*J. David Bleich*

With this issue TRADITION resumes a feature which for many years was contributed by Rabbi Immanuel Jakobovits, now Chief Rabbi of Great Britain, who because of pressure of official duties was constrained to relinquish the editorship of this department. Rabbi Bleich, our new Department Editor, is well known to our readers through his previous incisive articles on halakhic issues. In addition to serving as spiritual leader of the Yorkville Synagogue, Congregation B'nai Jehuda in New York, Rabbi Bleich is Rosh Yeshivah at the Rabbi Isaac Elchanon Theological Seminary and a lecturer in philosophy at Stern College of Yeshiva University.

# SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

With the proliferation of both popular and scholarly articles in the vernacular dealing with matters of Jewish theology and practice, many of which unfortunately abound in misrepresentations and are distressingly inaccurate, it becomes imperative that the views of normative Judaism be clearly enunciated. The assigned task of this department is to present a review of halakhic decisions on questions of practical import and concomitantly to discuss halakhic attitudes regarding the issues and movements of the times as reflected in the periodical literature. Thus the focus of these surveys is on the present — on the constant unfolding of halakhic decision, on contemporary problems and halakhic reactions evoked in response to them.

In the realm of "new" problems there are presently two major areas of halakhic investigation which have been the subject of numerous articles in the periodical literature during the past several years. The astonishing surgical advances in the area of heart transplantation have given rise to many new halakhic queries involving fundamental halakhic and ethical principles. Had there been no significant time lapse in the appearance of this column each opinion could properly have been discussed upon its publication. At this juncture, however, so much has been written on this topic that any meaningful presentation would necessarily entail an exhaustive study of this most urgent medical and moral problem. The second important area of halakhic inquiry posing novel and intriguing challenges involves questions which have become particu-

larly cogent since the Six-Day War. The sanctity of the various holy places, entry into the Temple site, return of conquered territories, etc., are all questions which we are now privileged to examine from an immediate vantage-point for the first time in millennia. A review of articles dealing with such topical matters constituted the last issue of this department which appeared in Spring, 1968. That review, penned by Rabbi Immanuel Jakobovits, the distinguished Chief Rabbi of Great Britain, of necessity included only material published prior to February of that year.

Since this department has not appeared for a considerable period of time it is difficult to consider all noteworthy responsa which have appeared in the interim and to collate all relevant material. In this initial selection the present reviewer has been guilty of allowing himself to be guided by personal interest with regard to choosing from among the plethora of topics available. Several of those included touch upon matters of social concern; others are in the nature of new looks at old questions. All involve details of legal and ritual practice of interest to the student and to the practicing rabbi. Henceforth, however, every effort will be made to be *au courant* in discussing such responsa as they appear in the spirit of: " 'All grasping the sword' . . . R. Meir says, all were sharpening the halakhah as a sword so that if a specific case were to be put before them halakhah would not [find it necessary to] call to them." (*Bamidbar Rabbah* 11:7)

### Surnames in Marriage Contracts and Bills of Divorce

The important question of the necessity of including the surnames of the various parties in bills of divorce is discussed in a significant work, recently republished, the *Chelkat Ya'akov,* collected responsa of Rabbi Jacob Breish of Zurich. Earliest mention of this matter is to be found in a work entitled *Seder Gittin* and cited in the *Darkei Mosheh* of Rabbi Moses Isserles, *Even ha-Ezer* 129:19. According to the *Darkei Mosheh* family names should not be included as a cognomen in these documents. Rabbi Shalom Mordechai Schwadron in Vol. I no. 83 of his *Teshuvot Maharsham* contends that this ruling was valid only in earlier days when family names were not widespread but now that people are invariably known by their surnames these names must be included in legal documents. In an addendum, published together with volume III of these responsa, the Maharsham adds that since positive identification of the individuals named must be possible on the basis of the content of the document itself (*mukhach mi-tokho*), the absence of a surname in an age when persons are identified primarily by last names renders the bill of divorce invalid. Yet the Maharsham's ruling was never accepted as normative practice. Rabbi Breish in volume I, no. 161 of his *Chelkat Ya'akov* advances several considerations which, in his opinion, explain the non-implementation of the Maharsham's decision. In the first place a bill of divorce commonly contains all

names, cognomens, nicknames, aliases, etc., including those of the vernacular, of both husband and wife and their respective fathers. Accordingly, there is no question of absolute identification of the parties named. Furthermore, inclusion of the surname may lead to confusion, for while at the time of divorce husband and wife share the same surname, the wife's family name will change upon remarriage. Therefore, there is no need to deviate from the recorded opinion of the *Darkei Mosheh.*

