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SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

HAZARDOUS MEDICAL PROCEDURES

The 5736 issue of *Shanah ba-Shanah* features a contribution by Rabbi Shlomoh Goren bearing the title "The Problem of Medical Experimentation." In actuality, the article deals with the somewhat different question of hazardous medical procedures without at all addressing itself to the question of therapeutic experimentation. The discussion presents a cursory overview of various facets of this question but fails to cite much of the fairly extensive responsa literature dealing with this topic. The present analysis will, therefore, focus upon a wider range of works than the Talmudic sources discussed in Rabbi Goren's article.

It is a well-established principle of Jewish law that the obligation to cure and to preserve life is not limited to situations in which it may be anticipated that subsequent to therapy the patient will have a normal life-expectancy. *Yoma* 85a, clearly indicates that a victim trapped under the debris of a fallen wall is to be rescued even if, as a result of such efforts, his life will be prolonged only by a matter of moments. Not only is every human life of infinite value but every moment of human life is also of infinite value. Accordingly, ritual restrictions such as Sabbath laws and the like are suspended even for the most minimal prolongation of life.

When the possibility of curtailing even the brief span of life (*hayyei sha'ah*) which a terminal patient may anticipate is weighed against the possibility of cure accompanied by normal life expectancy, Jewish teaching accepts the principle that reasonable risks may be incurred in the hope of effecting a recovery. Thus, hazardous procedures are sanctioned in life-threatening situations even if the proposed therapy is such that the drug or procedure may prove to be not simply ineffective but deleterious in nature and the patient's life shortened thereby. This principle may be derived from the Talmudic discussion in *Avodah Zarah* 27b concerning the incident of the four leprous men described in II Kings 7:3-4. The Syrian army had besieged Samaria. In addition, the region was suffering from a great famine. The lepers recognized that if they took no action they would die of hunger in a relatively short period of time. Were they, however, to cross into the Syrian lines one of two things would happen: either they would immediately be put to death as enemies or, if pitied because of their infirmity, they would be provided with food and their lives saved. Despite the danger, they reasoned, "Now therefore come, and let us fall into the host of the Syrians: if they save us alive, we shall live; and if they kill

us we shall but die." The Gemara views this narrative not simply as a record of a historical event but as a paradigm providing scriptural sanction for assuming the risk of precipitating death in an attempt to restore conditions necessary for normal life-expectancy.

In applying this principle, the Gemara, *Avodah Zarah* 27b, addresses itself to a very concrete problem. The Gemara reports that idolators commonly harbored malevolent designs upon the lives of Jews. There was, at the time, strong reason to fear that, given the opportunity to do so, idol worshippers would commit acts of murder against Jews. Accordingly, the Gemara forbids Jews to submit to medical ministrations of an idolatrous practitioner. The question then arises as to whether or not this ban encompasses even situations in which the Jew is afflicted with a life-threatening malady. Rava states in the name of R. Yochanan that this ban does include situations in which the patient may possibly die if he does not receive medical attention. However, if the illness is such that, if left untreated, death is a certainty the patient may permit himself to be treated by an idolator. The reasoning advanced is that since the patient's death is a certainty he hazards nothing by placing himself in danger of being killed by the idolator. In analyzing this statement the Gemara interposes an objection and argues that the idolator may shorten the patient's life and thereby deprive him of even the minimal time (*hayyei sha'ah*) he might yet have lived. The Gemara replies that one is justified in jeopardizing a limited, brief life-expectancy in the hope that a cure may be achieved.

On the basis of this Talmudic discussion, R. Meir Posner, *Bet Meir, Yoreh De'ah* 339:1, and R. Jacob Reisher, *Shevut Ya'akov*, III, no. 85, specifically permit use of a hazardous drug which might cause death to result "within an hour or two" on behalf of a patient who would otherwise have lived for "a day or two days." Despite the brevity of the period of time which the patient may be expected to live without therapy, *Shevut Ya'akov* mandates consultation with "proficient medical specialists in the city" and rules that therapy is to be instituted only if the physicians recommend it by at least a majority of two to one. He further requires that the approval of the local rabbinic authority be obtained before such recommendations are acted upon. [See also R. Shlomoh Eger, *Gilyan Maharsha, Yoreh De'ah* 155:1; R. Israel Lipshutz, *Tiferet Yisra'el, Yoma* 8:41; R. Ya'akov Ettlinger, *Binyan Zion*, no. 111; and R. Eliezer Waldenberg, *Ziz Eli'ezer*, IV, no. 13.]

