with the thesis advanced by Hatam Sofer.

## 2. Placing a Stumbling Block

*Minhat Yizhak*, V, no. 14, suggests that utilization of an answering machine may be tantamount to “placing a stumbling block before the blind” since a non-observant Jew may leave a message on the Sabbath. *Pri Megadim*, *Orah Hayyim*, *Eshel Avraham* 443:5, citing *Mishneh le-Melekh*, *Hilkhoh Kela'im* 1:6, asserts that, according to Rambam, when removal of a stumbling block is feasible, even passive non-intervention constitutes a transgression of that prohibition.<sup>3</sup> A recording directing the person telephoning to leave a message is an even more direct placement of a stumbling block. Nevertheless, *Minhat Yizhak* finds no reason to forbid use of an answering machine on that account. He regards the matter as comparable to a person who proffers a glass of wine while both he and the Nazarite are standing on the same bank of a river. Since the Nazarite could reach the wine himself if he so desired, the act of handing the wine to him is proscribed only by virtue of rabbinic edict. Similarly, *Minhat Yizhak* presumably reasons that since there is no actual facilitation of the performance of a forbidden act, any assistance rendered is only rabbinically prohibited.<sup>4</sup> Such assistance, argues *Minhat Yizhak*, is rabbinically proscribed only when it is a certainty that it will aid a transgressor.<sup>5</sup> Accordingly, since it is not at all clear that a Jew will telephone on *Shabbat*, *Minhat Yizhak* permits use of an answering machine to record telephone messages over the course of *Shabbat*. *Shevet ha-Levi*, V, no. 28 and *Bet Avi*, II no. 54 and IV, no. 69, similarly find no problem with the use of an answering machine on *Shabbat*.

The issue of “placing a stumbling block before the blind” is dismissed for a more fundamental reason by Rabbi Feinhandler in his contribution to *Oraita*. The prohibition, argues Rabbi Feinhandler, is limited to physically assisting another individual in committing a transgression or in proffering a forbidden substance to another person for purposes of transgression. A person performing an act or acquiring an object for his own benefit is not placing a stumbling block before another; rather, the second party who improperly seizes something not intended for him creates his own stumbling block. The fax machine is connected for the benefit of its owner and made available to non-Jews for their use. Accordingly, unauthorized and undesired use by a Jew does not reflect a violation of the prohibition against placing a stumbling block before

the blind. The effect of Rabbi Feinhandler's argument is to render use of a fax machine permissible even in situations in which a Jew has indicated in advance his intention to send a fax on *Shabbat*. Rabbi Grubner, *Knesset Yeheskel*, no. 26, sec. 4, similarly remarks that there is no transgression of the prohibition in a situation in which "the Nazarite comes to the house of his friend and of his own accord takes wine."

### 3. The Pre-Recorded Message

Use of a fax machine to receive fax messages on *Shabbat* in the conventional manner involves an additional problem. The generation of a fax message involves an act of "writing." A directive even to a non-Jew to perform a forbidden act on *Shabbat* for the benefit of a Jew is forbidden. Thus, a pre-recorded message directing the caller to transmit the fax might constitute a directive to perform a forbidden act. Nevertheless, once it is established that the fax machine need not be disconnected, it seems to this writer that a pre-recorded message indicating that a fax can be sent is not a directive to the caller to perform that act on *Shabbat*. Hence, the caller who sends a fax on *Shabbat* does so at his own discretion at a time when the act cannot be prevented by the Jewish recipient.<sup>6</sup>

### 4. Noise Emitted by the Device

Rabbi Feinhandler considers the possibility of a problem posed by the fact that a fax machine, when connected, may emit a faint humming sound. Rema, *Orah Hayyim* 252:5 rules that kernels of wheat may not be placed in a water mill to be ground over the course of *Shabbat* without further human involvement because a person hearing the noise generated by the grinding will suspect that the Jew is manually grinding wheat on *Shabbat*. *Bet Avi*, V, no. 75, expresses concern for "degradation of the Sabbath" (*ziluta de-Shabbat*) and permits use of a fax machine only if it is kept in a locked room so that receipt of a fax will neither be heard nor seen. Rabbi Feinhandler notes that noise quite similar to that produced by a fax machine is also emitted by a refrigerator and dismisses the problem with the observation that the prohibition is limited to situations involving loud noise clearly audible from a distance. It should also be noted that Rema explicitly permits use of a clock that announces the time "since everyone knows that the practice is to prepare it the day before." The same is certainly true of appliances such as refrigerators and fax machines that remain in constant operation.

## 5. Additional Considerations

*Helkat Ya'akov* expresses disapproval of use of telephone answering machines on *Shabbat*, particularly when used for business purposes. *Helkat Ya'akov* somewhat tentatively suggests that the mere fact that some commercial affairs are conducted on *Shabbat*, albeit automatically and without any human involvement, is forbidden according to Ramban's interpretation of the positive commandment of *shabbaton* as presented in the latter's commentary on Leviticus 23:24. Ramban develops the thesis that the commandment to observe a day of rest generates restrictions beyond those established by the prohibition of specific forms of labor. Ramban notes that a person might engage in normal mundane activities the entire Sabbath day without committing an infraction involving transgression of the prohibition against forbidden forms of labor. Accordingly, declares Ramban, the commandment with regard to observing a day of rest is designed to assure that the day be "a day of repose and rest, not a day of travail." Although Ramban's comments refer only to human activities that are mundane in nature, *Helkat Ya'akov* seeks to interpret them as encompassing anything that would mar the spirit of the day.

*Helkat Ya'akov* further asserts that such matters constitute prohibited "weekday activities." *Helkat Ya'akov* also contends that, in the eyes of the untutored, use of such devices also appears to involve activities prohibited on *Shabbat*. Moreover, *Helkat Ya'akov* regards such matters as a violation of the commandment to "Remember the Sabbath day to keep it holy" (Exodus 20:8) that mandates that "your actions on *Shabbat* shall not be as [your actions] on a weekday."<sup>7</sup> Those comments are cited with apparent approbation by *Minhat Yitzhak*.<sup>8</sup> *Shevet ha-Levi*, on the other hand, dismisses the notion that the use of an answering machine on *Shabbat* might constitute a prohibited form of commercial activity with a *reductio ad absurdum*: Were use of answering machines forbidden, making a mailbox available for delivery of mail on *Shabbat* should also be forbidden for the identical reason.

Rabbi Brandsdorfer goes even further in asserting that even if it is certain that no fax will be received on *Shabbat* the machine should nevertheless be disconnected. In support of that extreme view he cites the terminology employed by *Mekhilta*, *Ki Sisa*, *parashah* 1. The *Mekhilta* declares that *Shabbat* enhances the holiness of Israel. By virtue of the fact that a Jew's "store is closed on *Shabbat* . . . he testifies that [God] created His universe in six days." Rabbi Brandsdorfer asserts that disconnecting a fax machine similarly constitutes such testimony.