Rabbi Moses Feinstein in his *Igrot Mosheh, Even ha-Ezer,* 178, states that surnames are not included in a bill of divorce lest an error be made in proper Hebrew spelling as a result of transliteration and thus render the divorce invalid. Were this to be the case consequent marriages contracted by the divorcee would, in fact, constitute adultrous relationships. Since this consideration does not apply to marriage contracts there is no impediment to the inclusion of surnames in such documents. However, it goes without saying that even with regard to the execution of a marriage contract the officiating rabbi should familiarize himself thoroughly with the halakhic forms governing transliteration. Rabbi Feinstein adds that there may be positive reason for the inclusion of surnames in marriage contracts because in such documents cognomens are not commonly included. In large cities where many individuals may have identical Hebrew names, positive identification of the principals would perhaps not be effected by means of the document itself and hence it might be advisable that the surname be utilized for this purpose.

When the surname *is* included care should be taken that it not be identified as a personal cognomen, and the term *ha-mekhunah* should not be employed. *Darkei Mosheh,* quoting the *Seder Gittin,* states that the term *ha-mekhunah* denotes use of the appellation as a *personal* name. Thus the use of *ha-mekhunah* in conjunction with a surname is erroneous and renders the document invalid. In point of fact, the individual to whom reference is made bears no such personal name and the document is therefore faulty by virtue of misidentification. For this reason, Rabbi Feinstein declares that the surname, when used, must be introduced by a term identifying it as such. Rabbi Feinstein recommends use of the term *"le-mishpachat"* ("of the family") followed by the surname.

### Children of Mixed Marriages: Their Status as Levites

In a well researched and clearly reasoned article appearing in the 5729 *Adar-Nissan* issue of *Ha-Pardes,* Rabbi Meir Jost discusses one interesting ramification of the many problems resulting from mixed marriages. The Beth-Din of Amsterdam had been consulted with regard to the halakhic status of a child born of a union between a Levite mother and a gentile father. As the first-born son of a Levite woman, the child is exempt from the obligation of redemption of the first-born (*Yoreh De'ah* 305:18). Halakhah

clearly provides that maternal Levite parentage carries with it such statutory exemption even in instances when that child himself is not a Levite as is indeed the case with regard to the issue of all marriages between a Levite mother and an Israelite father. In the case under consideration, the question to be resolved is whether such exemption extends also to a future first-born son of the issue of a Levite mother and gentile father. The question is raised only with regard to the first-born son of a Levite mother. The son of the daughter of a *kohen* who cohabits with a gentile is not exempted from redemption (*Vide Yoreh De'ah* 305:18).

The *Gemara, Bekhorot* 47b, states that the progeny of a union between a Levite woman and a non-Jew has the status of a *levi pasul* — a disqualified Levite. Although paternal parentage is the controlling factor in the determination of tribal status, this principle applies only so long as there exists a recognized genealogical relationship between a father and son. Since, however, halakhah does not recognize the existence of a genealogical relationship (*yichus*) between a gentile father and a son sired by him, in such instances the tribal status of the mother devolves upon her children. Rabbi Chaim Soloveitchik in his novellae on the Rambam (*Issurei Bi'ah* 15:9) explains the appellation *levi pasul* as referring to an individual who, while disqualified from performing the functions of a Levite in conjunction with the Temple service, retains the familial status of a Levite. As such he is exempt from the precept concerning redemption of the first born because he himself is a Levite, genealogically speaking, notwithstanding the fact that he is barred from fulfilling the function of a Levite in the Temple service. According to this analysis exemption from redemption of the first-born extends to succeeding generations even in the case of the progeny of a *levi pasul* who is himself the issue of a mixed marriage.

Dayan Jost points out that the first discussion of this question appeared in one of the earliest Torah journals, the *Shomer Tzion ha-Ne'eman* which was published in Altona in the mid-nineteenth century under the editorship of Rabbi Jacob Ettlinger and Samuel Joseph Enoch. In his treatment of this problem in issues no. 98 (36 Nisan, 5610) and no. 99 (14 Iyar, 5610) Rabbi Samuel Bondi of Mainz reached a similar conclusion but hesitated to implement his ruling pending a concurring opinion on the part of prominent halakhic authorities. These responsa evoked a contrary opinion penned by Rabbi Moses Shick which appeared in issue no. 110 (22 *Elul*, 5611) of the same journal and was later reprinted in a more comprehensive form as responsum 299 of the *Teshuvot Maharam Shick*. A similarly dissenting view is expressed by the *Chazon Ish* on *Even ha-Ezer* 6:7 and 16:17. According to this opinion, a child can never acquire the tribal identity of its mother because the paternal genealogical relationship does not merely supersede that of the mother and hence becomes the governing factor in

