

SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

TEST-TUBE BABIES

With the birth of Louise Brown in the obscure mill town of Oldham in England's northwest region, science fiction of yesteryear became the reality of today. The legend of Faust and Homunculus, the little man-like creature created in a vial, has now become reality through successful development of in vitro fertilization.

Under normal circumstances pregnancy occurs when an ovum, an egg-cell which has been released by the ovary during ovulation, is fertilized by the sperm of the male as it passes through the fallopian tube. Conception takes place when the ovum is penetrated by a single sperm of the literally millions of sperm contained in the ejaculate deposited in the vagina. This occurs only when the sperm, after having successfully traversed the uterus, finds its way into the fallopian tube and succeeds in making contact with the ovum. Thereupon, the fertilized egg undergoes a number of cell divisions and subsequently descends into the uterus where it becomes implanted in the uterine wall.

A significant percentage of infertility problems are the result of a disorder of the fallopian tubes. When the fallopian tubes are blocked or missing it is impossible for the sperm and ovum to make

contact. The newly-developed technique enables conception to occur outside the fallopian tubes. The procedure involves surgically removing the mature ovum from the ovary, placing it in a petri dish in an appropriate culture medium and adding the male sperm to the solution. The fertilized ovum is allowed to incubate in order to undergo the cell divisions which in normal pregnancy occur in the fallopian tube and is then introduced into the uterus through the cervical os by means of a pipette. The fetus continues to develop in the uterus in an apparently normal manner.

As might have been anticipated, perfection of in vitro fertilization has given rise to a host of moral, theological and halakhic questions. Addressing the annual *Torah she-be-'al Peh* convocation in Israel, the Sephardic Chief Rabbi, R. Ovadiah Yosef, gave his qualified approval to this procedure (*J.T.A. Daily News Bulletin*, August 16, 1978). The Ashkenazic Chief Rabbi, R. Shlomoh Goren, is reported to view conception by such means as morally repugnant, although halakhically unobjectionable (*J.T.A. Daily News Bulletin*, July 28, 1978). Unfortunately, as of the time of this writing, only press reports of these two views are available. This writer has contributed an article to the current (Tishri 5739) issue of *Or ha-Mizrach* in which an attempt is

Survey of Recent Halakhic Periodical Literature

made to delineate the specific questions involved and to resolve those questions in light of earlier precedents in Jewish law.

In vitro fertilization has been condemned by some Catholic theologians on the grounds that such interference with nature is not morally acceptable. This is precisely the same consideration which forms the basis of the Church's opposition to contraception and artificial insemination. This argument is, however, alien to Judaism. Since Judaism does not posit a doctrine of natural law such practices, according to Jewish teaching, must be examined solely in light of possible infraction of biblical proscriptions. In the absence of a specific prohibition man is free to utilize scientific knowledge in order to overcome impediments of nature.

The first question which must be examined is the moral legitimacy of research involving fetal experimentation. The birth of a test-tube baby could not, at present, have taken place in the United States. All such research was abruptly terminated in 1975 when the Department of Health, Education and Welfare was barred from funding in vitro fertilization experiments in the absence of prior approval of a national ethics advisory board. Such a board was not constituted until January 1978 and has, as yet, not approved experimentation of this nature. The crucial issue is that of increased risk of chromosomal abnormalities leading to physical and mental defects when the ovum is fertilized outside of the body. It is entirely possible that some aspect of the experimental technique may cause

genetic damage. Moreover, it is estimated that as many as a half of all pregnancies are spontaneously terminated by the time of implantation. The mechanism responsible for this phenomenon is not fully known but there is reason to believe that in many instances this is nature's method of providentially preventing the development of a deformed fetus. Artificial maintenance of the zygote outside the body during this early stage of gestation may prevent the natural elimination of a deformed fetus.