A number of other rabbinic writers who have addressed this question also advise against use of such devices, albeit for reasons that are less than compelling. Rabbi Grubner notes that R. Moshe Feinstein, *Am ha-Torah*, no. 9 (5739), reprinted in *Iggerot Mosheh, Orach Hayyim*, IV, no. 60, expressed grave reservations with regard to use of automatic devices on *Shabbat*. However, that view has not been widely accepted among halakhic decisors. Automatic transmission of a fax message on *Shabbat* is also forbidden by Rabbi Birnbaum, in his article in *Ha-Ma'or*. In his brief contribution to *Or Yisra'el*, Rabbi Savitsky recognizes that the practice is permissible but declares that such is not the wont of the pious. Citing *Helkat Ya'akov's* earlier discussed remarks with regard to, telephone answering machines, Rabbi Raskin, in his article in *Oholei Shem*, observes that their use would serve to denigrate the sanctity of the Sabbath. In his contribution to *Ha-Pardes*, Rabbi Meyers concedes that there are grounds to permit a fax machine to remain operational over *Shabbat* but nevertheless advises that the machine be turned off since allowing it to remain connected may lead to serious transgression. Rabbi Padwa, *Teshuvot Heshev ha-Efod*, III, no. 86, comments cryptically that any person who employs a fax machine on *Shabbat* will "undoubtedly . . . come to severe transgressions." However, even were there to be cogent concern with regard to possible transgression, in the absence of a statutory basis, the practice may only be discouraged but should not be banned. Taken collectively, the considerations addressed by these writers serve at most to establish grounds for eschewing use of such devices as a pietistic practice but fall short of establishing a normative prohibition.

## II. TRANSMISSION OVER DIFFERENT TIME ZONES

It is also permissible to transmit a fax before or after *Shabbat* even though it is *Shabbat* in the locale in which the fax is received, provided that transmission of the fax will not lead to desecration of the Sabbath on the part of the recipient. In addition to the earlier-cited authors that question is also addressed by R. Shlomoh Wahrman, *She'erit Yosef*, VI, no. 4, published as an appendix to his *Orot Hag ha-Sukkot* (New York, 5760). The basic principle is that forbidden forms of labor are prohibited only when the physical act is performed on *Shabbat*. Thus, to take the classic example addressed by *Nimukei Yosef*, *Bava Kamma* 23a, a person may light a candle on Friday even though it will continue to burn on the Sabbath, since the act of kindling is performed on a week-

day.<sup>9</sup> For the same reason *Shulhan Arukh, Orach Hayyim* 252:5, rules that one may open an irrigation canal on Friday and allow the water to flow through the garden on *Shabbat*. Similarly, a physical act performed in a locale in which it is a weekday, even though its effect is actualized in a locale in which it is *Shabbat*, is entirely permissible.

Although it is clearly permissible to send a fax before or after *Shabbat* to a locale in which it is *Shabbat*, Rabbi Brandsdorfer, *Mevakshei Torah*, vol. 2, no. 8, questions whether the fax may be read by the recipient. Rabbi Brandsdorfer draws an analogy to the situation of a person who lives in the Diaspora who must observe the second day of *Yom Tov* even when visiting *Erez Yisra'el*. According to most authorities, such a person may not derive benefit from an act that he himself may not perform but which is performed on his behalf by a resident of *Erez Yisra'el* for whom the day is not *Yom Tov*.

Responding in the following issue of *Mevakshei Torah*, Rabbi Diskin, a *rosh yeshivah* at *Yeshivat Kol Torah* and the author of *Mas'et ha-Melekh* on the Rambam's *Mishneh Torah*, cogently distinguishes between the two situations. For the resident of the Diaspora the second day of *Yom Tov* is a day on which forbidden forms of labor may not be performed. Hence any labor performed on that person's behalf was performed on a day that, for that individual, is *Yom Tov*. The recipient of a fax on *Shabbat* sent from a locale where it is not *Shabbat* derives benefit from an act performed in a place in which it is not *Shabbat* for anyone. For all persons, *Shabbat* is determined by the beginning and end of the seventh day at a particular latitude and longitude. There are no restrictions upon acts performed at that locale when it is not *Shabbat* in that place. *Shabbat* at any place on the globe is determined by local time even for a person who is not physically present in that locale.<sup>10</sup>

### III. MUKZAH

Although allowing a fax machine to remain operative over *Shabbat* is permitted by most of the scholars who have addressed the issue, on first analysis it would seem that a fax that is received on *Shabbat* is *mukzah* and hence may not be moved or handled on *Shabbat*. All writing paper is *mukzah* by virtue of the fact that such paper is designed exclusively for a use that is forbidden on *Shabbat*, i.e., the paper will not willfully be used for any other purpose because any other use would constitute economic waste (*mukzah mahmat hisaron kis*). Since an item that is *mukzah* between sunset and dark is *mukzah* the entire day, it should follow that

the paper on which the fax message is received is *mukzah* for the entire Sabbath day. That is, indeed, the position espoused by Rabbi Lau, *Tehumin*, vol. XII, and Rabbi Grubner, *Knesset Yehezkel*, no. 27, sec. 1.

*Shulhan Arukh ha-Rav*, *Orah Hayyim* 308:6, regards writing paper as *mukzah*, for yet another reason. In order to use any object on *Shabbat* it must be "prepared" for use in advance, i.e., the object must have some utilitarian purpose before the onset of *Shabbat*. Any item that has no utilitarian purpose, e.g., a stone or a piece of wood, is *mukzah* unless designated in advance for some permitted use, e.g., as a doorstop. Despite the fact that, on weekdays, writing paper has a highly significant practical purpose, nevertheless, with the advent of *Shabbat*, since the paper may no longer be used for writing, writing paper loses all utilitarian value. Accordingly, *Shulhan Arukh ha-Rav* regards the status of writing paper on *Shabbat* to be identical to that of stones or pieces of wood.<sup>11</sup>

However, writing in *Or Yisra'el*, Rabbi Moseson argues that neither consideration applies to fax paper and hence that fax paper is not *mukzah*. Assuming that the fax machine may remain connected over *Shabbat*, the owner of the machine anticipates, and indeed desires, that the paper in the machine be used for a legitimate beneficial purpose over the course of *Shabbat*. Hence the nature of paper in a fax machine is different from that of ordinary writing paper. Writing paper cannot be used for its designated purpose on *Shabbat* and since, because of its inherent value, it is reserved solely for that impermissible purpose, it has no functional purpose. Fax paper does, however, have a permissible purpose, i.e., to be used for receiving permissible fax transmissions. The consideration of *Shulhan Arukh ha-Rav* is similarly inapplicable. In inserting paper in a fax machine the owner has designated the fax paper for a permissible utilitarian use over the course of *Shabbat* and hence such paper is not comparable in status to stones or pieces of wood.