An apparent contradiction to this position is found in *Sefer Hasidim*, no. 467. This source describes a folk remedy consisting of "grasses" or herbs administered by "women" in treatment of certain maladies. These herbs are reported to either cure or kill the person so treated within a period of days. *Sefer Hasidim* admonishes that those who administer such potions "will certainly be punished, for they have killed a person before his time." R. Shlomoh Mordecai Shwadron,

Da'at Torah, Orah Hayyim 328:10, resolves this contradiction by stating that the instance discussed by *Sefer Hasidim* involves a situation in which there is clearly a possibility for cure without hazardous intervention. According to this analysis, *Sefer Hasidim* sets forth the common-sense approach that hazardous procedures dare not be instituted unless conventional, non-hazardous approaches have been exhausted.

In none of these sources does one find a discussion or consideration of the statistical probability of prolonging life versus the mortality rate or the odds of shortening life. Yet, certainly, in weighing the advisability of instituting hazardous therapy, the relative possibility of achieving a cure is a factor to be considered. *Bet David*, II, no. 340, permits intervention even if there exists but one chance in a thousand that the proposed drug will be efficacious whereas there are nine hundred and ninety-nine chances that it will hasten the death of the patient. A differing view is presented by R. Joseph Hochgelerenter, *Mishnat Hakhamim*, who refuses to sanction hazardous therapy unless there is at least a fifty percent chance of survival. Although this is also the position adopted by R. Eliezer Waldenberg, *Ziz Eli'ezer*, X, no. 25, chap. 5, sec. 5, it is, however, contested by R. Chaim Ozer Grodzinski, *Teshuvot Ahi'ezer, Yoreh De'ah*, no. 16, sec. 8. He further requires, as does *Shevut Ya'akov*, that dispensation be obtained from ecclesiastical authorities on each occasion that such therapy is administered. Rabbi Moses Feinstein, *Iggrot Mosheh, Yoreh De'ah*, II, no. 59, however, rules that in cases when, in the absence of intervention, death is imminent a hazardous procedure may be instituted as long as there is a "slim" (*safek rahok*) chance of a cure, even though the chances of survival are "much less than even" and it is, in fact, almost certain that the patient will die. The late Rabbi I. Y. Unterman, the former Chief Rabbi of Israel, writing in *No'am*, XII (5730), p. 5, maintains that medical risks are warranted "when there is hope of a cure . . . even if in most cases [the procedure] has not been successful and will shorten life."

A much earlier authority, R. Moses Sofer, *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 76, refuses to sanction a hazardous procedure in which the chances of effecting a cure are "remote" but offers no mathematical criteria with regard to the nature of the mortality risk which may properly be assumed.

Tiferet Yisra'el, Bo'az, Yoma 8:3, raises a quite different question in discussing the permissibility of prophylactic inoculations which are themselves hazardous. In the situation described, the patient, at the time of treatment, is at no risk whatsoever. The fear is that he will contract a potentially fatal disease, apparently smallpox. The inoculation, however, does carry with it a certain degree of immediate risk. *Tiferet Yisra'el* justifies acceptance of this risk which he estimates as being "one in a thousand" because the statistical danger of future contagious infection is greater.

Insofar as there is disagreement between the authorities cited, such

disagreement is limited to the permissibility of instituting potentially hazardous therapy. Procedures which involve any significant risk factors are always discretionary rather than mandatory and accordingly, none demand that hazardous therapy be initiated.