The ethical implications of experimentation which may result in the birth of a defective fetus are addressed by a leading bioethicist, Professor Paul Ramsey of Princeton University, in an article, "Shall We 'Reproduce'?" which appeared in the *Journal of the American Medical Association*, vol. 220, no. 10 (June 5, 1972), pp. 1346-1350 and vol. 220, no. 11 (June 12, 1972), pp. 1480-1485, as well as in his book, *The Ethics of Fetal Research* (Yale University Press, 1975). Professor Ramsey argues that in vitro fertilization followed by implantation is an immoral experiment upon a possible future life since no researcher can exclude the possibility that he will do irreparable damage to the child-to-be: "We ought not to choose for another the hazards he must bear, while choosing at the same time to give him life in which to bear them and to suffer our chosen experimentations."

This argument, insofar as it applies to artificial conception, is entirely consistent with the norms of Torah ethics. Jewish law does not

TRADITION: *A Journal of Orthodox Thought*

sanction abortion motivated solely by a desire to eliminate a defective fetus, nor does it sanction sterile marriage as a means of preventing transmission of hereditary disorders. However, it does discourage marriages which would lead to the conception of such children. The Gemara, *Yevamot* 64b, declares that a man should not marry into an epileptic or leprous family, i.e. a family in which three members have suffered from these diseases. This ruling is apparently a eugenic measure designed to prevent the birth of defective children. It follows, *a fortiori*, that overt intervention in natural processes which might cause defects in the fetus would not be countenanced by Judaism.

Despite the happy initial success in the case of the Brown infant, it will require the birth and maturation through adolescence and into adulthood of a significant number of healthy and normal test-tube babies before the technique may be viewed as morally acceptable. When, and if, it has in fact been demonstrated that the procedure poses no risk to the fetus there can be no objection to the utilization of this technique on the basis of the fact that the original experimentation was morally unconscionable. As observed by Dr. Daniel Callahan, "The history of medicine is full of instances where things were done unethically but led to benefits for people" (*The New York Times*, July 27, 1978, p. A16, col. 3). An obvious example from the perspective of Jewish law is that of post-mortem examinations which were halakhically unwarranted at the

time of their performance but which have led to acquisition of potentially life-saving information. Jewish ethics knows of no *Miranda* principle which would bar the use after the fact of information obtained by illicit means.

It should also be stressed that even in the absence of moral or halakhic objections no woman is *required* to submit to in vitro fertilization. The obligations of women, whether by reason of the Scriptural exhortation to populate the universe, "He created it not a waste, He formed it to be inhabited" (Isaiah 45:18), or by virtue of marital contract, are limited to bearing children by means of natural intercourse. In a different context, *Iggrot Mosheh, Even ha-Ezer*, III, no. 12, expresses the view that a woman, while bound to assume the pain usually associated with normal childbirth, is under no obligation to conceive when faced with the likelihood of unusual and extraordinary pain. Furthermore, it appears to this writer that the comments of *Tosafot, Pesachim* 28b, establish the principle that one need not assume the pain and risk of a surgical procedure for purposes of fulfilling even an obligatory *mitsvah*. The husband's obligations with regard to procreation under such circumstances are discussed by the *Shulchan Arukh, Even ha-Ezer* 154:10-11, and commentaries thereon.

The means employed in procuring sperm or purposes of in vitro fertilization does, however, pose a halakhic problem. Jewish law forbids ejaculation other than within the context of intercourse as *ho-*