There is yet another category of *mukzah* that is known by a different term, viz., *nolad*. Included in that category are things that are "born" or come into existence on *Shabbat*. The primary example is an egg that is laid by a hen on *Shabbat*. Rabbi Grubner asserts that, since the letter or message printed by the fax machine did not at all exist prior to the advent of *Shabbat*, the faxed message should be regarded as *nolad* and hence *mukzah*. Rabbi Grubner, however, does not forbid handling a fax message on *Shabbat* because he is willing to rely on the authorities who, in disagreement with Rema, *Orah Hayyim* 575:4, prohibit *nolad* only on *Yom Tov* but not on *Shabbat*.<sup>12</sup>



Nevertheless, the contention that a fax message is in the category of *nolad* may be rebutted on a variety of grounds. Citing *Shulhan Arukh ha-Rav, Kuntres Aharon, Orach Hayyim* 497:6, Rabbi Raskin argues that no item can be regarded as *nolad* unless it acquires a new use on *Shabbat*. The item to be moved, *viz.*, the fax paper, has acquired no new use since its sole purpose, and the purpose for which it was designated before *Shabbat*, is to receive fax messages. Rabbi Moseson dismisses the suggestion that a faxed message should not be handled on *Shabbat* because the letters imprinted on the paper should be regarded as *nolad* by virtue of the fact that they were produced on *Shabbat*. He observes that no transgression is involved in moving the ink since the ink “has no substance” (*ein bo mamash*), i.e., the ink imprinted on the paper is intangible. Rabbi Feinhandler resolves the problem somewhat differently in arguing that nothing is “born” in the printing of a fax message since both the paper and the ink were present and available before *Shabbat*. Hence, argues Rabbi Feinhandler, the printed message is merely the combination of substances that were both present and available before *Shabbat*.<sup>13</sup>

#### IV. READING THE FAX

To state that a fax machine may remain connected and operational over *Shabbat* does not necessarily mean that a fax received on *Shabbat* may be read during the course of the Sabbath day or even upon expiration of the Sabbath. Letters and documents pertaining to business matters may not be read on *Shabbat*. As recorded in *Shulhan Arukh, Orach Hayyim* 307:13, it is also forbidden to read “friendly letters” on *Shabbat* because they are readily confused with letters pertaining to business affairs. Not prohibited is the reading of letters dealing with matters pertaining to physical needs as distinct from matters pertaining to money or property. It is, however, permitted to glance at a letter in order to determine its nature provided that one ceases further reading if and when the prohibited nature of the letter becomes evident. It is quite obvious that the same provisions apply with regard to the reading of fax messages on *Shabbat*.

*Bet Avi*, Rabbi Lau and Rabbi Feinhandler rule that a fax sent by a Jew in violation of Sabbath restrictions may not be read regardless of its content. Rabbi Grubner tentatively reaches the same conclusion. Rabbi Feinhandler and Rabbi Raskin further observe that the fax may not be read even after *Shabbat*. The general rule as formulated with regard to cooking on *Shabbat* and recorded in *Shulhan Arukh, Orach Hayyim*

318:1, provides that food cooked by a Jew in willful transgression of *Shabbat* restrictions is forever forbidden to that person but is permitted to others immediately after *Shabbat*. The food is permitted to others after *Shabbat* because there is no reason to fear that the Jew may request the transgressor to cook again on his behalf at some future occasion since “no person sins when he has no benefit.” Accordingly, *Pri Megadim*, *Orah Hayyim*, *Eshel Avraham* 325:22, rules that if food is cooked on behalf of a Jew by an apostate the person for whom the food was prepared may never partake of the food for fear that, if he is allowed to benefit from the forbidden act, the Jew may request the apostate to cook on his behalf on some future occasion. Since the person who cooked the food is an apostate the principle that a person does not transgress other than for personal benefit is not applicable.

Rabbi Feinhandler cogently argues that *Pri Megadim*’s ruling applies to contemporary Sabbath violators even if they are adjudged to be “children captured by the heathens.” A person totally ignorant either of the nature of Sabbath restrictions or of the severity of the transgression will have no compunction with regard to future violation. Hence the food is forbidden to the person for whose benefit it was prepared lest he request a similar benefit in the future. Accordingly, Rabbi Feinhandler concludes that, when it is known that the sender is a Jew, a fax sent by a Jew on *Shabbat* may never be read. He similarly concludes that a person may not listen to a message left on a telephone answering machine if he knows with certainty that it was recorded by a Jew on *Shabbat*. The recipient of a fax sent on *Shabbat* may, however, request that the fax be resent since any benefit accruing to him will be from the second fax rather than from the first.

Rabbi Brandsdorfer observes that a fax sent by a non-Jew may also not be read on *Shabbat*. As recorded in *Shulhan Arukh*, *Orah Hayyim* 325:5, a Jew may not derive benefit from a forbidden act performed on his behalf on *Shabbat* even if he has not requested the non-Jew to provide the benefit on his behalf. He may, however, derive benefit from the act after *Shabbat*, provided that he does not do so until a period of time sufficient to perform the act after *Shabbat* has elapsed. Obviously, with regard to transmission of a fax, that period of time is rather brief.

## V. DELAYED TRANSMISSION

A further question addressed by many of these writers is the propriety of setting a fax machine before *Shabbat* to transmit fax messages later in

the day, i.e., when it is already *Shabbat*, in order to take advantage of lower evening rates. Rabbi Lau correctly notes that delayed transmission of a fax is essentially the same as the widely accepted use of a timer or *Shabbat* clock<sup>14</sup> and, accordingly, he has no difficulty in permitting the practice, at least when the recipient is aware of the fact that the message has been transmitted automatically. The practice is also permitted by Rabbi Leizerowsky and Rabbi Feinhandler.

Rabbi Brandsdorfer, however, compares the practice to the performance of an act of labor by a non-Jew in the home of a Jew. Such an act is prohibited even when performed by a non-Jew who is not subject to the direction or control of a Jew on the grounds that an uninformed observer is likely to assume that the labor is being performed at the direction of a Jew. Similarly, argues Rabbi Brandsdorfer, an observer at the receiving end of the fax transmission may suspect that it was sent without benefit of an automatic timer. Rabbi Diskin rebuts that contention with the observation that the Sages prohibited labor performed by a gentile but did not prohibit labor performed by an inanimate object. The underlying principle invoked by Rabbi Diskin, i.e., that matters not encompassed within the ambit of a rabbinic prohibition remain permissible, is beyond dispute.<sup>15</sup>

## FISH OR MEAT AT A BRIT MILAH REPAST?

Performance of certain *mizvot*, including circumcision, is traditionally accompanied by a festive meal. *Hokhmat Adam* 149:24 emphasizes that the repast should be a meal in the halakhic sense of the term, i.e., that it must be served with bread as distinct from a collation consisting of coffee or whisky and pastries or the like. He adds that a person who can afford a proper repast but seeks to economize by offering his guests less than usual “does not act properly” and that R. Elijah of Vilna protested against such behavior.<sup>16</sup>