determination of tribal identity but serves as the sole operative relationship with regard to tribal status. Hence the first-born issue of a mixed marriage does not have the tribal status of a Levite and is exempt from redemption as a first-born solely by virtue of the fact that he is a son of a female Levite. Accordingly, the *Chazon Ish* defines the term "disqualified Levite" employed by the *Gemara* as having reference to one who is progeny of a Levite but himself lacks any such tribal identity. A similar interpretation is to be found in the commentary of the *Rit Algazi* on *Bekhorot.* In support of the view of these authorities Rabbi Jost cites the commentary of Nachmanides on the verse ". . . and the son of an Israelite woman and a son of Israel strove together in the camp" (Leviticus 24:11). Maimonides remarks that despite his unquestioned status as a Jew, Scripture speaks of the child of an Israelite mother and Egyptian father as the "son of an Israelite woman" and not as an Israelite in his own right as an indication that such progeny lacks tribal identity. We are then confronted by the odd case of an individual who is unquestionably a Jew by birth but who is not a member of any of the twelve tribes and hence lacking in tribal status. The halakhic ramifications of this anomolous status precludes such individuals from encampment around the banners in the wilderness and from inheritance in the land of Israel.

Insofar as being called to the Reading of the Torah as a Levite there is no question that a son of a mixed marriage is disqualified from being accorded this honor since the *Gemara* deems such a child to be a "disqualified Levite."

### Shaving on the Intermediate Days of Festivals

This topic having been exhaustively discussed in responsa literature over a period of centuries would not ordinarily have been reviewed in this department since no new light has been shed on this question in current halakhic writings. However, an article authored by Rabbi Aaron Pinchik containing a useful summary of some of the material appears in the *Tishrei* 5729 issue of *Or ha-Mizrach,* the 5729 edition of *No'am* and the 5729 edition of *Shanah ba-Shanah.* Both *No'am* and *Shanah ba-Shanah* are publications of the Heichal Shlomo Institute and Rabbi Pinchik serves as editor of the latter annual. The ubiquitous nature of this article prompts us to discuss its contents. However, the practical importance of this question necessitates a somewhat fuller analysis of the sources.

The prohibition against cutting one's hair during the intermediate days of the festival is derived from *Mo'ed Katan* 13b. The Mishnah permits cutting of hair during the intermediate days only in certain enumerated instances in which proper grooming prior to the holiday was precluded by circumstances beyond one's control. The *Gemara* explains that others are restricted with regard to cutting of the hair lest they negelect to do so prior to the holiday.

The formulation of this statement by the *Gemara* "lest he enter into the festival with a neglected appearance" would seem to imply that the prohibition against cutting the hair is rabbinic in origin, the edict having been legislated in order to enhance the dignity of the holiday by assuring that hair would be properly cut prior to the commencement of the festival. Tosafot, however, are of the opinion that cutting of the hair constitutes an infraction of the Biblical prohibition against "work" on the intermediate days of a festival. This position is adopted by Tosafot despite the general principle that "work" is permitted if directly connected with the holiday needs. Since a neat appearance is a holiday need, it would stand to reason that cutting of the hair be included in the category of such permitted activities. Nevertheless, the explanatory phrase "lest he enter into the festival with a neglected appearance" is interpreted by Tosafot as an explanation of why cutting the hair is not a permitted form of labor. According to this explanation cutting the hair during the course of the festival itself cannot be deemed a holiday need because the hair should properly be cut prior to the holiday in honor of the oncoming festival. Therefore in the opinion of Tosafot cutting the hair during the intermediate days of the festival is Biblicly forbidden.

One authority, Rabbenu Tam, cited in *Tur, Orach Chaim* 531, maintains that the prohibition against cutting the hair is operative only if the hair has not been cut on the eve of the festival. Rabbenu Tam reasons that since the basis of the ban against this activity is "lest he enter into the festival with a neglected appearance" therefore one who has not been remiss in this respect is not under restraint with regard to cutting the hair again on the intermediate days. Since Rabbenu Tam permits cutting the hair under these circumstances, it would appear that he does not consider this activity to be a form of "work" and hence deems the prohibition to be of rabbinic origin. *Tur* raises an objection against Rabbenu Tam's view on the basis of the previously cited Mishnah, *Mo'ed Katan* 13b which specifically enumerates those exceptions where hair-cutting is permited. According to Rabbenu Tam, there is yet another category of individuals permitted to cut their hair on the intermediate days of the festival — those who have already done so previously on the eve of the holiday. If so, queries *Tur,* why is this category not specifically included among those enumerated by the Mishnah? This question is particularly cogent since such an explanation is mentioned in a parallel case. Laundering is also forbidden on the intermediate days of the festival. In that case the Gemara, *Mo'ed Katan* 14a, specifically exempts an individual who has only one shirt because the garment, even if washed before the holiday, will again become soiled.