Survey of Recent Halakhic Periodical Literature

tza'at zera le-vatalah — destruction of the seed. The question is whether or not semen procurement designed to promote procreation is deemed to be *le-vatalah*. The identical question has been raised in the past both with regard to semen testing in cases of suspected male infertility and in connection with artificial insemination utilizing the semen of the husband. This question is analyzed in detail by many halakhic authorities. The most significant of these discussions are those of R. Shalom Mordecai Schwadron, *Teshuvot Maharsham*, III, no. 268; R. Aaron Walkin, *Teshuvot Zekan Aharon*, II, no. 97; R. Malkiel Zvi Tanenbaum, *Teshuvot Divrei Malki'el*, IV, nos. 107-108; R. Ben Zion Uziel, *Mishpetei Uzi'el, Even ha-Ezer*, I, no. 19; R. Yehoshua Baumel, *Teshuvot Emek Halakhah*, no. 68; R. Ovadiah Hadaya, *No'am* I, (5718), pp. 130-137; R. Ya'akov Breisch, *Teshuvot Chelkat Ya'akov*, I, no. 24; R. Yitzchak Weisz, *Teshuvot Minchat Yitzchak*, IV, no. 5; R. Eliezer Waldenberg, *Tzitz Eli'ezer*, IX, no. 51, sec. 4; R. Shlomoh Zalman Auerbach, *No'am*, I, (5718), pp. 145-166; R. Ovadiah Yosef, *Teshuvot Yabi'a Omer*, II, no. 1 and R. Moshe Feinstein, *Iggrot Mosheh, Even ha-Ezer*, I, nos. 70 and 71, II, nos. 16 and 18, and III, no. 13.

Removal of semen from the vaginal tract following normal coitus for in vitro fertilization would appear to be regarded by most authorities as the optimal method. Although some authorities forbid emission of semen other than in the course of coitus for subsequent insemination, others sanction this

practice but disagree with regard to the means of procurement. Some authorities advise that semen be obtained by means of coitus interruptus. Others sanction the use of a condom as well. The permissibility of masturbation for this purpose is a matter of dispute. Such procedures can, of course, be sanctioned only if the sperm of the husband is used exclusively.

There are of course a host of other questions which present themselves: Does the husband fulfill his obligation with regard to procreation by means of in vitro fertilization? Does a filial relationship exist between the father and a child born in this manner? Does the child enjoy the status of the father as a kohen or levite? Is the child considered to be an heir to his father's estate? These questions have been analyzed with regard to children born of artificial insemination and such discussions appear to be equally germane to the case of children born as a result of in vitro fertilization. In any event, the resolution of these questions has no bearing upon the permissibility of in vitro fertilization.

It should be noted that one aspect of the in vitro procedure — as reportedly performed — does present particular cause for concern. The human female is endowed at birth with as many as a million or more ova. These egg-cells mature, ripen and are normally released between puberty and menopause at the rate of approximately one a month. It is reported that, in order to enhance the chances of success of in vitro fertilization without resorting to re-

TRADITION: *A Journal of Orthodox Thought*

peated surgical removal of mature ova, hormones are administered in order to hasten maturation of the egg-cells so that multiple ova may be removed at one time. All ova removed in this manner are exposed to the male sperm. This permits the fertilization of more than a single ovum. The fertilized ova are then examined and carefully monitored for any sign of chromosomal abnormality. Finally, a single blastocyst is selected for implantation and the remainder are destroyed.

The procedure, when carried out in this manner, poses the question of the permissibility of destroying a developing embryo. Many halak-hic authorities have ruled that the prohibition against feticide is operative immediately following conception while others maintain that no prohibition exists within the first forty days of gestation. In the case of in vitro fertilization the entire question may, of course, readily be sidestepped by limiting the procedure to the fertilization of a single ovum.

Development and perfection of in vitro techniques may in time make it possible to select not only the sex but also other genetic characteristics such as the color of the baby's eyes, I.Q., adult height, etc. Indeed, given the almost infinite number of ova and sperm available and the rapid advances now being made in the field of genetics, it is not at all inconceivable that genetic characteristics may be ordered to conform with virtually any parental preference or whim. The moral, genetic and societal implications of such practices are truly awesome.

Nevertheless, the distinction between capricious genetic manipulation and in vitro fertilization which simulates natural procreation and is designed solely to alleviate infertility due to abnormality of the fallopian tubes should be readily apparent.