None of the previously cited discussions draws a distinction between the use of known and accepted techniques or drugs which are hazardous in nature and hazardous procedures which are entirely experimental. However, one contemporary author, Rabbi Moshe Dov Welner, Chief Rabbi of Ashkelon, does discuss medical experimentation. Rabbi Welner differentiates between various cases on the basis of the experimental nature of the risk involved, rather than on the basis of anticipated rates of survival. Writing in *Ha-Torah ve-ha-Medinah,* VII-VIII (5716-17), p. 314, Rabbi Welner argues that hazardous procedures may be undertaken despite inherent risks only if the therapeutic nature of the procedure has been demonstrated. For example, a situation might arise which calls for the administration of a drug which has known curative potential but which is also toxic in nature. The efficacy of the drug is known but its toxicity may, under certain conditions, kill the patient. The drug may be administered in anticipation of a cure despite the known statistical risk. The same statistical risk, argues Rabbi Welner, could not be sanctioned in administering an experimental drug whose curative powers are unknown or have not been previously demonstrated. This, he maintains, is why *Sefer Hasidim* censures the practice of administering dangerous herbs as was the custom of women in his day. According to Rabbi Welner, it was not the risk *per se* which was found to be objectionable; rather, utilization of the herbs in question was simply not accepted medical practice. Since the efficacy of such potions had not been demonstrated, risk to the life of the patient precludes their use. The same distinction is applied by Rabbi Welner with regard to surgical procedures. Surgical hazards are acceptable only when the technique is known to be effective. In the opinion of Rabbi Welner, hazardous surgery employing experimental techniques does not justify exposure to risk.

A related problem is the attitude toward hazardous therapy for alleviation of pain or other symptoms rather than for the cure of a potentially fatal illness. R. Jacob Emden, *Mor u-Kezi'ah, Orah Hayyim* 338, adopts a somewhat ambivalent position with respect to this question. This authority refers specifically to the surgical removal of gall stones, a procedure designed to correct a condition which he viewed as presenting no hazard to life or health but recognized as being excruciatingly painful. He remarks that, in the absence of danger to life, those who submit to surgery "do not act correctly" and that the procedure is "not entirely permissible." However, Me'iri, *Sanhedrin* 84b, and Rema, *Yoreh De'ah* 241:13, both sanction hazardous procedures designed to alleviate pain rather than to preserve life. Conflicting views with regard to this question

were analyzed in this column in the Fall, 1974, issue of *TRADITION*. A fuller discussion is included in this writer's *Contemporary Halakhic Problems*, pp. 121-123.

Impotence as Grounds for Divorce

In Israel matters concerning marriage and divorce are under the exclusive jurisdiction of the rabbinical courts. From time to time these courts are confronted with the need for a definitive decree in hitherto uncharted or poorly charted judicial waters. The text of one such decree, issued by the Tel Aviv Rabbinical District Court composed of Rabbis S. B. Werner, E. Azuai and D. C. Tzimblist, has been published in the official case record of the rabbinical courts, *Piskei Din Batei ha-Din ha-Rabbaniyim*, vol. 10, no. 4.

The case, on the surface, involves a matter which is well-settled in terms of Jewish law. The plaintiff, a young, recently married woman applied for a judgment directing her husband to issue a bill of divorce. The ground for her suit was the husband's alleged impotence.

The law applicable in the absence of a denial or counterclaim is recorded in *Even ha-Ezer* 154:7. In the event that the husband concedes that he is impotent he is clearly obligated to accede to the wife's desire for a divorce and her rights in the matter are enforced by the *Bet Din*. In the event of the husband's denial of impotence, *Shulhan Arukh* records that the woman's claim—rather than the husband's denial—is given credence provided that her claim is not accompanied by a demand for payment of the *ketubah* to which she is entitled by virtue of the marriage contract. The prevailing legal assumption is that, *ceteris paribus*, a wife will not have the audacity to impugn her husband's virility in his presence unless he is indeed impotent and her claim is therefore given credence over the husband's denial. In the event that her petition is accompanied with a claim for a settlement of the *ketubah* her credibility is compromised by virtue of the obvious pecuniary interest involved. The *Bet Din* then has reason to question her veracity since her claim may have been unjustly advanced in order to secure the financial benefits due a divorcee. Rema enters a *caveat* and states that in "our day" the wife is not automatically believed since there now exist "audacious women" quite capable of presenting such false pleas. Nevertheless, Rema agrees that in the presence of corroborating evidence of other factors which tend to confirm the wife's statement her version is to be accepted. *Shakh*, in his *Gevurot Anashim*, no. 67, declares that, even following the opinion of Rema, the wife's contention is to be accepted if accompanied by an express renunciation of her right to the *ketubah*. *Shakh* further adds that virginity "two or three years" after the marriage was to have been consummated is in itself deemed sufficient evidence confirming the husband's impotence.