Rabbi Ezekiel Landau, in his responsa, *Noda' bi-Yehudah, Orach Chaim* I, 13, endeavors to reinterpret Rabbenu Tam's position in a way which reconciles the latter's views with those of the authorities

who allegedly dispute his position. Accepting the previously quoted explanation of Tosafot, Rabbi Landau explains that according to Rabbenu Tam hair-cutting constitutes forbidden "work" but, if not for rabbinic legislation, would be permissible by virtue of its necessity in fulfilling a holiday need. Rabbinic decree forbids what is otherwise permissible in order to promote cutting of hair prior to the festival "lest he enter into the festival with a neglected appearance." Once actually forbidden by the Sages, cutting of the hair can no longer be considered a holiday need and hence, in the final analysis, is included among the Biblicly forbidden categories of work. *Noda bi-Yehudah* adds that, according to Rabbenu Tam, if the hair has been cut immediately prior to the festival, there is no longer any need to cut the hair again during the festival because one who has indeed cut his hair prior to the festival does not require a second cutting within so short a period. For that individual cutting of the hair cannot be deemed a holiday need. The result, *Noda bi-Yehudah* reasons, is that cutting of hair is prohibited to all individuals even according to Rabbenu Tam. Yet there is a crucial difference with regard to one who cut his hair prior to the holiday. If cutting the hair is prohibited only because of the "work" involved and not because of the superimposed rabbinic decree "lest he enter, etc.," the prohibition against cutting the hair will then be governed solely by the regulations applicable to work on the intermediate days. A poor laborer lacking funds to buy provisions for the holiday is permitted to perform such acts of "work" on the intermediate days of the festival. Hence it would be permitted to have a poor barber cut one's hair — but only if the hair has already been previously cut prior to the festival. If this was not done, the rabbinic edict "lest he enter into, etc.," becomes effective and cutting the hair is forbidden by rabbinic edict even in circumstances where "work" would otherwise be permitted. The explanation offered by the *Noda bi-Yehudah* also resolves the previously mentioned difficulty raised by the *Tur*. Since, according to the *Noda' bi-Yehudah,* Rabbenu Tam intended to permit the cutting of hair for one who has already done so on the eve of the festival only through the employment of a needy barber, this category could not be included among those listed in the Mishnah because the ones so listed are not restricted in this manner. The *Noda bi-Yehudah* maintains that there is complete unanimity of opinion between Rabbenu Tam and other authorities regarding the permissibility of hair cutting and shaving by a needy barber if the client has also engaged in these preparations prior to the holiday.

Rabbi Landau's lenient ruling with regard to shaving apparently gained wide acceptance in his own city of Prague. In Volume II, *Orach Chaim,* no. 101, the *Noda bi-Yehudah* reports that he caused the Jewish barbers of his city to take a solemn oath not to shave their clients with a razor as is prohibited by Leviticus 21:5. However, during the festivals many

Jews, finding the Jewish barber shops closed, were wont surreptitiously to patronize gentile barbers. Of course these barbers did utilize razors as shaving implements. As documented in this responsum and in the one previous, no. 100, it was this breach in observance of Jewish law which Rabbi Landau sought to repair by permitting Jewish barbers (at least those who were poor) to keep their establishments open during the intermediate days of the festival.