In vitro fertilization may prove to be a highly beneficial development if properly safeguarded. Certainly, indiscriminate tampering with nature is dangerous and immoral. Utmost vigilance must be maintained lest we fashion a Huxley-type world in which eugenic selection becomes the norm. Yet, if properly controlled and not permitted to become a substitute for normal human procreation, this revolutionary technique can be a welcome means of bestowing the happiness and fulfillment of parenthood upon otherwise childless couples.

SEVERANCE PAY: HIRED SERVANT OR INDEPENDENT CONTRACTOR?

A hired employee, under Jewish law, enjoys certain benefits which do not accrue to an independent contractor. Most basic of these is the right of the laborer "to withdraw even in the middle of the day." The Gemara, *Baba Metzi'a* 10a, declares that involuntary labor is a form of servitude. Since Jews are described by G-d as "my servants" no Jew can rightfully be forced to serve a mortal master as a laborer, even if he has previously agreed to do so. A laborer cannot be compelled to work against his

Survey of Recent Halakhic Periodical Literature

will, since forcing him to do so would relegate him to the status of a slave. Nevertheless, if his withdrawal should result in irretrievable loss, the laborer may be required to compensate his employer for such loss. The laborer is, however, not liable for damages simply because other workers hired in his stead demand higher wages.

An independent contractor, on the other hand, is in no way comparable to a slave. He, therefore, is not granted the prerogative of withdrawing from his contractual agreement. Although specific performance cannot be compelled and hence the contractor cannot be forced to carry out his undertaking, nevertheless, any expenses incurred in completing the task may be deducted from the sum owed to the contractor.

By virtue of custom and practice workers are entitled to paid vacations and, particularly in Israel, to severance pay upon dismissal. Independent contractors do not enjoy such benefits. Writing in the 5737 issue of *Torah she-be'al Peh*, Rabbi Shmuel Baruch Werner reports on a case which came before the Tel Aviv *Bet Din* of which he is a member. A school had hired a chauffeur to transport students in his own car on a daily basis. Following four years of employment in this capacity, the chauffeur was peremptorily dismissed in the midst of the school year. The chauffeur demanded severance pay, as is customary and usual in Israel upon dismissal of a worker. The school rejected this demand, arguing that the chauffeur was an independent contractor rather than a hired la-

borer and hence not entitled to such compensation.

The crucial legal issue in this dispute hinges upon delineation of the criteria which distinguish an independent contractor from a hired worker. In terms of usual relationships, the distinguishing criteria are two in number: 1) a laborer is hired for a specific period of time while a contractor is engaged to perform a specific task; 2) a hired laborer is bound to the master in being obligated to work during fixed hours whereas an independent contractor may work when it pleases him to do so.

It is, however, possible for a person to be hired for the performance of a specific task, regardless of its duration, but with the stipulation that the task be performed at a certain stipulated hour or between certain hours of the day. Is a person who enters into a contract to perform a specific task at a specific time, but is not bound to work beyond completion of the task, a hired laborer or a contractor? The chauffeur, in the case litigated before the *Bet Din*, had obligated himself to perform a specific task, rather than to work a specific period of time, but had bound himself to transport the children at appointed hours. Conversely, what is the status of a person hired and compensated on a piece-work basis but who has agreed to work certain specified hours?

Mahari Engel, no. 16, maintains that the crucial criterion which distinguishes an independent contractor from a laborer is contracting for the performance of a specific task. Thus, a ritual slaughter-

