SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

Plastic Surgery

Judaism recognizes divine proprietorship over all objects of creation, including the human body. Judaism expressly teaches that the individual has no proprietary rights with regard to his own body and hence is forbidden to mutilate or wound his own body (See Rambam, Hilkhot Chovel u-Mazik 5:1). A person's body is committed to him for safekeeping and hence self-mutilation or any form of assault upon the body is viewed as a breach of this stewardship. Dispensation for intervention in physiological processes for therapeutic purposes is granted in the biblical directive, "... and he shall surely heal" (Exodus 21:19). Thus, a surgical operation to correct a deformed or malfunctioning organ is specifically excluded from the prohibition against "wounding."

Perfection of highly sophisticated medical techniques has led to the development of a wide range of elective surgical procedures. As a result, cosmetic surgery is becoming increasingly more commonplace in our society. From the perspective of Halakhah, elective cosmetic surgery gives rise to a number of significant questions. Plastic surgery undertaken solely for cosmetic or esthetic purposes differs significantly from other corrective procedures. The obvious halakhic problem associated with plastic surgery is whether or not such procedures involve infractions of the law against wounding (chavalah). A further, more general, question is raised by the risk to life involved in such procedures. Any form of surgery, particularly when performed under general anesthesia, poses at least a minimal, but nevertheless significant, threat to life. Is it permissible, according to Halakhah, to expose oneself to such danger for cosmetic purposes? A third question is posed by cosmetic surgery performed upon male patients. The prohibition "... a man shall not put on a woman's garment" (Deuteronomy 22:5) extends not only to the wearing of female clothing by a male but also to the application of cosmetics or to any act of beautification usually associated with women. Dyeing of the hair and removal of armpit or pubic hair are specifically enumerated acts of this nature. Are such forms of plastic surgery as facelifting, nasoplasty, etc., so widely associated with women as to constitute a form of "female dress" or may men avail themselves of such methods for purposes of improving their appearance?

The problems posed by plastic surgery are discussed by Rabbi Chanoch Grossberg in a cursory manner in the context of a more comprehensive treatise devoted to topical medical issues appearing in
the 5733 edition of *No'am*. Rabbi Grossberg cites the earlier, more extensive, analyses of these questions by Rabbi Yechiel Ya'akov Breish, *Chelkat Ya'akov*, III, no. 11, and Rabbi Menashe Klein, *Mishneh Halakhot*, IV, nos. 246 and 247. [The argument against surgery which is purely cosmetic in nature is forcefully advanced by Rabbi Eliezer Waldenberg, *Tzitz Eliezer*, XI, no. 4, sec. 8-9.]

Rabbi Klein draws a distinction between plastic surgery undertaken for cosmetic purposes in order to improve personal appearance or to reverse the normal manifestations of the aging process and surgery designed to remedy a *mum* or "blemish" which may be either congenital in nature or the result of accidental disfigurement. *Ketubot* 72b states that if a man contracts a marriage on the condition that the bride be free of blemishes and it is subsequently discovered that a blemish is present the marriage is deemed to be invalid. The Gemara further declares that since the marriage is considered to be invalid from its inception, subsequent removal of the blemish cannot validate the marriage. Rabbi Klein argues that, since in the course of the discussion of this question, the Gemara makes specific reference to the woman seeking medical help "to heal" the blemish, it may be inferred that a physician is permitted to correct such blemishes. According to this argument, the treatment of such conditions constitutes an act of healing included in the dispensation "and he shall surely heal" and is accordingly excluded from the prescription against "wounding."

The term "blemish" is defined by the Gemara by means of specific enumeration. Priests marred by "blemishes" are forbidden to participate in the sacrificial rituals. A total of one hundred and forty different blemishes are listed. Among these are included a crooked nose, a nose longer than the small finger of one's hand and inordinately large breasts. Rabbi Klein argues that reversal of any condition constituting one of the specifically enumerated "blemishes" does not constitute an act of wounding. Although this thesis may not be an unreasonable one, Rabbi Klein adduces no convincing evidence that "wounding" is permissible other than for purposes of healing a malady. There is no specific evidence that members of the priestly family were permitted, much less obliged, to remove such blemishes by means of surgery in order to become qualified to participate in the offering of sacrifices. Nor does the Gemara, in speaking of a woman seeking removal of a blemish, state that the condition was remediable by means of surgery or that such surgery was indeed permissible. Be that as it may, Rabbi Klein, in the second of his two responsa dealing with this topic, ignores his own distinction but indicates that plastic surgery is warranted in order to alleviate certain forms of psychological distress as will be indicated later.