Rabbi Landau's reputation was such that this innovating decision had far-reaching repercussions. Rabbi Saul Loewenstamm of Amsterdam, to whom responsum 101 of volume II was addressed, speaks of Rabbi Landau as the "wonder of the generation" and appeals to him to "repair the breach in the fence of the vineyard" by retracting this lenient ruling. Another interlocutor, to whom Rabbi Landau replies in II, no. 99, bemoans the latter's decision arguing that it is unwise to publicize this ruling for "particularly in a wanton generation such as ours is it to be feared that sinners will stumble in many other areas if they see a leniency contrary to the *Shulchan Arukh* and all later authorities." Rabbi Landau replies that his decision was originally rendered some "twelve or fifteen" years earlier and that at the time he concealed his true reasons and informed the individual who had consulted him regarding this matter that the considerations prompting a permissive ruling applied solely to the one case which had been brought to his attention. Interestingly, Rabbi Landau adds that the motive which prompted this circumspect attitude was not trepidation with regard to halakhic innovation but recognition of the fact that in other cities many persons had adopted the practice of shaving with razors. Apparently, the same people who usually shaved with a razor refrained from shaving on the intermdiate days of the festival. Rabbi Landau, knowing that if they were to shave on the festival it would be with razors, wished to preserve them from this transgression at least during these holiday periods. The *Noda bi-Yehudah* adds that in preparing his manuscripts for publication his original intention had been to suppress the responsum in question but that in reconsidering the matter he became determined to publicize this decision. In a very intriguing comment Rabbi Landau adds that the reasons prompting this decision must remain "concealed in my heart." Surprisingly, in his comments on this statement of the *Noda bi-Yehudah* Rabbi Pinchik does not refer to the *Teshuvot Chatam Sofer, Orach Chaim,* no. 144. In this responsum Rabbi Mosheh Sofer declares, "I am a talebearer and will reveal the secret," and proceeds to show precisely what line of reasoning it was that prompted the *Noda bi-Yehudah's* decision and at the same time Rabbi Sofer indicates his own divergent view. Respecting Rabbi Landau's desire that the explanation remain *in pectore* we will not enter into detailed discussion of this controversy.

Apart from this disagreement Rabbi Mosheh Sofer takes issue with the main thesis of the *Noda*

*bi-Yehudah's* responsum. He quotes *Binyan Ari'el* on *Mo'ed Katan* by Rabbi Saul of Amsterdam who disposes of the contention that shaving constitutes a forbidden form of "work." A similar prohibition against hair-cutting was placed on *kohanim* during their period of service in the Temple in order to prompt them to cut their hair prior to beginning their period of service. Rabbi Sofer argues that it would follow on the basis of the *Noda bi-Yehudah's* reasoning that a *kohen* who did cut his hair immediately prior to his period of service should not be restricted in any way during his period of service. Considerations based upon prohibited "work" are not applicable in light of the fact that there was no restriction against "work" placed upon *kohanim* performing the Temple service. Yet no exception from this ban is recorded in the case of a *kohen* who cuts his hair prior to beginning his period of service.

The *Sedei Chemed, Ma'arekhet Chol ha-Mo'ed,* cites sources which mention that at a subsequent date Rabbi Landau retracted his lenient ruling. These claims are rejected as spurious by the *Sedei Chemed* in light of the responsa printed in volume II of the *Noda bi-Yehudah.* This volume was posthumously published by the author's son and it is unthinkable that the latter would have published as authoritative decisions and opinions which his father had retracted. The *Sedei Chemed* does, however, cite a number of authorities in addition to the *Chatam Sofer* who disagree with the lenient ruling of the *Noda bi-Yehudah.*

The problem regarding shaving of the beard during the intermediate days of a festival is somewhat modified in our day by the fact that virtually all men who shave do so each day. One objection raised by the *Tur* against the view of Rabbenu Tam, who permits cutting of the hair by one who has already done so before the festival, is based upon *Mo'ed Katan* 14a. The *Gemara* declares that hair-cutting cannot be permitted on the festival itself even if there existed valid reason for not having cut the hair prior to the festival, e.g., preoccupation with seeking a lost object. The explanation given is that so long as one's personal preoccupation is not public knowledge onlookers will not be aware of such reasons and will themselves become lax in observance of this law. The objection advanced by the *Tur* is that even if the person has indeed cut his hair on the eve of the festival this would be unknown to onlookers seeing him with hair fully cut on the intermediate days. Hence cutting of the hair should always be forbidden according to the grounds advanced in the above-mentioned Talmudic citation.

Rabbi Moses Feinstein in his *Igrot Mosheh, Orach Chaim,* 163, argues that in our times this objection does not apply since it is common knowledge that almost all men not sporting beards do shave daily and certainly do so on the eve of a festival. Therefore in addition to those of the *Noda bi-Yehudah* we have grounds to permit this practice. The other objection raised by the *Tur,* namely, that this exception to the general

prohibition against cutting the hair on the intermediate days of a festival is not specifically mentioned in the Mishnah, is regarded by Rabbi Feinstein as presently inapplicable. A country or geographical area in which so large a number of people are unshaven was unheard of in bygone days and therefore there was no need to take such a situation into account. There remains, however, one possible objection. Both the *Noda bi-Yehudah* and another source, the *Nachal Eshkol,* state that where shaving is not halakhicly permitted such an act constitutes a form of work forbidden on this holiday. Although there would have been no reason for the Sages not to have permitted shaving in such circumstances as now prevail among most Jews, nevertheless this category did not present itself for their consideration as can be inferred from the fact that no mention is made of an exception under conditions such as ours. If not specifically sanctioned might not such acts be forbidden as a form of "work?" Rabbi Feinstein, disagreeing with these two authorities, argues that shaving constitutes one of the needs of the festival and cannot be banned as a form of "work." In a final observation he adds that his practice is to permit shaving on the intermediate days of the festival only in cases of extreme need or great discomfort, but that no fault can be found with those who do so merely for purposes of a neat appearance.