*Hokhmat Adam* strongly decries the conduct of those who fail to serve a proper meal in conjunction with a circumcision but falls short of a condemnation for failure to fulfill a statutory obligation. Indeed, the halakhic origin and status of the meal offered guests upon the occasion of a circumcision is a matter of some controversy. As recorded in *Pirkei de-Rabbi Eli'ezer*, chapter 29, rabbinic interpretation of the phrase “*be-yom higamel et Yizhak*” in the verse “and Abraham made a great feast

on the day Isaac was weaned" (Genesis 21:8) establishes that Abraham made a "great banquet" on the day of his circumcision of Isaac. Although this rabbinic comment does not unequivocally establish a normative obligation, *Sha'arei Teshuvah*, *Orah Hayyim* 551:33, cites one authority who maintains that the repast is "a biblical *mizvah*." *Sefer Haredim*, chapter 40, section 3, records participation in a wedding banquet or a circumcision repast in his list of positive commandments derived "from the words of Holy Writ and from the words of the scholars." *Yam shel Shlomoh*, *Bava Kamma* 7:37, similarly writes that, in contradistinction to the celebratory meal accompanying the redemption of a firstborn son, the circumcision repast constitutes a *mizvah* and is predicated upon the verse "I rejoice over your word like one who finds abundant spoils" (Psalms 119:162). On the other hand, *Teshuvot Bet Ya'akov*, no. 73, declares that the status of the repast is rabbinic in nature while *Bi'ur ha-Gra*, *Orah Hayyim* 640:6, states that the repast "is not a biblical *mizvah* and there is no obligation of rejoicing."<sup>17</sup> *Magen Avraham*, *Orah Hayyim* 640:13, interprets *Teshuvot Maharik*, no. 178, as asserting that the meal represents "a mere custom."<sup>18</sup> Elsewhere, *Orah Hayyim* 546:5, *Magen Avraham* declares that a circumcision repast does not entail "rejoicing." However, *Mordekhai*, *Mo'ed Katan*, sec. 891, asserts that a mourner may not partake of a meal served in conjunction with a circumcision precisely because it involves rejoicing. That contention is based upon the interpretation by the Gemara, *Shabbat* 130a and *Megillah* 16b, of the verse "I rejoice in Your word as one who finds great spoil" (Psalms 119:162) as a reference to circumcision.

At present, it has become the practice to serve the celebratory meal early in the day immediately following the circumcision. At that early hour many people find it difficult to eat a heavy meal and hence the repast often features fish rather than meat. The question of whether the circumcision meal must include meat or whether fish or dairy dishes may be served in satisfying the requirement is posed by R. Alexander Eliezer Knopfler in the Tammuz 5758 issue of *Or Yisra'el*, published by Machon Or Yisra'el located in Monsey, New York. Responses by R. Abraham David Horowitz of Strasbourg, R. Yitzchak Ya'akov Neiman of Montreal, R. Joseph Lieberman of Jerusalem, R. Gavriel Zinner of Brooklyn and R. Yochanan ha-Levi Wosznier of New Square appear in the same issue. A brief comment by R. Yitzchak Tessler of Monsey appears in the Tishri 5759 issue of the same journal. The topic is also addressed by R. Elyakim Dworkes, *Be-Shevilei ha-Halakhah*, II

(Jerusalem, 5752). However, apart from additional bibliographic sources and several interesting anecdotal tidbits, those responses add little to the earlier succinct but comprehensive treatment of this topic by R. Moshe Bunim Pirutinsky included in his encyclopedic work on the laws of circumcision, *Sefer ha-Brit* (New York, 5733) 265:162. Many of the considerations and sources also pertain to the proper mode of satisfying the requirement of serving a festive meal in conjunction with fulfillment of other *mizvot*, particularly with the celebratory meals served during the post-nuptial week.

The question has its roots in the issue of whether or not there exists a requirement for eating meat in conjunction with the *Yom Tov* meal.<sup>19</sup> As recorded by the Gemara, *Pesahim* 109a, during the period in which sacrifices were offered the commandment to “rejoice before the Lord your God” (Deuteronomy 27:7) was fulfilled by males in partaking of the meat of peace-offerings to which reference is made in that verse. *Tosafot*, *Yoma* 3a, and Rabbenu Nissim, *Sukkah* 42b, maintain that, even during the days of the Temple, eating meat on *Yom Tov* was not an absolute requirement; rather, as characterized by Rabbenu Nissim, eating meat was merely the optimal mode of fulfilling the obligation. Citing a further statement of the Gemara, *Pesahim* 109a, Ritva, *Kiddushin* 3b, and *Teshuvot Rashbash*, no. 176, rule that, following the destruction of the Temple, “there is no rejoicing other than with wine.”<sup>20</sup> On the other hand, Rambam, *Sefer ha-Mizvot*, *mizvot aseh*, no. 54 and *Mishneh Torah*, *Hilkhot Yom Tov* 6:18, followed by *Tur Shulhan Arukh*, *Orah Hayyim* 529, regards the eating of meat on *Yom Tov* as mandatory even in our day.<sup>21</sup> Among latter-day authorities, *Magen Avraham*, *Orah Hayyim* 696:15, states that, subsequent to the destruction of the Temple, there is no obligation to eat meat on festivals.<sup>22</sup> That statement is however contradicted by two other comments of the same authority, *Magen Avraham*, *Orah Hayyim* 249:6 and *Orah Hayyim* 529:3, in which he affirms the existence of such an obligation even in our day.<sup>23</sup>

*Yam shel Shlomoh*, *Beizah* 2:5, develops the thesis that every joyous repast requires meat but that, subsequent to the destruction of the Temple, there is an additional requirement to drink wine in order to dispel melancholy. *Magen Avraham*, *Orah Hayyim* 249:1, cites Maharam of Lublin who maintains that the “*mizvah* of rejoicing [on the occasion] of a circumcision cannot be fulfilled with dairy dishes.”<sup>24</sup> R. Jacob Emden, *Migdal Oz*, *nahal* 9, sec. 17:3, declares that both meat and wine must be served at a *se’udat mizvah*.<sup>25</sup> *Migdal Oz* comments that a banquet is termed a “*mishteh*,” as in Genesis 21:8, because of the drink that is

served. He assumes that the noun "*mishteh*" is derived from the verb "*shatoh*," meaning "to drink." *Migdal Oz* finds an allusion to partaking of meat in particular at a circumcision repast in Psalms 50:5 which he renders as "those who enter into a covenant with Me by slaughter."

*Torat Hayyim*, *Orah Hayyim* 551:26, draws attention to the ruling of Rema, *Orah Hayyim* 551:10, to the effect that during the week in which the ninth of Av occurs no more than ten persons are permitted to eat meat or drink wine on the occasion of a *se'udat mizvah*. *Torat Hayyim* argues that, were it possible to satisfy the requirements of a *se'udat mizvah* in some other fashion, it would not be necessary to modify the restriction against eating meat during the period of mourning even to the extent of permitting a bare quorum of ten to partake of meat. The clear implication is that Rema regards the eating of meat as intrinsic to the nature of a *se'udat mizvah*.