Rabbi Breish cites evidence showing that "wounding" is permissible not only for purposes of curing a physiological disorder but also for purposes of alleviating pain. *Shul-
chan Arukh, Yoreh De'ah 241:3, states that a son should not "wound" his father even for medical reasons. Hence he should not remove a splinter, perform bloodletting or amputate a limb. Rema adds that if no other physician is available and the father is "in pain" the son may perform bloodletting or an amputation on behalf of his father. A similar statement is made by Meiri, Sanhedrin 84b. Since the phraseology employed by these sources indicates that the contemplated procedures were designed to mitigate pain rather than to effect a cure, Rabbi Breish concludes that alleviation of pain is included in the pronouncement "and he shall surely heal" and hence excluded from the prohibition against "wounding."

The halakhic definition of pain is significantly expanded by Tosafot, Shabbat 50b. Tosafot states that a state of mind which prevents a person from mingling with people constitutes "pain" within the halakhic definition of that term. Accordingly both Rabbi Breish and Rabbi Klein conclude that if an individual shuns normal social intercourse as a result of a deformity or other disfigurement the condition causing distress may be corrected by means of plastic surgery.

Writing in the sixth volume of No'am (5723), Rabbi Immanuel Jakobovits opines that plastic surgery would also be permissible in order to rectify conditions as a result of which the afflicted individual experiences difficulty in finding employment or a marriage partner, but indicates that he has not marshaled halakhic sources substantiating this conclusion. Indeed, Tosafot, Baba Kama 91b, clearly states that "wounding" is forbidden even when undertaken for purposes of pecuniary advantage. Quite obviously, the desire for financial gain is not in itself sufficient grounds upon which to justify "wounding." Nevertheless, it would appear that the psychological anguish normally attendant upon not being able to find gainful employment or a suitable marriage partner is a form of "pain" no less severe than distress at not feeling free to mingle socially with other people. It would follow that in such circumstances cosmetic surgery is permissible in order to alleviate this anguish.

Although the prohibition concerning wounding does not apply in these limited situations, is it permissible to place one's life in danger in order to alleviate psychological anguish? Citing the above mentioned comments of Rema, Rabbi Breish argues that even the amputation of a limb is permissible in order to alleviate pain. The Gemara in a number of instances (Shabbat 129b, Avodah Zarah 30b, Niddah 31a and Yevamot 72a) indicates that a person may engage in commonplace activities even though he places himself in a position of danger in so doing. In justifying such conduct the Gemara declares, "Since many have trodden thereon 'the Lord preserveth the simple'" (Psalms 116:6). The Talmudic principle is that man is justified in placing his trust in G-d provided that the risk involved is of a type which is commonly accepted as a reasonable one by society at large. Rabbi Breish apparently feels that
any accepted therapeutic procedure falls into this category.

A diametrically opposed view is expressed by R. Ya'akov Emden in his *Mor u-Ketzia, Orach Chaim* 328. R. Ya'akov Emden speaks of persons who place their lives in jeopardy in order to alleviate pain, such as those “who allow themselves to be operated upon in order to remove a stone in the 'pocket' etc.” and states that if there is no danger associated with the pain such individuals “do not act correctly.” Similarly, *Avnei Nezer, Yoreh De'ah*, no. 321, permits the application of a cast for purposes of correcting an orthopedic condition but adds that he would not have approved an operation as a proper therapeutic procedure, since all surgical procedures involve some danger. Rabbi Klein also rules that cosmetic surgery is not permissible if it poses any danger to life.

Rabbi Breish and Rabbi Klein both rule that cosmetic surgery, when permissible, is permissible not only for women but for men as well. As has been indicated, cosmetic surgery is not permitted simply for purposes of beautification but is sanctioned only in order to alleviate psychological anguish. *Tosafot, Shabbat* 50b, states that males are permitted to use cosmetics if such cosmetics are applied for purposes of alleviating pain. It follows therefore that other forms of beautification commonly associated with women are also permitted to males provided they are designed primarily for purposes of alleviating pain. Rabbi Klein further notes that in the United States cosmetic surgery is not a unique form of feminine beautification but is widely practiced by males as well and accordingly does not constitute an infraction of the prohibition against the wearing of female garments.