er, who is paid for each animal he slaughters, enjoys the status of a contractor even though he is obligated to make his services available during specific hours. Rabbi Werner, however, cites a number of latter-day authorities who apparently disagree. Most explicit of these is *Sema*, *Choshen Mishpat* 333:16, who cites as the sole distinction between a hired laborer and a contractor the fact that the latter may work "during whatever hours of the day he chooses in the manner of a master doing his own labor" while a hired laborer has no such discretion. The manner of compensation, whether on a weekly or piece-work basis, is irrelevant. R. Shlomoh Kluger, *Chokhmat Shlomoh*, *Choshen Mishpat* 333, extends this concept to encompass the case of a person who has not obligated himself to perform a set task but who has obligated himself to work a set period of time, e.g., two hours, but who leaves himself the option of selecting the hours of work as he chooses. Thus a tutor who agrees to teach at a set hour is a hired worker, while one who agrees to teach for a two-hour period but reserves the right to choose and to vary the time of the lesson is an independent contractor. This distinction, and its application to teachers, is found in *Or Zaru'a*, *Baba Mezi'a*, chap. 6, no. 242. On the basis of these sources the Tel Aviv *Bet Din* ruled in the case at hand that the chauffeur is entitled to the rights and privileges of a laborer.

ENTEBBE: II

The dazzling rescue by the Israeli Defense Forces of the hostages held in Entebbe following the hijacking of an Air France jet airliner by terrorists in the summer of 1976 earned widespread acclaim. The propriety of this action in accordance with the conventions of international law is analyzed by Malcolm Shaw in the premier volume of a significant new publication, *The Jewish Law Annual*, edited by Bernard S. Jackson (Leiden: A. J. Brill, 1978), pp. 232-239. There has also been considerable discussion of halakhic issues raised by the rescue operation. Questions concerning blessings to be recited by rescued hostages were discussed in the Summer 1977 issue of *TRADITION*. Justification of the Israeli government's policy of adamant refusal to free captured guerillas in exchange for release of hostages was discussed in this column in the Winter-Spring 1972 issue of *TRADITION* in the aftermath of a similar incident in the autumn of 1970. The Entebbe operation posed the additional question of endangering the lives of the members of the commando unit in their endeavor to rescue the hostages. These questions are discussed by Rabbi Ovadiah Yosef in a wide-ranging article which appears in the 5737 issue of *Torah she-be-'al Peh*.

In his discussion Rabbi Yosef presents a thorough review of sources dealing with an individual's obligation to jeopardize his life in order to save the life of another. Earlier discussions of this question

Survey of Recent Halakhic Periodical Literature

appear in Rabbi Shlomoh Yosef Zevin's *Le-Or ha-Halakhah*, pp. 14-18 as well as in *Minchat Yitzchak*, VI, no. 103, and in *Tzitz Eli'ezer*, IX, no. 45 and X, no. 25, chaps. 7 and 18. The latter two discussions are within the context of the broader question of organ donation for transplant surgery. This portion of Rabbi Yosef's discussion also appears in an article on kidney transplants in volume 7 (5737) of *Dine Israel*, an annual published by the Faculty of Law of Tel Aviv University.

The question of whether or not one must risk one's life in order to save the life of another is the subject of considerable disagreement. R. Joseph Karo, *Kesef Mishneh*, *Hilkhot Rotzeach* 1:14, and *Bet Yosef*, *Choshen Mishpat* 426, cites *Hagahot Maimuniyot* who, in turn, bases himself upon a statement found in the Palestinian Talmud and declares that one is indeed obligated to assume such a risk. *Bet Yosef* explains that if the impending loss of life is certain, while the danger to the would-be rescuer is doubtful, the "certainty" of one's fellow takes precedence over the "doubtful" loss of one's own life. On the other hand, *Isur ve-Heter* 59:38 declares that no person is obligated to place himself at risk in order to save the life of another. *Sema*, *Choshen Mishpat* 426:2, notes that no such obligation is recorded by any early authority. A similar ruling was issued by R. David ibn Zimra, *Teshuvot Radbaz*, III, no. 625. The question submitted to Radbaz involved a situation in which a feudal despot demanded of a Jew that he permit one of his

limbs to be cut off and threatened that, should permission to do so not be forthcoming, a fellow Jew would be put to death. Radbaz answered [in opposition to the view of *Teshuvot Maharam Recanti*, no. 480] that compliance with this cruel request would constitute an act of piety, but that there exists no obligation to do so, particularly since the amputation of a limb may lead to death. In situations where there exists a significant hazard to the life of the would-be rescuer, Radbaz speaks of one who assumes such risk as a "pious fool." In such cases the applicable consideration is, "How do you know that the blood of your fellow is redder than your blood?", a variation of the Talmudic dictum which prohibits the taking of the life of one's fellow in order to save one's own.