In the case at hand the husband entered both a counterclaim and a denial. The husband denied his impotence, yet in somewhat of a self-

contradiction, he solicited his wife's cooperation in overcoming this deficiency. At the same time, the husband freely conceded his wife's continued virginity but claimed that she had persistently refused to engage in intercourse. In light of the wife's virginity and since in her application to the *Bet Din*, she had expressly waived claim to the *ketubah*, the *Bet Din* had no difficulty in deciding on behalf of the plaintiff and, accordingly, directed the husband to deliver a *get* to his wife.

The case was, however, complicated by a novel factor. The husband introduced medical evidence showing that he suffered no physical deficiency, claimed that he was willing to undergo therapy in order to overcome any functional deficiency and earnestly solicited his wife's cooperation to this end. Although the *Bet Din* purported to find a contradiction in the husband's statement, it appears that in denying impotence the husband intended merely to deny physical impotence but conceded psychological impotence. This is confirmed by the wife's statement that the husband experienced partial erection followed by premature ejaculation.

The legal point requiring adjudication is whether impotence resulting from psychological factors, and hence possibly only temporary in nature, is grounds for directing the husband to issue a divorce, or whether the wife may validly be directed to assist in the therapy necessary to overcome this deficiency. The *Bet Din* ruled that the wife could not be ordered to act against her expressed feelings of repugnance in order to aid in her husband's therapy, particularly in view of the fact that in situations of severe marital discord the assistance of the female partner is not likely to be of avail in overcoming functional sexual deficiency. The *Bet Din* also ruled that possibility of a future cure does not constitute valid grounds for setting aside a wife's demand for current conjugal fulfillment. A precedent for this decision is found in *Teshuvot Rivash*, no. 127. *Rivash*, addressing himself to a situation involving a young couple in which the husband has not been able to consummate the union during eight months of marriage, states that the bride cannot be forced to continue a relationship which she finds intolerable but that "it is the way of modest daughters of Israel to bear this [and] not to come before a *Bet Din* to demand the dissolution of the bond" [See also *Rizba, Tosafot, Yevamot* 85b].

Although many authorities sanction the use of corporal force in coercing the husband to divorce his wife under such circumstances, the *Bet Din* did not threaten incarceration in the event of recalcitrance. In declining to threaten imprisonment for failure to follow its directive, the *Bet Din* took cognizance of the dissenting view of *Shakh, Gevurot Anashim*, no. 42, who follows the position of Rabbenu Chananel in asserting that physical coercion is not warranted in cases of impotence, and the view of *Rashbaz*, no. 693, who maintains that corporal force is not justified in cases of impotence if the possibility of a cure exists. The opinion of *Rashbaz* is cited with approval by *Teshuvot Maharashdam*, I, *Even*

ha-Ezer, no. 103. [Although not cited in this decision, *Teshuvot Maharalbah*, no. 33, similarly advises that a precipitous judgment not be issued in favor of the wife but that action be delayed for a period of "two or three years" in the hope that the condition will rectify itself. Cf., however, an earlier decision of the Supreme Rabbinical Court, *Piskei Din*, III, 84-85, in which an attempt is made to narrow the disagreement between these authorities and *Rivash*.] The court did, however, levy a judgment for support against the husband in the sum of IL 400 per month until such time as the bill of divorce is executed. In effect, this procedure, which is common and utilized to good effect by Israeli *Batei Din*, is tantamount to a fine for nonperformance. Desire to avoid financial penalty is usually sufficient motivation to secure compliance with the directive of the *Bet Din*.