The compiler of *Zemiroth Divrei Yo'el* (New York, 5750), *Brit Milah*, sec. 205, reports that the late *Satmarer Rebbe*, Rabbi Joel Teitelbaum, was once present at a *brit* at which dairy food was served. In answer to the *Satmarer Rebbe's* query with regard to the lack of meat the father informed him that he could not afford the additional expense of a meat meal. The *Satmarer Rebbe* is reported to have responded that, had he been aware of the need, he would have himself provided sufficient funds for "a complete meal of fish and meat."<sup>26</sup>

R. Shimon Konitz, *Ot Brit* 265:14, indicates that the practice of serving dairy dishes in conjunction with a circumcision developed on the basis of reliance upon the position of Rif and Rosh<sup>27</sup> who maintain that, subsequent to the destruction of the Temple, meat is not integral to the obligation of rejoicing. *Ot Brit*, however, does insist that the drinking of wine is obligatory on such occasions. This is also the position of R. Abraham Anshel Grunwald, *Zokher ha-Brit* 25:9.

The Gemara, *Ta'anit* 30a, declares that salted meat may be eaten on the day preceding the ninth of Av on the grounds that partaking of preserved meat does not give rise to "rejoicing." It would then follow that, for purposes of a *se'udat mizvah*, delicatessen is no more appropriate than are dairy dishes. However, *Tosafot, ad locum*, declare that "in our times, since we are accustomed to eat meat that has been preserved for a lengthy period of time, such meat is prohibited in the period preceding the ninth of Av. Accordingly, notes Rabbi Pirutinsky, "perhaps" such meat may appropriately be served at a *brit* or other *se'udat mizvah*.<sup>28</sup>

The Gemara, *Haggigah* 8a, declares that the meat of fowl may not be used to satisfy the requirement of the *Yom Tov* repast. Two separate

opinions are adduced by the Gemara in support of that exclusion. The first is based upon rabbinic exegesis establishing that only meat of a species from which the festival sacrifice may be brought can be used to satisfy the obligation of rejoicing. The second opinion, recorded in the name of Rav Ashi, declares simply that there is no "rejoicing" in the consumption of the meat of fowl.<sup>29</sup> Rabbi Pirutinsky insightfully notes that, according to the first opinion, there is no reason to assume that partaking of fowl does not engender happiness and rejoicing; fowl are excluded from use in fulfilling the *Yom Tov* obligation for an entirely different reason having no bearing upon utilization of fowl in conjunction with a *se'udat mizvah*.<sup>30</sup> However, according to the second opinion, fowl do not serve to generate happiness or rejoicing<sup>31</sup> and hence are no different from dairy dishes insofar as a *se'udat mizvah* is concerned.<sup>32</sup>

These various sources notwithstanding, serving meat at a *brit* was far from a universal practice even in previous generations. R. Moshe Sofer, *Teshuvot Hatam Sofer, Orah Hayyim*, no. 69, was consulted with regard to the propriety of serving dairy dishes at a *brit milah* performed on the Sabbath. The inquiry was prompted by an interesting set of circumstances. The community in which the *brit* was to be performed regularly conducted the morning service at an early hour in order to complete the service before expiration of the period in which the *shema* must be recited. They then assembled again later in the morning for the *musaf* service. The issue was whether or not it was appropriate to partake of a meal prior to recitation of the *musaf* service. The interlocutors preferred to serve the *se'udat mizvah* at an early hour because they would be expected to present "fish and meat" at a meal served on *Shabbat* at a later hour and they did not wish to incur that expense. *Hatam Sofer* permitted the practice precisely because only dairy food was to be served. *Hatam Sofer* ruled that a meal featuring only dairy dishes does not constitute the type of meal prohibited before *musaf* even when those foods are accompanied by bread.<sup>33</sup> He also stipulated that wine not be served. It is thus evident that *Hatam Sofer* did not regard either meat or wine as *de rigeur* at a *se'udat mizvah*.

There are also reports in a number of sources, including *Brit Avot* in the name of *Erez ha-Hayyim*, *Yoreh De'ah*, p. 95, as well as *Zekher ha-Brit*, *Hilkhos Milah* 25:7, indicating that R. Nissim Azulai, author of *Shulhan ha-Tahor al Taryag Mizvot*, promulgated a formal edict in Safed forbidding the presentation of foods other than fish at the repast served in conjunction with a *brit*. His stated reason was a desire to prevent embarrassment of those who could not afford more expensive dishes.

These authorities may have relied upon the position of the decisors who maintain that, in our day, meat is not a *sine qua non* of “rejoicing.” However, it is unlikely that this was the rationale underlying *Hatam Sofer*’s ruling since he also dispenses with the requirement regarding the drinking of wine. Alternatively, it may be the case that these authorities maintained that “rejoicing” is not a concomitant of the repast accompanying a circumcision. *Hatam Sofer*’s disciple, R. Moshe Schick, *Teshuvot Maharam Shik, Yoreh De’ah*, no. 366, citing *Magen Avraham, Orach Hayyim* 546:5, adduces the latter consideration as an apologia (*limmud zekhut*) for those who serve dairy dishes rather than meat on such occasions.

As noted earlier, the practice of serving a festive meal in conjunction with a *brit* is derived from the verse “And Abraham made a great feast on the day that Isaac was weaned” (Genesis 21:8). *Pirkei de-Rabbi Eli’ezer* understands the Hebrew “*bigamel*” (literally: he was weaned) as a combination of the letters “*heb*” (having the numerical equivalent of five) and “*gimmel*” (having the numerical equivalent of three) and the word “*mal*” (meaning “he circumcised”) which renders the entire verse as “And Abraham made a great feast on the day “*heb gimmel*” (having the numerical equivalent of eight) in which he circumcised Isaac. That comment is cited by *Tosafot, Shabbat* 130a, s.v. *sas anokhi*. Similar statements regarding a festive meal in conjunction with a *brit* are found in *Midrash Tehillim*, no. 112, and *Yalkut Shim’oni, Parashat Lekh Lekha*, no. 81. Indeed, the Gemara, *Ketubot* 8a, declares that inclusion of the phrase “Let us praise our God in whose habitation there is joy” in conjunction with recitation of Grace after Meals would have been required on such occasions if not for the fact that the circumcised child experiences pain.<sup>34</sup>

Although the point is not made explicitly in earlier sources, it seems to this writer that, unlike the requirement of “rejoicing” on *Yom Tov*, which is obligatory, the festive repast accompanying fulfillment of *mizvot* such as circumcision and redemption of the first-born constitute a “*mizvah kiyyumit*” rather than a “*mizvah hiyyuvit*”, i.e. one who participates in such a repast fulfills a *mizvah* but nevertheless the repast is not mandatory in nature.<sup>35</sup> This thesis is formulated by *Shulhan Gevoha, Yoreh De’ah* 265:12, and accounts for the terminology employed by *Shulhan Arukh, Yoreh De’ah* 265:12, in declaring, “It is *customary* to serve a meal on the day of the circumcision” as well as for the willingness of the authorities cited earlier in this discussion to rely upon permissive views with regard to the requirements for the repast.