Teshuvot Yad Eliyahu, no. 43, p. 48b, adduces evidence bolstering this position on the basis of *Tosafot's* understanding of an incident recorded in *Niddah* 61a. It was rumored that certain individuals had committed an act of murder. These persons appeared before R. Tarfon and requested that he shelter them from the authorities. Although the rumor was unconfirmed, R. Tarfon refused to do so and instead instructed them to find refuge in some other manner. *Tosafot* explains that R. Tarfon was afraid that he himself would be put to death for harboring fugitives. *Yad Eliyahu* argues that since R. Tarfon refused to place his own life in danger it may be inferred that a person is not obligated to place himself at risk in order to save the life of another. However,

TRADITION: *A Journal of Orthodox Thought*

the argument based upon this source is not at all conclusive. It is quite possible that the persons in question were capable of finding refuge without endangering R. Tarfon. Moreover, it is quite possible that even had R. Tarfon hidden them, their hiding place might have been discovered, thereby causing not only their lives but also the life of R. Tarfon to be forfeit. Virtually all authorities agree that there is no obligation to place oneself at risk unless it is certain that preservation of the life of another is assured thereby. [See, however, *Teshuvot Chavot Ya'ir*, no. 146.] Furthermore, R. Naftali Zevi Yehudah Berlin, *Ha'amek She'elah* 129:2, argues that, on the contrary, *Niddah* 6a serves as evidence for the opposing view of *Hagahot Maimuniyot*. *Ha'amek She'elah* argues that R. Tarfon acted as he did only because there existed genuine doubt with regard to the culpability of those who sought his assistance. Had it been certain that they were guiltless, argues *Ha'amek She'elah*, R. Tarfon would have been duty-bound to assume the hazards involved in providing them with shelter.

Among the factors militating against release of terrorists under any conditions is the fear that upon their release they are likely to resume their nefarious activities and thereby endanger the lives of others. Nevertheless, Rabbi Yosef argues that since, according to *Hagahot Maimuniyot*, a person must place himself at risk in order to prevent the *certain* death of his fellow, it would be permissible to free terrorists in exchange for the

lives of hostages. The danger to the hostages who face imminent execution is certain and immediate, while the danger to others as a result of the release of guerillas is merely doubtful. Moreover, argues Rabbi Yosef, even those who dispute the position of *Hagahot Maimuniyot* do so on the basis of the fact that a person may justifiably give consideration to his own safety over that of others. A third party, however, whose own person is not at risk, when confronted by certain danger to one individual and merely possible danger to other individuals, is not at all in an analogous situation. Since his obligation to both is equal he must act to eliminate the certain and immediate danger. This course of action is mandated by the principle that the "certain" takes precedence over the "doubtful."

A similar case is discussed by *Teshuvot Maharibal*, II, no. 20. A person was unjustly held for execution by a feudal despot. It was within the power of a friend to secure his release but the friend had reason to fear that a third person would be seized and executed in place of the released prisoner. *Teshuvot Maharibal* rules that if the execution of another person is deemed a certainty, a third party is forbidden to intervene. However, if it is possible that the wrath of the authorities will subside and no one will be executed in place of the released victim, elimination of the certain and immediate danger to the designated victim takes precedence over the possible danger to others.