In reading the decree one is left with the gnawing feeling that had proper psychological and marital counseling been available this marriage might have been saved. The response of *Rivash*, written some six hundred years ago, readily supports a directive to attempt such a resolution. Judicial procrastination in an attempt to effect a reconciliation is firmly supported by Rema, *Even ha-Ezer* 154:7. *Teshuvot ha-Rashba*, I, no. 628, also urges that attempts be made to eliminate discord and to create an atmosphere in which a normal conjugal relationship is possible and adds that the extent of delay to be allowed for such an endeavor is within the discretion of the *Bet Din*. It is regrettable that the *Bet Din*, despite its right, when warranted by Halakhah, to call upon the police power of the State in enforcing judicial decrees, does not have ancillary personnel to deal with psychological and marital difficulties. The circumstances of the case surely point to the desirability of an evaluation by a competent psychologist. Unfortunately, the *Batei Din* do not effectively draw upon such resources and, accordingly, in the case at hand, the *Bet Din* was able only to affirm the wife's legal right to a divorce and to act decisively in preventing a situation of *igun*.

Privacy of Personal Correspondence

In recent years a number of Supreme Court court decisions have been issued which seek to establish the right to privacy as one of the human freedoms guaranteed by the American constitution. The newly-developed constitutional right to privacy is the right of immunity from governmental interference in one's private affairs, unless legitimate state interests are at stake. There exists no concomitant constitutional right to privacy *vis a vis* the private acts of fellow citizens, although actions harmful or potentially harmful to others are forbidden by law.

Jewish law, by means of rabbinic legislation, has adopted certain specific measures in order to safeguard the individual's right to privacy. The most obvious example is the Talmudic requirement that a wall be erected between adjacent

courtyards in order to assure that the residents of each courtyard may enjoy unencumbered privacy. Another example is the well-known post-Talmudic ban of Rabbenu Gershom forbidding the reading of another person's mail without permission. This edict is cited by *Be'er ha-Golah, Yoreh De'ah* 334:123. *Sefer ha-Leket,* I, no. 173, declares that Rabbenu Gershom's ban is based upon the admonition, "You shall not go as a talebearer among your people" (Leviticus 19:16). The prohibtion against talebearing, argues *Sefer ha-Leket,* is equally applicable whether the bearing of tales is directed to another person or to oneself. Intercepting another person's private correspondence is, in effect, bearing tales, i.e., divulging another person's private affairs to oneself.

There are, however, very few rights, if any, which are absolute in nature. Rights must perforce yield to superseding interests and considerations. It is necessary to determine what, if any, are the limitations upon the right of privacy as recognized in Jewish law. The possibility of at least one interesting limitation with regard to the privacy of one's correspondence is discussed in the Adar II and Tammuz 5736 issues of *Shma'atin,* a periodical published by the Association of Teachers of Jewish Studies under the aegis of the Israeli Ministry of Education and Culture. Teachers and counselors, at times, have reason to suspect that their charges are engaging in activities detrimental to their moral development but find themselves unable to deal with the situation effectively because of lack of concrete factual information. In some situations the educators have reason to believe that the desired information might be gleaned from mail received by their students. They are, however, understandably reluctant to tamper with the correspondence of their charges because it would appear that the privacy of such communications is protected and rendered inviolate by virtue of the ban promulgated by Rabbenu Gershom. The editors of *Shma'atin,* therefore, turned to Rabbi Chaim David Halevy, Sephardic Chief Rabbi of Tel Aviv, and solicited his opinion with regard to the halakhic permissibility of intercepting and reading the mail of students for the express purpose of preventing moral infractions. Rabbi Halevy's response appears in the Adar II issue of that publication.