## CIRCUMCISION OF A CHILD BORN SINE CONCUBITO

In vitro fertilization was successfully accomplished for the first time less than thirty years ago. Artificial insemination was performed for the first time in London in 1790. Both procedures were unknown during the talmudic period. Nevertheless, the Gemara, *Haggigah* 14b, queries whether a high priest is permitted to marry a pregnant virgin. The Gemara considers it possible that the woman may have become pregnant as a result of bathing in water into which a man had previously discharged semen. There is also a midrashic source that relates that Ben Sira was conceived *sine concubito* by the daughter of Jeremiah and that the child's father was Jeremiah himself. Jeremiah, it is reported, was forced by a band of wicked men to ejaculate in a bath and his daughter became pregnant when she subsequently bathed in the same bathhouse.<sup>36</sup>

Rabbeinu Hananel, *Haggigah* 16a, explains the Gemara's remarks concerning a woman who conceives from semen emitted in a bath in a manner that has practical halakhic ramifications with regard to a child born of in vitro fertilization and perhaps for a child born of artificial insemination as well. Rabbeinu Hananel, who apparently had a different manuscript version of the talmudic passage, understands the Gemara's question to be focused upon whether or not a woman who gives birth to a child conceived *sine concubito* is subject to the ritual defilement associated with childbirth. According to Rabbeinu Hananel, the term "*isha ki tazri'a*" (Leviticus 12:2) connotes pregnancy resulting from natural fertilization of the ovum but excludes a woman who conceives as a result of unnatural "miraculous" fertilization in the manner described by the Gemara.

Rabbi Leib Baron, in his most recent volume, *Nezah Ya'akov* (Jerusalem, 5757), no. 35, notes that, according to Rabbeinu Hananel, a child conceived from semen emitted into bath water may not be circumcised on *Shabbat*. The Gemara, *Shabbat* 135a notes the juxtaposition of the regulation concerning ritual impurity occasioned by childbirth recorded in Leviticus 12:2 and the immediately following statement "And on the eighth day the flesh of his foreskin should be circumcised" (Leviticus 12:3) and declares that a child may be circumcised on the eighth day when it occurs on *Shabbat* only if the baby's birth occasioned ritual impurity of the mother. As stated by the Gemara, *Niddah* 40a, a woman who gives birth by Cesarean section does not become ritually impure because talmudic exegesis understands Leviticus 12:2 as declaring that only a woman who "gives birth from the place in which she

conceives" becomes ritually impure. Rabbeinu Hananel interprets that statement in a novel manner and regards it as disassociating all forms of unnatural procreation from ritual impurity. The Gemara declares that, since a woman who delivers by Cesarean section does not become ritually impure, the baby born in that manner may not be circumcised on *Shabbat*. Rabbi Baron observes that it therefore follows that, according to Rabbeinu Hananel, a child born as a result of emission of semen in bath water should similarly not be circumcised on *Shabbat*. Rabbi Baron further notes that, according to Rabbeinu Hananel, the status of a child conceived in a petri dish is identical to that of a child conceived from semen emitted into bath water, i.e., the mother is not subject to ritual impurity occasioned by childbirth<sup>37</sup> and hence should not be circumcised on *Shabbat*.<sup>38</sup> Indeed, in vitro fertilization is even more unnatural than bathhouse pregnancy. In the latter case, conception takes place within the mother's body; in the case of in vitro fertilization conception takes place externally and, according to Rabbeinu Hananel, is certainly not encompassed within the meaning of "*isha ki tazri'a*."

R. Shlomoh Zalman Auerbach, *Minhat Shlomoh*, III, no. 98, sec. 4, makes the same point, albeit somewhat tentatively with regard to pregnancy resulting from artificial insemination and questions whether a boy conceived in that manner should be circumcised on *Shabbat*. Artificial insemination is entirely analogous to bath house insemination. In both cases conception occurs internally; in both cases pregnancy occurs *sine concubito*. Since it is the absence of a sexual act that places the conception outside the ambit of "*isha ki tazri'a*," it should follow that, according to Rabbeinu Hananel, neither a child born of in vitro fertilization nor a child born of artificial insemination should be circumcised on *Shabbat*.

According to the manuscript versions accepted by Rashi, *Tosafot* and other early-day commentators, there seems to be no basis for the halakhic ramifications that flow from Rabbeinu Hananel's interpretation of his version of the talmudic text. Nevertheless, since the classical codifiers of Halakhah omitted any reference to the matter, Rabbi Baron is certainly correct in adopting the position that the opinion of an early-day authority of the stature of Rabbeinu Hananel should not be ignored, particularly when a possible biblical transgression of *Shabbat* laws is involved. Parents who do not wish it to be known that the child was conceived other than in the usual manner may offer other reasons, e.g., the residual presence of physiologic jaundice, in explanation of why the circumcision is delayed until Sunday.