Rabbi Yosef cites *Tal Orot* 16b

Survey of Recent Halakhic Periodical Literature

who finds a source for this ruling in the commentary of Rashi on the verse, "Send the lad with me and we will arise and go that we may live and not die" (Genesis 43:8). Rashi depicts Judah as arguing, "As for Benjamin it is doubtful whether he will be seized or whether he will not be seized, but for us, we shall certainly all die of hunger if we do not go. It is better that you shall set aside that which is doubtful and grasp that which is certain." However, upon closer scrutiny, it is readily apparent that Rashi's comments are not at all germane to the case at hand. Placing the life of Benjamin in jeopardy in compliance with Joseph's demand does not serve as a paradigm establishing a normative principle for a third party who must weigh the danger his actions may cause to others. Nor, in the biblical narrative, does Benjamin place himself in danger solely on behalf of others. On the contrary, failure to appear before Joseph would mean that not only will the family fail to secure food, but that Benjamin himself will die of hunger. Accordingly, Rashi depicts Judah as advancing the compelling argument that even insofar as Benjamin himself is concerned, appearing before Joseph constitutes a lesser danger.

Rabbi Yosef also ignores the fact that the release of terrorists in order to save the lives of hostages is not the act of a third party who is himself free of danger. The government officials and the citizens of the State of Israel who must release the imprisoned guerillas are themselves among the potential vic-

tims of possible terrorist activity. Hence, according to the vast majority of authorities who dispute the position of *Hagahot Maimuniyot*, there is no obligation for them, on these grounds, to assume additional risks in order to prevent the execution of hostages.

It should, however, be stressed that a person is exempt from coming to the aid of his fellow only when such intervention poses a significant risk to himself. When, however, the risk to himself is minimal he is obligated to do so. This point is made by R. David ibn Zimra himself in another responsum, *Teshuvot Radbaz*, II, no. 217. The Gemara, *Sanhedrin* 73a, obligates a person to render assistance to the individual whose life is endangered and enumerates as examples specific circumstances including those of a person drowning in a river, being attacked by armed bandits or mauled by a wild beast. Each of these examples involves at least minimal danger to the rescuer. The obligation to render assistance in cases of minimal danger to oneself is clear. The matter is best summed up in the words of Rabbi Yechiel Michel Epstein in the early 20th-century compendium *Arukh ha-Shulchan*, *Choshen Mishpat* 426:4, who writes, "However, everything depends upon the circumstances; it is necessary to weigh the matter on a scale and not to safeguard oneself more than necessary."

Rabbi Yosef finds justification for military action in rescuing the hostages on the basis of a declaration of the Gemara, *Eruvin* 45a. The Gemara states that an invading army seeking to seize a city near

of course, is true not only of toasters, but applies with equal cogency to any electrical appliance used in the preparation of food.

Rabbi Moshe Stern, the *Debre-cyner Rav*, in his *Be'er Moshe*, IV, no. 100, assumes without question that electric toasters require immersion but offers a practical suggestion in order to circumvent this requirement. *Chokhmat Adam* 73:13 rules that when immersion of an oversized utensil proves to be too cumbersome a hole may be made in the vessel sufficiently large to render the utensil unusable and thereafter the vessel should be repaired by a Jewish workman. Perforation of the utensil has the effect of nullifying the utensil's status as a "vessel." Since, upon repair, the utensil regains status as a "vessel" through the workmanship of a Jew it is exempt from the requirement for immersion. Rabbi Stern suggests that the toaster be taken apart in a manner that will require a repairman to put it together again. A disassembled utensil which requires the skill of an artisan for re-assembly also loses the status of a "vessel." Following reassembly by a Jewish workman the toaster no longer requires immersion in a *mikveh*.

Rabbi Stern also reports that he has been advised by electricians that if the toaster is not used for a period of two days following immersion no damage will occur. This period should be sufficient to allow for the drying of electrical wires and the evaporation of any remaining drops of water.

CANTORIAL REPETITION

The historical functions of the cantor include leading the congregation in prayer and (particularly in olden times) recitation of the prayers on behalf of unlettered persons unable to do so themselves. Such persons may discharge their obligation by listening attentively to the cantor's rendition. As a representative of the congregation beseeching G-d through prayer, the cantor was expected to be a person of piety and erudition. Jewish law specifies that in the appointment of a cantor a person blessed with a pleasing and melodious voice is to be sought in order that the congregation be inspired to proper concentration upon the service. Piety and scholarship are, however, of more fundamental importance. Thus *Shulchan Arukh, Orach Chaim* 53:5, rules that when no person can be found who is endowed with all cantorial desiderata other considerations should be overlooked in the quest for a person of learning and wisdom.