Rabbi Halevy argues that the resolution of the question addressed to him hinges upon whether or not the ban of Rabbenu Gershom bears the weight of law even in situations in which its enforcement will entail nonperformance of a *mitsvah.* A precedent is found with regard to the application of another edict issued by Rabbenu Gershom, viz., the well-known ban against polygamy. Despite Rabbenu Gershom's edict against plural marriages, *Shulhan Arukh, Even ha-Ezer* 1:9, rules that a married man may take as a wife the widow of a brother who has died childless. The explanation advanced is that Rabbenu Gershom's edict was not intended to extend to situations which would result in nonperformance of a *mitsvah.* In the case discussed by *Shul-*

han Arukh the *mitzvah* of levirate marriage would be abrogated if the ban against polygamy were to be enforced. Rema, however, appends a gloss in which he cites authorities who maintain that Rabbenu Gershom's ban encompasses such situations as well. Rabbi Halevy argues that, according to *Shulhan Arukh*, not only is the ban against polygamy suspended in such situations, but that all edicts issued by Rabbenu Gershom are suspended in face of the necessity of fulfilling a *mitsvah*. Rabbi Halevy further argues that even those authorities who dissent—as cited by Rema—do so only with regard to situations in which obedience to the edict results merely in passive nonfulfillment of a *mitzvah* but that all authorities are in agreement that the edict is suspended if the action in question is necessary to prevent an overt transgression. Accordingly, Rabbi Halevy permits the opening of letters when such action is absolutely necessary to prevent untoward conduct on the part of the student.

The Tammuz issue of *Shma'atin* contains a concurring opinon authored by Rabbi Eliezer Katz. Rabbi Katz offers a further argument bolstering this position. A person who smites a fellow Jew transgresses a negative commandment (Rambam, *Hilkhot Hovel u-Mazik* 1:1). Nevertheless, a father who smites a child or a teacher who smites a pupil for purposes of reproving him and correcting his conduct may not only do so with impunity, but the action is deemed to be a *mitsvah* (see *Makkot* 8b). In effect, Rabbi Katz argues that assault is an infringement of the right to privacy of one's person. Since the biblical right to privacy of one's person is suspended in face of overriding pedagogical considerations, *a fortiori* the rabbinic right to privacy of correspondence is suspended in the presence of identical considerations.

In a short note appended to the article, the editor of *Shma'atin* cites R. Chaim Pelaggi, *Hikekei Lev, I, Yoreh De'ah*, no. 49, who asserts that it is permissible to open a letter in order to obtain information necessary to prevent financial loss. By the same token, he argues, it is permissible to open a letter in order to prevent moral and spiritual loss to the recipient. [In point of fact, the editor's statement is somewhat inaccurate. *Hikekei Lev* does not unequivocally sanction tampering with correspondence in order to prevent financial loss; he states *"yesh zedadin le-ka'an u-le-ka'an*—there are arguments which may be advanced in support of both sides of the question."]

Rabbi Halevy concludes his responsum by questioning whether the same corrective measures might not be taken even in the absence of information gained in this manner and indicates that if such corrective measures might indeed be instituted, in any event, the right to privacy with regard to correspondence must be regarded as being inviolate. He further admonishes that any information obtained in this manner may not be divulged to other persons.

To this a further comment must be added. Procedures involving violation of privacy are likely to be

counter-productive. To be successful in their efforts, educators must gain and retain the confidence and trust of their students. It is virtually impossible to impart ethical sensitivity while employing means which are themselves perceived by students as being unethical in nature. It is a commonplace truism that not every procedure which is permissible should be pursued. In this instance, since such a course of action is sanctioned only as a means of achieving a higher goal, the inefficacy of the theoretically permissible renders such a course of action impermissible in practice.

Netilat Yadayim BY SOLDIERS

The State of Israel's need to maintain a large standing army in a constant state of preparedness has raised questions pertaining to the applicability of various provisions of Jewish law dealing specifically with soldiers engaged in battle. Such questions arise with regard to many diverse facets of personal and military life governed by halakhic regulations. The Tevet 5736 issue of *Ha-Ma'ayan* features an article by Rabbi Shiloh Rafael in which he examines a ritual question; viz., the obligation of washing the hands before meals as it applies to members of Israel's armed forces.

The Mishnah, *Eruvin* 17a, enumerates four provisions of Jewish law from which dispensation is granted to soldiers engaged in warfare. The washing of hands before partaking of bread is, in ordinary circumstances, mandated by virtue of rabbinic decree. Such washing of the hands is, however, one of the enumerated obligations from which soldiers are exempted. The question to be resolved is whether this exemption is limited solely to personnel engaged in combat or whether the exception is more inclusive in nature.