### Single Sterilizer for Both Meat and Dairy Utensils

In an article appearing in the 5728 edition of *Shanah ba-Shanah* Rabbi S. Efratti reports that the following query had been addressed to him: A hospital found it necessary to utilize a sterilizer for all eating utensils used in its pediatric and isolation wings. Since purchase of two such machines would involve a great expense could the same sterilizer be used for both meat and dairy utensils, albeit not at the same time? It was to be understood that both dishes and silverware were to be washed properly before being placed in the sterilizer. The apparatus, the interlocutor averred, used cold water and was equipped with its own heating elements which were utilized to raise the temperature of the water to the proper degree of heat for purposes of sterilization.

Rabbi Efratti compares this case to that mentioned in *Yoreh De'ah* 94:5 concerning a new pot containing boiling water in which a dairy spoon had been placed. The pot was subsequently emptied, refilled with boiling water and this time a meat spoon was inserted. The ruling in this situation is that the pot has been rendered unfit for either meat or dairy products and can be used only for neutral foods. If the instance of the sterilizer is analogous to the case cited, use of the machine would be objectionable for either meat or dairy utensils. There is, however, one significant difference. The utensils in question are used by patients in eating meals, but never in the kitchen for the preparation of foods. Thus these dishes never come into contact with hot food

while such food is yet in the utensils in which it was originally cooked. The utensils to be sterilized accordingly have the status of a *keli sheni,* a vessel into which cooked food is transferred. Since such vessels possess only heat transmitted to them by the food they contain their power of absorption is considerably lessened. Rabbi Efratti points out that in the case under consideration the "taste" of food goes through three distinct processes of assimilation: from the edibles into the eating utensil, from the eating utensil into the water and from the water into the sterilizing apparatus. Accordingly, he argues, if this analysis does in fact take account of all relevant factors there would be no reason for a stringent ruling so long as the absorption of dairy or meat foods in the eating utensils takes place in the form of a *keli sheni.*

This line of reasoning does not, however, apply to instances where particles of food are permitted to enter the machine. In such an event absorption is directly from the food itself. The situation is then tantamount to actual cooking, and the sterilizer acquires the status of either a dairy or meat utensil depending upon the category of vessels which were sterilized first. Rabbi Efratti states that in the case of the sterilizer it may be anticipated that a fatty residue will remain on at least some eating implements and accordingly, we must deem the vessel to be one in which food has been cooked.

In cognizance of this additional factor Rabbi Efratti asserts that it is necessary to *kasher* the sterilizer between meat and dairy and vice versa. This can be done quite easily by simply running the sterilizer for a short period of time while it is empty of dishes and silverware. The machine, heating its own water, will thereby *kasher* itself.

There would still appear to be an impediment to the use of a single sterilizer for both meat and dairy foods even if the machine be *kashered* after each use. The *Magen Avraham,* in his commentary on *Orach Chaim* 509:5 states that it is our practice not to *kasher* meat utensils for dairy use or vice versa. *Kashering* procedures are employed only in order to render usable non-kosher utensils which would otherwise not be used for any purpose or in order to prepare utensils for Passover use. The reason for this restriction is apparently the fear that if *kashering* of the utensils be permitted between meat and dairy use there would then be no need for maintaining separate sets of utensils. As a result there might be inadvertent use of such eating implements for both meat and dairy foods without prior *kashering.* Underscoring the fact that the reason for disallowing the *kashering* of a single utensil for meat and dairy use is the danger of forgetfulness, Rabbi Efratti suggests that this fear can be obviated in the case of a sterilizer by requiring separate racks for meat and dairy utensils. The racks would have to be changed constantly and their substitution would serve as a reminder that *kashering* is required as well.