**Tenure**

Traditionally, communal and synagogue functionaries enjoy tenure in their positions as long as they are not remiss in the performance of their duties. This arrangement serves to protect the livelihoods of persons whose talents and specialized skills have been devoted to public service. Thus it precludes the ignominious possibility that an individual who has sacrificially devoted years of service to the community may be discharged due to frivolous whim or personal animosity. But, most significantly, tenure serves to preserve the independence and integrity of religious leadership much in the same manner that academic tenure serves as the single most potent safeguard of academic freedom.

Tenure in communal office is a well-established provision of Jewish law and references to this prerogative may be found in many diverse sources. As is the case with regard to any area governed by legal codes, questions have arisen through the ages with regard to fine points of application. Which officials are considered to be tenured? May the right to tenure be waived? Upon what grounds may a tenured official be removed? While references to these questions are to be found scattered throughout rabbinic and responsa literature, a systematic and comprehensive treatise dealing with
these questions is lacking. Several years ago a dispute arose between the administration of a religious school in Israel and a number of the members of its faculty. The administration sought to discharge the teachers while the latter contended that, according to Jewish law, they were entitled to tenure in their positions. The case was heard by a rabbinic district court in Tel Aviv composed of Rabbis S. Tena, Y. Nesher and A. Horowitz. The Bet Din's written decision, which runs to over thirty pages, is not limited solely to the resolution of the questions raised in the particular case before the court. Incorporated in the decision is a fairly comprehensive review of the entire matter of tenure in Jewish law. This decision had been included in the current volume of the published decisions of the Israeli rabbinical courts, Piskei Din Rabbaniyim, VIII.

The underlying concept upon which the right to tenure is predicated is an intriguing one. Jewish law provides that succession to the monarchy be from father to son, provided the son is qualified to discharge the duties of this high office. The right of inheritance is not limited to the royal throne but extends to all positions of serarah or communal authority. (See Rambam, Hilkhot Melakhim 1:7.) Or Zaru'a, no. 65, remarks that since a son has precedence over all others aspiring to such office "most certainly the person himself has precedence as long as he has not been remiss." The identical rationale is formulated by Mabit, no. 4, and Bet Yitzchak, Yoreh De'ah, no. 34. Rivash, no. 271, finds the halakhic concept of tenure to be based upon the statement of the Palestinian Talmud, Horiyot 3:5, to the effect that care was exercised in taking apart and reassembling the Tabernacle to assure that boards used for the different walls on the various sides of the courtyard not be interchanged. Even an inanimate piece of wood, once it has been accorded the "privilege" of occupying a position of honor can not be removed and assigned an inferior position. Other authorities cite the Talmudic principle "In matters of sanctity one enhances but does not diminish" and interpret it as prohibiting the diminuation of "sacred" responsibility by removal from office.

The Bet Din, noting that automatic tenure, according to Halakah, is a prerogative only of those occupying positions of "authority," carefully draws a distinction between teachers engaged in the education of young children and roshet yeshivah to whom is entrusted the training of more mature students. Teachers are considered to be communal employees rather than communal officials. Roshei yeshivah, even though they exercise authority only within their individual classrooms and perform no formal administrative function, are "heads" of the yeshivah as evidenced by their title and their relationship vis-à-vis their students. This distinction may be traced to Nidrei Zerizin as cited by Divrei Ge'onim, no. 94.

Interestingly, the rabbinic court found grounds to differentiate between institutions administered by the community at large and institutions sponsored by an individual or a small group of people even
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though the latter may also be fund-
ied by philanthropic sources. In this
decision, religious and educational
institutions sponsored by individuals
are viewed as private institutions
even though their services are free-
ly available to the entire commu-
nity and, accordingly, the usual em-
ployer-employee relationship exists
between the administration and
members of the staff.