Rabbi Rafael maintains that the exemption is a broad one on the basis of two considerations. In the first place, the Mishnah, in delineating these exceptions, speaks of a *mahaneh*, or camp. While many early authorities maintain that the exemption applies only to soldiers, *Maggid Mishneh, Hilkhot Eruvin* 1:3 and *Bi'ur ha-Gra, Orah Hayyim* 168:8, demonstrate that at least several authorities are of the opinion that the term "camp" employed by the Mishnah encompasses not only military camps but any type of encampment in which dwellers are deprived of the usual amenities of developed areas. Secondly, Rabbi Rafael demonstrates that, according to all authorities, soldiers are exempt not only when actually engaged in military action but also when preparing for military activity. Accordingly, Rabbi Rafael concludes that these provisions apply not only to combat soldiers but also to border patrols and other paramilitary units as well.

This cogent conclusion notwithstanding, not every soldier is exempt from the obligation with regard to washing the hands. Rabbi Isaac ha-Levi Herzog, *Heikhal Yizhak Orah Hayyim*, no. 47; states that members of the armed forces assigned to urban centers or quartered in permanent camps in areas where there is no tension are not

included in this exemption. Dispensation from washing the hands is occasioned by the hardship encountered in military camps and does not apply to situations in which usual amenities are readily available.

Rabbi Rafael also discusses a further limitation upon this exemption. The exemption from the obligation with regard to washing the hands applies only to a "camp," but not to individual soldiers. The term "camp," by definition, refers to a group of not less than ten individuals as indicated by the Palestinian Talmud, *Eruvin* 1:10. *Hazon Ish, Eruvin, Likutim* 112:6, asserts that the ten persons who constitute the "quorum" for a camp must be located within a geographical area of not less than approximately 71 ells. Thus, soldiers enroute to their units are not covered by the statutory exemption until they reach their camp. Moreover, declares *Hazon Ish,* qualifications for inclusion in the "quorum" of ten are identical with those for inclusion in a *minyan* for purposes of prayer. It would thus follow that, according to *Hazon Ish,* female units are not exempt from this obligation. An interesting question which merits further investigation is the question of whether or not female personnel serving together with a unit consisting of at least ten males are also exempt from this obligation.

Even when soldiers are exempt from the ritual of washing the hands it would appear that, according to *Mishneh Berurah* 158:36, they are obligated to wear gloves or to wrap their hands in a cloth, if available, in order to avoid touching food with unwashed hands. According to *Shulhan Arukh, Orah Hayyim* 163:1, both hands must be covered, while according to Rema, *loc. cit.*, the only requirement is that the hands do not touch the food. Thus, according to Rema, only the hand which touches the food need be covered or, alternatively, food may be eaten with a fork. However, *Arukh-ha-Shulhan, Orah Hayyim* 168:14, asserts that the exemption from washing the hands is all-encompassing and that soldiers are not obligated even to cover unwashed hands with a cloth. This appears to be the opinion of *Bet Yosef, Orah Hayyim* 163, as well.

When, however, water is readily available within the camp, *Perishah, Orah Hayyim* 168:8, maintains that soldiers are required to wash the hands in the usual fashion. Rabbenu Yonatan, in his commentary on *Eruvin* 17a, indicates that soldiers are obligated to perform this ritual even in situations in which there is no water within the camp itself but in which water is available within a radius of a *mil.* Following Rema, *Orah Hayyim* 459:2 and *Yoreh De'ah* 69:6, Rabbi Rafael defines a *mil* as the distance which can be traversed by an average person within a period of 18 minutes. However, some authorities assert that a *mil* is to be measured as the distance covered in 22.5 minutes, while others state that the correct time measurement is 24 minutes. *Mishneh Berurah, Bi'ur Halakhah* 459:2, rules that normative halakhic practice is in accordance with the opinion that a

mil is measured as the distance traversed in 22.5 minutes. Rabbi Rafael raises one further consideration. He suggests that, according to the view of Rabbenu Yonatan, the distance to be measured should be calculated as that which can be travelled within the specific period of time by a motor vehicle, if available. Thus, if water could be brought from a distance of 22.5 minutes travel-time the exemption would not be operative. Rabbi Rafael himself rejects this position and argues that soldiers are obligated to wash their hands before eating only if water is available within the camp itself, but that they are not obligated to journey even a minimal distance by car or by foot for this purpose.