Another reason adduced by Rabbi Efratti for permitting the use of

a single sterilizer is based on *Yoreh De'ah* 95:4. According to this source the addition of ashes to the water before the utensils are placed therein causes the emitted "taste" of milk or meat to become a "spoiled taste." Since the machine then absorbs a "spoiled taste" it does not acquire the status of either a meat or dairy vessel. Rabbi Efratti maintains that addition of chemical substances during the sterilizing process may be considered to have the same effect. However both the *Taz* 95:15 and the *Shach* 95:21 express their disagreement with the basic premise concerning a "spoiled taste" arising out of the admixture of ashes and the matter is the subject of considerable discussion in subsequent halakhic literature.

It should be noted that in this article Rabbi Efratti's discussion is limited to the question of sterilizers and no mention is made of dishwashing machines in which different conditions may be operative. For example, the mode of *kashering* a dishwasher, if this process be necessary, requires further clarification since the latter machine does not heat its own water. Furthermore, Rabbi Efratti's permissive ruling is based entirely upon the fact that all utensils to be sterilized had the status of a *keli sheni.* Housewives commonly use cutlery in cooking foods on the stove and any such utensil is considered to be a *keli rishon.*

### War and Peace

During the past few months there have been few social issues on which more popular attention has been lavished than the moral problems surrounding the Viet Nam conflict. As the moratorium movement gains momentum throughout the country problems of conscience previously buried deep within the recesses of heart and mind are now subjected to probing analysis in the harsh spotlight of public controversy. There is a general awakening of moral consciousness and an accompanying heightened ethological sensitivity which reacts with abhorrence to all forms of warfare. It is an unfortunate accident of history that at precisely such a juncture in the ethical maturation of mankind uncontrollable circumstances have conspired to project a warlike image of the Israeli. Harsh and tragic facts of life have caused an unprecedented degree of attention, pride and even adulation to be focused upon the Israeli soldier. This phenomenon is of course understandable and indeed well founded. Yet at such times it is imperative that we not lose sight of the striving for peace which lies at the very core of Judaism.

It was no doubt sentiments such as these which prompted the editors of the engaging Israeli army magazine, *Machanayim,* to devote an entire edition to the theme of peace in Jewish sources. The issue of Adar 5729 contains a wide range of articles dealing with halakhic, historical, literary and liturgical aspects of the topic. Although primarily in the nature of a general précis, of special interest to our department are Rabbi Shlomo Goren's discussion of "Army

and Warfare in the Light of the Halakhah" and Rabbi Mordechai ha-Kohen's "Peace in the Wars of Israel in the Light of the Halakhah."

Rabbi Goren presents a general discussion of the classical distinction between obligatory wars, permissible wars and wars of defense. More noteworthy is his presentation of sources pertaining to the establishment of minimum and maximum ages with regard to the conscription of soldiers. The chief difficulty in establishing a minimum age is that although Rashi in his commentary on the Pentateuch (Exodus 30:14 and Numbers 1:3) states that warriors must be "twenty years old and upward" the Rambam in his *Mishneh Torah* is silent with regard to any such provision. The question of a maximum age limit centers upon the proper textual reading of the *Sifre,* Numbers 197, which establishes an upper limit of either forty or sixty years of age, depending upon which of the variant readings is accepted as accurate. Another problem to be resolved is whether these limits pertain only to permissible wars (*milchemet reshut*) or are applicable to obligatory wars (*milchemet chovah*) as well.

Rabbi Mordechai ha-Kohen demonstrates that it is mandatory that peace terms be set forth before engaging in hostilities. In this article the author endeavors to prove that normative Halakhah requires the initial proffering of peace terms even in the case of obligatory wars in accordance with the ruling of the Rambam, *Hilkhot Melakhim* 6:1, and concurring authorities in contradiction to the ruling of the *Sifre,* Deuteronomy 199, and Rashi in his commentary on Deuteronomy 20:10. The latter sources regard this provision as being operative only in the case of permissible wars to the exclusion of obligatory wars.

While we cannot but regret that cogent questions such as these must yet be classified as *contemporary* halakhic problems, we should perhaps recall that "All that is recorded in the Torah is written for the sake of peace; and although warfare is recorded in the Torah, even warfare is recorded for the sake of peace" (*Tanchumah* 96).