With the passage of time it became common practice for cantors to embellish the prayers with musical renditions designed to exhibit musical accomplishment. These exhibitions of cantorial vanity, when designed to impress the congregation or to provide esthetic gratification rather than to arouse spiritual fervor, were decried by so early an authority as R. Solomon ben Adret in the 13th century as recorded in *Bet Yosef* and *Shulchan Arukh, Orach Chaim* 53:11. Subsequently, the eighteenth-century authority, R. Alexander Schorr, *Bekhor Shor*,

Survey of Recent Halakhic Periodical Literature

Ta'anit 16b, inveighed against such practices and caustically described them as more objectionable than theatrical performances.

In later times, cantors began to repeat words and phrases which occur in the liturgy as part of their musical arrangements. This practice has been censured by a host of authorities including *Maharam Schick*, *Orach Chaim*, no. 31; *Pekudat Elazer*, no. 25; *Eshel Avraham*, no. 51; R. Joseph Engel, *Ben Porat*, II, no. 7; *Sedei Chemed*, *asifat dinim*, *marekhet hefsek*, sec. 9; and *Iggrot Mosheh*, *Orach Chaim*, II, no. 22.

Recently, in the course of his highly popular "Ask the Rabbi" program broadcast on Israeli radio, Rabbi Ovadiah Yosef responded to a closely-related question: In singing portions of the prayer service may students (or others) repeat verses of *hallel* or of the psalms included in the prefatory section of the morning prayers? Rabbi Yosef's answer appears in the Kislev 5737 issue of *Or Torah*.

Repetition of words and phrases is prohibited for a number of reasons. In addition to marring the solemnity of prayer and generating an aura of a concert performance rather than of divine worship, such repetition frequently seriously distorts the cognitive meaning of the words of the liturgy and may, at times, even impart a ludicrous meaning to the text of the prayer. Another consideration raised by the authorities who address themselves to this question is that unauthorized words or phrases may constitute a *hefsek* or "interruption" which, in the case of blessings, has

the effect of invalidating the prayer.

Repetition of complete verses of the psalms is, however, significantly different in nature. The meaning of the sentences uttered is not distorted by means of repetition. Since the psalms are not blessings, but are designed to extol the praises of G-d, repetition does not appear to constitute a *hefsek*. Indeed, the verses of Psalms 118:25-29 are regularly repeated in the course of *hallel* for reasons advanced by Rashi, *Succah* 38a. Similarly, Psalms 150:6 is repeated in the daily morning service to indicate that it constitutes the final verse of the section referred to in *Shabbat* 118b as "*hallel*."

Rabbi Yosef cites *Orchot Chaim*, *hilkhot pesukei de-zimra*, no. 31, and *Yeshu'ot Ya'akov*, no. 51, sec. 111, who maintain that, these distinctions notwithstanding, other verses of psalms should not be repeated. On the other hand, Rabbi Yosef points to a number of authorities, cited by *Bet Yosef*, *Orach Chaim* 61, who maintain that the verses of *kri'at shema*, with the exception of the very first verse, may be repeated. All agree that the first verse of *kri'at shema* may not be repeated lest such repetition be interpreted as a confession of dualism. However, the authorities who permit repetition of the ensuing verses of *kri'at shema* are apparently of the opinion that, apart from the considerations of possible dualistic misinterpretation which is present only in repetition of *kri'at shema*, there is no objection to repetition of biblical verses.

Accordingly, Rabbi Yosef rules

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that, while in general, it is not permitted to repeat words and phrases of the liturgy, repetition of verses of psalms (or, less preferably, of complete phrases) is not forbidden.