Probably the most important is-
ue with regard to tenure is the
question of whether this preroga-
tive may be surrendered by means
of a contract specifically limiting
the term of office. At least one au-
thority, Chikrei Lev, Orach Chaim,
no. 50, maintains that the right to
tenure, where it exists, cannot be
waived by prior stipulation. Yoma
12b discusses a contingency in
which the High Priest becomes tem-
porarily disqualified from perform-
ing the sacrificial ritual on Yom
Kippur and a substitute must be ap-
pointed to perform the service on
that day. What is the status of the
newly appointed High Priest after
the temporarily disqualified High
Priest is again able to return to the
performance of the duties of his of-
lice? There is a dispute between R.
Meir and R. Yosi as to whether or
not the temporarily appointed High
Priest retains the status of a High
Priest but both concur that one
who has filled the office of High
Priest, even temporarily, can no
longer function as an ordinary
priest. The rationale adduced by
the Gemara is the principle that
"In matters of sanctity one en-
hances but does not diminish." Now,
reasons Chikrei Lev, it would be quite simple to stipulate in ad-

vance that the appointment as High
Priest be only temporary in nature,
and that the individual so design-
nated revert to his prior status upon
the lapse of his temporary appoint-
ment. Since this was obviously not
viewed by the Gemara as a viable
procedure it may be concluded, ar-
gues Chikrei Lev, that tenure is a
divinely bestowed prerogative which
cannot be waived. Any contractual
agreement to this effect constitutes
a stipulation contrary "to that
which is written in the Torah" and
hence is ipso facto null and void.

Other authorities disagree and
point out that the High Priest did
not simply discharge a religious
function; rather, inauguration into
this exalted office conferred a
unique sanctity upon the occupant
by virtue of the holy oil with which
the High Priest was appointed.
These authorities argue that ap-
pointment to other communal of-
cices does not confer any specific
sanctity upon the designee and
hence such appointment may be
for a specific period of time. This
is the view of Chemdat Shlomo,
Orach Chaim, no. 7, who has been
understood as ruling that a cantor
may be discharged upon the expira-
tion of the term of his contract.
Be'er Yitzchak, Yoreh De'ah, no.
3, following Chemdat Shlomo, rules
that the same is true with regard
to the removal of a ritual slaughter-
er. With regard to the adjudication
of the case at hand the Israeli Bet
Din followed the latter authorities
in ruling that the contract of a
teacher or rosh yeshivah engaged
for a provisional period need not
be renewed since the period of serv-
vice has been stipulated in advance
The acceptance of a stipulation with regard to a specific period of service is viewed as constituting a waiver of the right to tenure.

It should be pointed out that an apparently contradictory ruling was issued by Rabbi Moshe Feinstein, Igrot Mosheh, Choshen Mishpat, I, no. 77. Rabbi Feinstein declares that a teacher engaged for a period of one year cannot be denied reappointment other than for justifiable cause. The Israeli court takes notice of Rabbi Feinstein’s responsum and attempts to show that their decision does not contradict the position adopted by Igrot Mosheh since the latter deals with the case of a teacher who had been dismissed by a Board of Directors whereas in the case before the Israeli Bet Din the dismissal was initiated by the school’s principal. However, a careful reading of Igrot Mosheh shows that this analysis is erroneous. Rabbi Feinstein declares that despite an express stipulation to the effect that the individual may be dismissed upon expiration of the contract period “it is greatly to be doubted” that employment may be denied other than for halakhically acceptable cause. Igrot Mosheh argues that since the directors and principals do not act in individual capacities but are representatives of the community it is self-understood that they are empowered to act only in accordance with the criteria of Jewish law and may not substitute their own subjective judgment for halakhically established criteria. It should be emphasized that, contrary to the assertion of the Israel Bet Din, Rabbi Feinstein specifically refers to both “directors and principals.” Moreover, Rabbi Feinstein declares that the argument need be invoked only if the contract expressly stipulates that continued employment may be denied even without just cause. In an earlier responsum, Chosen Mishpat, I, no. 76, Rabbi Feinstein rules that in the more usual event that the contractual agreement makes no reference to employment beyond the date of expiration but simply specifies a period of employment the contract is automatically renewable and may not be terminated other than for just cause. Igrot Mosheh goes beyond other authorities in asserting that this principle applies not only to communal employees, but to private employees as well. Rabbi Feinstein maintains that no employee may be dismissed without cause as long as there remains a need for the services he was engaged to perform. His argument is that since contracts are customarily renewed provided there is no cause for dismissal it must be assumed that renewal of the contract is an implied condition of employment. This would, of course, not be the case if this implied condition were to be nullified by inclusion of a clause specifically reserving to the employer the arbitrary power of dismissal upon termination of the contract period.