### Sabbath Elevators

We are indeed pleased to welcome into the slim fold of Torah journals a new publication which has already achieved an enviable reputation for its high standards of excellence and which promises to contribute significantly to the advancement of rabbinic scholarship. The first edition of *Moriah,* edited by Rabbi Moshe Hirschler, which appeared in *Tevet* 5729 proclaims the new journal as a monthly designed to serve as "the expressive voice of Sinai and Moriah in all its aspects." As such this magazine strives to encompass all facets of Torah scholarship with regularly featured departments devoted to novellae, practical halakhah, unpublished manuscripts, Jewish philosophy and ethics. The tables of contents of issues which have appeared thus far constitute a veritable roster of luminaries in the galaxy of Torah. The impres-

sive list of contributors reads like a Who's Who of the Torah world and includes personalities such as Rabbi Yecheskel Abramsky, Rabbi Moshe Chevroni, Rabbi Moses Feinstein, Rabbi Yitzchok Hutner, Rabbi Abraham Jofen, Rabbi Yecheskel Levenstein, Rabbi Joseph B. Soloveitchik, Rabbi Moshe Sternbuch, Rabbi Ovadya Yosef and Rabbi S. J. Zevin.

This periodical is published by the *Tenuah le-Hafazat Torah* (popularly known as *Talat*), a movement which sponsors a series of *Kollelim* throughout the length and breadth of Israel. These *Kollelim* are unique in that they foster a program offering a felicitous combination of Torah study and active communal involvement. The nucleus of scholars in these institutes of higher study have definite functions and commitments within the communities of which they are a part. These young scholars lecture, lead youth groups and perform rabbinic services in far-flung settlements. With foresight and imagination the *Kollelim* have been established in areas sorely lacking in spiritual guidance. Consequently, each of these institutions has had a positive effect upon the religious atmosphere of the locale in which it is situated. In a marked departure from the splendid isolation of the Torah community this movement represents a concerted effort to disseminate Torah knowledge in every nook and cranny of the country. The concerns which prompted the formation of *Talat* are reflected by the editors of *Moriah* who manifest a deep sense of responsibility and an acute awareness of the opportunity and challenge facing our generation "in these days between sunset and sunrise, between holocaust and redemption."

*Moriah,* with its high caliber of erudition, is to be hailed as a publication of breadth and scope whose further issues we await with keen anticipation.

One of the contemporary issues discussed in the *Iyar* 5729 issue of this publication is the use of automatic elevators on the Sabbath. This article contributed by Rabbi E. Kugel, Coordinator of the Halakhah Department of the Institute for Science and Halakhah, contains a report of the halakhic research in this area carried out by members of this pioneering institute. Chief among the problems attendant upon Sabbath use of automatic elevators is the increased flow of electric current due to the added weight of passengers and the increased sparking which may occur with each stop of the elevator. Although not cited in this presentation, a technical exposition of the factors responsible for these phenomena and the principles governing the operation of the automatic apparatus are detailed in the first Bulletin of the Institute, published in February, 1967.

Rabbi Kugel asserts that it is forbidden to cause an increase in the consumption of electric current because generation of additional current causes enhanced conduction and results in raising the temperature of various mechanisms employed in the generation of electricity to the level of "cooking." Production of the current in itself

may perhaps be forbidden as being encompassed by the rabbinic prohibition against creating new entities (*nolad*). The question pondered by Rabbi Kugel is whether the passive activity of simply standing inside the elevator car, thereby permitting one's weight to cause additional flow of current, constitutes an "action" within the province of Sabbath regulations. The *Gemara, Baba Kama* 10b, indicates that individuals seated upon a couch who fail to remove themselves when additional weight is placed upon the piece of furniture on which they are seated incur financial liability for any resultant damages. Since the original act of seating themselves on the couch caused no damage the inference to be drawn is that one's mere presence and the effects caused by sheer weight are considered as "actions."

The question as to whether sparks are to be deemed a form of "fire" or whether their transitory and ephemeral nature precludes their inclusion in this category is the subject of long-standing dispute. Rabbi Kugel cites a long list of authorities who consider the production of sparks to be a Biblical offense. The more permissive view expressed by some authorities is predicated upon the comments of the *Pri Megadim, Orach Chaim* 502:1. In a lengthy exposition and analysis of the views expressed by the *Pri Megadim,* Rabbi Kugel endeavors to show that these leniences are based upon an erroneous interpretation resulting in a misunderstanding of the *Pri Megadim's* position regarding this question. Accordingly, Rabbi Kugel argues, the *Pri Megadim* concurs in the opinion that the causing of sparks is Biblically forbidden and thus all subsequent lenient rulings in this matter are based upon an error of interpretation.

Not mentioned in this article but of great interest is an item in the second Bulletin of the Institute for Science and Halakhah, dated 1969, reporting that scientific research by members of the Institute has resolved the theoretical difficulties which stood in the way of the development of sparkless relays and that a prototype of this device is now being developed. This project is specifically designed to overcome the halakhic questions surrounding the use of automatic elevators on the Sabbath.