NOTES

1. The articles appearing in *Ha-Pardes*, *Ha-Ma'or*, *Oholei Shem*, *Mevakshei Torah*, *Knesset Yehezkel* and *Or Yisra'el*, II Adar 5759, were written in response to a query by R. Abraham Moses Krauss, formerly a member of the *Bobover kollel* in Antwerp and now of London. I am indebted to R. Moshe Shapiro of the Mendel Gottesman Library of Yeshiva University and to my son, R. Moshe Bleich, for bringing a number of these sources to my attention.
2. *Helkat Ya'akov* clearly equates creation and extinguishing of sparks with the creation and extinguishing of a flame. That question is, however, the subject of some controversy among contemporary rabbinic scholars. For a discussion of the issue see *Encyclopedia Talmudit*, XVIII, 171-173.
3. See also *Sedei Hemed*, *Kuntres ha-Kelalim*, *Ma'arekhet Vav*, klal 26, sec. 25.
4. *Shakh*, *Yoreh De'ah* 151:6, asserts that the prohibition against rendering such assistance is rabbinically forbidden as an extension of the obligation regarding admonition (*tokhahah*) recorded in Leviticus 19:17. Since there is no obligation of admonition with regard to an apostate or a heretic, if present-day Sabbath violators are deemed to be in that category, the rabbinic prohibition against rendering indirect assistance is not applicable. Numerous authorities, including R. Jacob Ettlinger, *Teshuvot Binyan Zion he-Hadashot*, no. 23; R. David Zevi Hoffman, *Melamed le-Ho'il*, *Orah Hayyim*, no. 29; and R. Moshe Feinstein, *Iggerot Mosheh*, *Even ha-Ezer*, II, no. 20, *Orah Hayyim*, I, no. 37, and *Yoreh Deah*, II, no. 8, maintain that contemporary Sabbath desecrators cannot automatically be regarded in that light. See also R. Yechezkel Landau, *Dagul me-Revavah*, in a comment on *Shakh*, *ad locum*, who understands *Shakh's* position as encompassing all willful transgressors. Cf., however, *Magen Avraham*, *Orah Hayyim* 347:4 and *Mishnah Berurah* 147:7 who disagree with *Shakh's* ruling.
5. See also *Birkat Mosheh*, *Kuntres ha-Teshuvot*, no. 21 and R. Shlomoh Kluger, *Teshuvot Tuv Ta'am va-Da'at*, *Mahadura Telita'a*, II, no. 50. Some authorities, including Ritva, *Avodah Zara* 15b, maintain that even a biblically proscribed placement of a stumbling block is permitted when it is not certain that a transgression will result. See R. Yitzchak Eliyahu Adler, *Lifnei Iver*, (Ofakim, 5749), chap. 13. See also R. Zevi Pesach Frank, *Teshuvot Har Zevi*, *Orah Hayyim*, no. 125.
6. Cf., *Minhat Yizhak*, V, no. 14, sec. 7.
7. Cf., *Shabbat* 113a and 113b. The Gemara cites the verse "and you shall honor it, not doing your wonted ways, nor pursuing your business, nor speaking thereof" (Isaiah 58:13) rather than Exodus 20:8 and proceeds to interpret the verse as follows: "And you shall honor it"—that your *Shabbat* clothing should not be as your weekday clothing; 'nor doing your wonted ways'—your Sabbath gait should not be as your weekday gait; 'nor pursuing your business'—your business is prohibited [but] the business of Heaven is permitted; 'nor speaking thereof'—your Sabbath conversation should not be as your weekday conversation."
8. See also *Minhat Yizhak*, I, no. 107 and III, no. 38.

9. See also *Netivot ha-Mishpat* 348:4 and R. Elchanan Wasserman, *Kovez Shi'urim*, *Beizah*, sec. 49.
10. See *Teshuvot Erez Zevi*, no. 44, who permits a person standing on the side of the halakhic dateline on which it is *Shabbat* to direct a person standing on the other side of the dateline to perform an act of labor prohibited on the Sabbath.
11. This was also the opinion of R. Moshe Feinstein as reported by R. Yisra'el Pinchas Bodner, *Halachos of Mukzah* (Jerusalem, 1981), p. 84, note 29.
12. Cf., *Mishnah Berurah* 495:14 and *Arukh ha-Shulhan*, *Orah Hayyim* 495:6.
13. These reasons also serve to explain why a newspaper printed on *Shabbat* is not *nolad*. However, Rabbi Feinhandler endeavors to show that no such problem exists with regard to newspapers because of the failure of R. Moshe Schick, *Teshuvot Maharam Shik*, *Orah Hayyim*, no. 123, to raise the issue of *nolad* as a problem with regard to newspapers printed on *Shabbat*. Although, as noted, the position may be independently correct, no proof can be adduced from *Maharam Shik's* responsum. *Maharam Shik* discusses only the permissibility of reading a newspaper after the Sabbath has drawn to a close. He states explicitly that reading newspapers on *Shabbat* is not under consideration because, in his opinion, "in any event it is forbidden to a Jew to read a newspaper on *Shabbat*." Accordingly, *Maharam Shik* had no cause to address the issue of whether or not the newspaper is *mukzah* on *Shabbat*.
14. See, *inter alia*, R. Moshe Schick, *Teshuvot Maharam Shik*, *Orah Hayyim*, no. 157; R. Joseph Saul Nathanson, *Sho'el u-Meshiv*, *Mahadura Tinyana*, I, no. 5; R. Shimon Grunfeld, *Teshuvot Maharshag*, I, *Yoreh De'ah*, no. 7, sec. 2; R. Shlomoh Zalman Auerbach, *Me'orei Esh*, chap. 5; and R. Ovadiah Yosef, *Teshuvot Yabi'a Omer*, III, nos. 17-18.
15. R. Isaac Liebes, *Bet Avi*, V, no. 75, forbids delayed transmission on the basis of a ruling of *Teshuvot R. Akiva Eger*, no. 159. R. Akiva Eger demonstrates that it is forbidden to enter into a marriage conditioned to take effect on a Sabbath or holy day and concludes that transfer of title designed to become effective on *Shabbat* is also forbidden. [See also R. Abraham Benjamin Samuel Sofer, *Teshuvot Ketav Sofer*, *Orah Hayyim*, no. 46, and R. Jekuti'el Judah Teitelbaum, *Teshuvot Avnei Zedek*, *Orah Hayyim*, no. 74. Cf., however, R. Moshe Schick, *Teshuvot Maharam Shik*, *Orah Hayyim*, no. 131. For further discussions of this issue see *She'arim Mezuyanim be-Halakhah* 80:32; R. Shimon Grunwald, *Teshuvot Maharshag*, I, no. 117; *Teshuvot Helkat Ya'akov*, I, no. 63, and II, no. 102; and *Teshuvot Minhat Yizhak*, III, no. 34.] *Bet Avi* argues that it is similarly forbidden to perform an act prior to *Shabbat* that is designed to cause "labor" to be performed on *Shabbat*. However, this analogy is simply incorrect. A candle may be kindled on Friday even though the flame burns on *Shabbat*. Automatic timers are similarly permitted. Marriage and transfer of title are entirely different. Marriage and transfer of title are not forbidden on *Shabbat* because they constitute acts of labor. Rabbinic decree prohibits effecting the legal change in status reflected in such transactions rather than the act *per se*. Since it is the effect, rather than the act, that is forbidden, opines R. Akiva Eger, marriage and transfer of title are forbidden when the effect takes place on *Shabbat* regardless of when the act is performed.