The situation with regard to dismissal of a rabbi upon the expiration of his contract is somewhat different. In this decision the Bet Din, citing Teshuvot Chatam Sofer, Orach Chaim, no. 205, affirms that under existing practice a rabbi can-
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not be dismissed through failure to renew his contract. More recently, an attempt by officials of the Jewish community of Rotterdam to terminate the tenure of their rabbi by refusing to renew his contract elicited a number of statements regarding rabbinic tenure. In separate declarations, the Israeli Chief Rabbinate, the Union of Orthodox Rabbis of the United States and Canada and the Dutch Board of Chief Rabbis affirmed the principle of rabbinic tenure and indicated that any dispute between a community and its spiritual leader must be submitted to a qualified Bet Din since only a Bet Din is competent to render a decision with regard to grounds for termination of rabbinic tenure.

(For a discussion of rabbinic tenure see “Survey of Recent Halakhic Periodical Literature,” TRADITION, XI (Fall, 1970), 71-72. See also R. Shlomo Kluger, Ha-Elef Lekha Shlomo, Orach Chaim, no. 38 and Yoreh De’ah, no. 253. The earlier mentioned considerations advanced by Igrot Mosheh, Choshen Mishpat, I, nos. 76 and 77, are, of course, fully applicable to rabbinic tenure as well.)

The halakhic aspects of dismissal of a teacher within the contract period are also considered in the published decision of the Israeli rabbinic court. The Bet Din found no difficulty in permitting removal of a teacher for malfeasance and ruled that in such cases the teacher need be compensated only for time actually served. At times, however, there is a desire to replace a teacher during the contract period, not simply because a more qualified person has been found. Under such conditions the employee’s claim to full compensation for the term of employment specified in the contract is not questioned by the Bet Din. The Bet Din, however, cites conflicting opinions with regard to whether the teacher may lawfully be replaced during the term of the contract even if under such conditions the school is willing to compensate the dismissed teacher in full. No attempt was made by the Bet Din to issue a definitive judgment with regard to this point.

The final issue discussed in this decision is the question of the legitimacy of strike action on the part of teachers in religious schools as a means of forcing a resolution of disputes between faculty and administration. The Bet Din, citing Igrot Mosheh, Choshen Mishpat, I, no. 59, who rules that strikes against a yeshivah can be sanctioned only under extraordinary circumstances, emphatically declares that interruption of Torah study cannot be countenanced as a means of resolving issues which should properly be adjudicated by a Bet Din.

Removal of Torah Scrolls

Communal services are usually held on a regular basis in synagogues which permanently house Torah scrolls. Hence on Sabbaths, Holy Days, Mondays and Thursdays, etc., when the reading of the Torah constitutes an integral part of the service, the Torah scroll is simply removed from the ark and replaced after the reading is con-
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Ordinarily, there is no need to remove the scroll from the building, or even the room, in which it reposes permanently. However, situations do arise in which it is necessary or desirable to hold services elsewhere, e.g., in the house of a mourner or for the benefit of a sick person unable to attend services in the synagogue. May the Torah scroll be removed from its usual location and transported to a different site in order to accord those unable to worship in the synagogue the opportunity of participating in the reading of the Torah? This question is discussed by Rabbi Kasriel Techorsh, a member of Israel's Chief Rabbinate, in the 5734 issue of Halikhot. Halikhot is a periodical published by the Religious Council of the municipality of Tel Aviv and regularly features a department devoted to practical aspects of Jewish law.