Immersion of Disposable Aluminum Utensils

Utensils which are acquired from a non-Jew and are designed for use in the preparation or serving of food require immersion in a *mikveh* prior to use. This requirement is derived from Numbers 31:23 and is viewed as biblical in nature by the overwhelming majority of authorities.

Among modern conveniences available to housewives are disposable aluminum baking pans and trays used for cooking or warming pre-cooked foods. These utensils are sometimes reused a limited number of times but are most frequently discarded after their initial use. Rabbi Elimelech Bluth, writing in the Summer 5733 issue of *Le-Torah ve-Hora'ah,* published by Mesifta Tiferet Jerusalem, examines the status of these utensils with regard to the requirement of immersion.

The first question examined by Rabbi Bluth is whether any utensil made of aluminum need be immersed prior to use. *Tiferet Yisra'el, Yevakesh Da'at,* sec. 44, cites the opinion of the R. Elijah of Vilna, who maintains that the biblical obligation with regard to immersion of utensils is limited to vessels made of the six types of metal enumerated in Numbers 31:23; viz., gold, silver, copper, iron, tin and lead. Since aluminum is not among the enumerated substances, it follows that, according to R. Elijah of Vilna, there exists no biblical obligation with regard to the immersion of aluminum utensils even if they were to resemble other metal utensils in every other respect. Nevertheless, argues Rabbi Bluth, aluminum utensils require immersion for three reasons:

(1) Many authorities maintain that *all* metal utensils require immersion, not merely those fashioned from the biblically enumerated substances. (2) Aluminum utensils customarily contain an admixture of other metallic substances added as alloys. The entire utensil thus requires immersion because of the other metals of which it is composed. (3) Even according to the opinion of R. Elijah of Vilna there exists a rabbinic obligation with regard to the immersion of utensils made of other substances, just as there exists a rabbinic obligation with regard to the immersion of glass utensils. *Avodah Zarah* 75b indicates that any

vessel which can be repaired by a smelting process must be immersed prior to use by virtue of rabbinic decree. Aluminum utensils are clearly among those vessels which satisy this description.

The second question examined by Rabbi Bluth is whether disposable utensils, regardless of the material from which they are fashioned, require immersion. The fact that these aluminum utensils are *customarily* discarded after a single use does not effect their status with regard to the statutory requirements of immersion. The *Tosefta,* cited by Rabbenu Shimshon in his commentary on the Mishnah, *Kelim* 17:15, distinguishes between two categories of utensils. Utensils fashioned from hollowed-out turnips, citrons and gourds, are not deemed to have the status of "vessels" with regard to laws of ritual impurity. Utensils fashioned from pomegranates, acorns and nuts are deemed to have the status of "vessels" with regard to laws of ritual impurity. *Tosafot, Shabbat* 66a, explains that utensils of the first category are not durable, presumably because they are made of materials which decay rapidly, whereas utensils of the second category, even though customarily discarded, could well be retained for use over a significant period of time. The distinguishing factor with regard to laws of ritual impurity is not the number of times the utensil is used but the utensil's potential for sustained use.

Rabbi Bluth does, however, find another reason for exempting some disposable utensils from immersion. A utensil which is used only once because of its flimsy composition is, in his opinion, not to be considered a "vessel" but rather the "shell" or protective covering of the food. As such, the aluminum in which the food is contained is deemed an appendage of the food rather than a "vessel" possessing independent status.

Rabbi Moses Feinstein, in an addendum appended to this article, apparently questions whether these considerations are applicable with regard to aluminum utensils currently in use. Rabbi Feinstein opines that aluminum utensils which cannot possibly be used more than "two or three times" do not require immersion prior to use. However, he recognizes the possibility that, in point of fact, such utensils might well be reused a greater number of times, but are discarded only because they are inexpensive and hence are replaced simply to avoid bother. When this is indeed the case, concludes Rabbi Feinstein, such utensils require immersion prior to use.