16. *Shittah Mekubetzet*, *Beizah* 16a, cites Ritva in asserting that the sustenance ordained for an individual on *Rosh ha-Shanah* is exclusive of any expenses incurred in fulfilling a *mizvah* just as it is exclusive of expenditures incurred in honoring the Sabbath and the festivals. See also R. Moshe Bunim Pirutinsky, *Sefer ha-Brit* 265:161.
17. See *Sefer ha-Brit* 265:159.
18. For a conflicting interpretation of *Teshuvot Maharik* see *Eliyahu Rabbah* 640:19. See also R. Shimon Konitz, *Ot Brit* 165:14.
19. That question is more fully discussed in this writer's *Contemporary Halakhic Problems*, III (New York, 1989), 246-256. Cf. also R. Moshe Sternbuch, *Mo'adim u-Zemanim*, VIII, no. 111.
20. Rif, *Pesahim* 109a, and Rosh, *Pesahim* 10:22, fail to mention a need for partaking of meat and record only the statement found in *Pesahim* 109a with regard to wine. *Magen Avraham*, *Orah Hayyim* 249:6, cites the opinion of *Levush* to the effect that, subsequent to the destruction of the Temple, meat is not required. Similarly, in a comment included in the glosses of *Hatam Sofer* to *Shulhan Arukh*, *Magen Avraham*, *Orah Hayyim* 249:6, R. Abraham Samuel Benjamin Sofer rules that meat is not a necessary condition of "rejoicing" subsequent to the destruction of the Temple. This also appears to be the view of *Sha'agat Aryeh*, no. 65.
21. Rambam, *Hilkhot Megillah* 2:15, similarly rules that the obligation with regard to the Purim repast can be fulfilled only with meat. See also *infra*, note 27.
22. See also *Bet Yosef*, *Orah Hayyim* 529. *Mishnah Berurah* 529:2, *Bi'ur Halakhah*, s.v., *keizad*, states that the eating of meat on *Yom Tov* in our day is not mandatory but that it nevertheless constitutes fulfillment of a *mizvah*.
23. For an attempt to resolve that contradiction see *Darkei Teshuvah*, *Yoreh De'ah* 89:19 and R. Chaim Eleazar Shapiro, *Nimukei Orah Hayyim* 529:2. See also R. Jacob Ettlinger, *Arukh la-Ner*, *Sukkah* 42b; *Darkei Teshuvah* 89:19; and R. Ovadiah Yosef, *Yehaveh Da'at*, VI, no. 33.
24. Cf., however, *Magen Avraham* 151:5, who, in a different context, remarks that the requirement of a *se'udat mizvah* can be fulfilled with "bread and legumes."
25. *Tosafot Hadashim*, *Sanhedrin* 8:2, also indicates that a *se'udat mizvah* requires both meat and wine.
26. See also R. Meir Arak, *Minhat Pittim*, *Yoreh De'ah* 265:12, and R. Abraham Pietrovsky, *Piskei Teshuvah*, no. 194, who rule that meat of an animal must be served at a circumcision repast.
27. See *supra*, note 20.
28. It should be noted that *Magen Avraham*, *Orah Hayyim* 552:2, rules that eating fish also causes rejoicing and hence rules that fish may not be eaten on the day preceding the ninth of Av. Accepting the point made by Rabbi Pirutinsky, it would then follow that fish may satisfy the requirement for "rejoicing" in conjunction with a *se'udat mizvah*. See also R. Shmuel ha-Levi Wosznier, *Teshuvot Shevet ha-Levi*, III, no. 18, sec. 2.
29. See R. Judah Nagar, *Mo'adei ha-Shem*, p. 132b, who rules that for this reason the obligation with regard to the Purim repast cannot be fulfilled by eating fowl. As declared in the Book of Esther 9:22, Purim is a day of

- “feasting and joy.” *Hatam Sofer*, *Hullin* 83a and *Hoshen Mishpat* 199:3; *Teshuvot Bet Ya’akov*, no. 73; and *Teshuvot Dvar Mosheh*, no. 47 rule that the Purim obligation can be fulfilled only by eating meat. See also *Nimukei Orah Hayyim* 695:2. This requirement seems to be explicitly stated by Rambam, *Hilkhhot Megillah* 4:15. See R. Moshe Sternbuch, *Moa’dim u-Zemanim*, II, no. 190. Cf., *Magen Avraham*, *Orah Hayyim* 696:15. See also R. Meir Brandsdorfer, *Kneh Bosesem*, no. 102, regarding eating meat on Purim by a woman prior to her immersion in a *mikvah* on the evening following Purim. According to Rabbi Pirutansky’s thesis whether or not the meat of fowl can be utilized in fulfilling the obligation of rejoicing on Purim is dependent upon which of the two opinions expressed in *Haggigah* 8a is regarded as normative.
30. This analysis was actually advanced earlier by *Brit Avot* 265:14.
  31. The second opinion to the effect that fowl do not engender rejoicing is apparently accepted as normative by *Mordekhai*, *Ta’anit*, sec. 639. This is also the view of *Havot Ya’ir*, no. 178.
  32. A strange and questionable anecdote is reported by Rabbi Gavriel Zinner in his contribution to *Or Yisra’el*. Rabbi Zinner reports that each of the children of a certain person died in infancy. Upon being informed of the tragic situation, the *Belzer Rebbe* is reported to have asked the father if he had served “meat of an animal” at the *brit* of his children. Rabbi Zinner provides no substantiation for the inferred causal connection. In a rather different vein, Rabbi Yochanan Wosznar cites anonymous sources to the effect that offering meat at a *brit* serves to assure that the child will develop properly in the study of Torah and in divine service. In a footnote to *Zemiroth Divrei Yo’el*, *Brit Milah*, sec. 205, the editor similarly reports that the *Apter Rav* is known to have declared that serving a dairy meal in conjunction with a circumcision will jeopardize the child’s ability to become proficient in Torah study. The original source of the latter anecdote seems to be R. Shlomoh Aharon Auerbach, *Taharat ha-Nefesh*, (Czernowitz, 5633) 60:123 from which it appears that the *Apter Rav*’s comment was uttered in a jocular vein. See R. Shabetai Lipschutz, *Brit Avot* (Munkács, 5658), chap. 13, sec. 1.
  33. Cf., the general rule recorded in *Shulhan Arukh*, *Orah Hayyim* 286:3, to the effect that the maximum quantity of bread that may be eaten prior to *musaf* is no more than the equivalent of the size of an egg. See also R. Jacob Tannenbaum, *Teshuvot Naharei Afarsemon*, *Orah Hayyim*, no. 29 as well as *Likkutei He’arot al Sifrei Teshuvot Hatam Sofer*, *Orah Hayyim* 69:3.
  34. See also additional sources cited by *Sefer ha-Brit* 265:158.
  35. Cf., however, *Zekher ha-Brit* 25:8, who censures those who omit the repast and criticizes their lack of ideological commitment.
  36. See *Alfa Beta de-Ben Sira* in *Ozar ha-Midrashim*, ed. J. D. Eisenstein, (New York, 1928), p. 43. The veracity of this account is challenged by R. David Gans, *Zemah David*, (Warsaw, 5619), I, 13a.
  37. The mother would nevertheless require immersion in a *mikveh* both because of the contradictory opinion of other authorities and because of the consideration that all bleeding is now treated as a menstrual flow.
  38. Both Rabbi Baron and R. Shlomoh Zalman Auerbach, *Minhat Shlomoh*,

III, no. 98, sec. 4, maintain that despite Rabbeinu Hananel's employment of the term "miraculous" the distinction between bathhouse pregnancy and usual pregnancy lies in its "unnatural" rather than its "miraculous" nature. Since there is nothing "miraculous" in a Cesarean section that understanding of Rabbeinu Hananel is probably correct.