The Torah scroll must be treated with the highest degree of dignity and respect. Thus, in general, the temporary removal of a Torah scroll is deemed to be incompatible with the honor demanded by its sacred character. Shulchan Arukh, Orach Chaim 135:14, declares that it is not permissible to transport a Torah scroll to a prison for the benefit of Jewish inmates even on such solemn occasions as Rosh Hashanah and Yom Kippur. Rema modifies this ruling by stating that this restriction applies only to situations in which the scroll is to be transported merely for the brief period of the Torah reading and returned immediately thereafter. Rema states that there is no objection to the removal of the scroll if the Torah is transported “a day or two days” earlier. Arukh ha-Shulchan, Orach Chaim 135:32, observes that Rema's modification has been somewhat narrowed in terms of custom and practice. Custom permits transportation of a Torah scroll only upon fulfillment of two conditions: 1) Prior preparation of an ark, closet or other suitable place in which the scroll may be housed, 2) Utilization of the scroll for purposes of public reading at the new location on at least three occasions before its return. It is in order to meet the latter requirement that it has become customary to conduct Minchah services on Shabbat afternoon in the house of a mourner for whose use a Torah scroll has been provided. In the normal course of events there are usually only two occasions during the period of mourning at which the Torah would be read in the home of the mourner, viz., Monday and Thursday mornings. Hence, even though the mourner is permitted to attend services in the synagogue on Shabbat, one service is conducted in the mourner's home in order to afford the opportunity of reading from the Torah scroll a third time. [Cf., however, Rabbi Shabbtai Lifshitz, Sha'arei Rachamim (commentary on Rabbi Ephraim Margolies' Sha'arei Ephraim), 9:22.]

Rabbi Avraham David Wahrman (Rav of Butshatch), Eishel Avraham, Orach Chaim 135:14, cites earlier authorities who permit the transportation of a Torah scroll even when these conditions are not satisfied, provided that the Torah
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scroll is accompanied by ten individuals, "For wherever there are ten, there rests the Divine presence." This authority adds that the ten persons must not merely accompany the Torah but must actually encircle the scroll. Rabbi Techorsh notes that it is customary to permit this procedure only when the scroll is transported to the synagogue courtyard or to another synagogue, but not to a private dwelling.

*Mishneh Berurah, Bi'ur Halakhah, Orach Chaim 135:14,* draws a sharp distinction between removal of the Torah scroll for the benefit of an individual worshipper and its removal on behalf of an entire *minyan* unable to attend services elsewhere. *Mishneh Berurah* maintains that the restrictions codified by *Shulchan Arukh* and Rema apply only to cases in which there are less than ten prison inmates (or other individuals) unable to attend synagogue services. While, of course, the Torah cannot be read other than in the presence of ten people, the *minyan* may be formed by co-opting other worshippers who agree to pray with the prisoners in order that the latter have a proper quorum for communal prayer and the reading of the Torah. *Mishneh Berurah* argues that removal and transportation of the Torah scroll are not freely permitted in such cases only because the individual prisoners, since they themselves do not constitute a *minyan*, are not obligated to read the Torah even though it is meritorious for them to seek the formation of a *minyan* in order to do so. However, if the inmates are ten or more in number there is a binding obligation upon them to engage in the reading of the Torah. This obligation, argues *Mishneh Berurah*, takes precedence over any other consideration. This distinction is, however, rejected by the prominent Sephardic codifier, *Kaf ha-Chaim, Orach Chaim* 135:73.

Rema, *Orach Chaim* 135:14, expresses a further leniency and permits transportation of a Torah scroll on behalf of a Torah scholar. Although the *Shulchan Arukh* disagrees, Rema maintains that removal of a Torah scroll on behalf of a scholar is in keeping with the honor due the Torah. *Eliyahu Rabba* explains that Rema permits the procedure only if the scholar is also a prisoner or an invalid; otherwise, it would indeed be a sign of disrespect to bring the Torah to him instead of the scholar himself going to the synagogue. However, *Shemen ha-Ma'or* and apparently also R. Elijah Gaon of Vilna understand Rema as permitting transportation of a Torah scroll on behalf of a scholar under all circumstances. Rabbi Techorsh points out that in any event this would not be permissible for Sephardic Jews who follow the ruling of the *Shulchan Arukh* since the latter disagrees with Rema's leniency with regard to scholars.

Thus, in terms of practice, Ashkenazic Jews may follow the rulings of the authorities who permit transportation of a Torah scroll on behalf of a scholar or on behalf of an assemblage of at least ten persons, whereas Oriental Jews, who regard the opinion of Sephardic scholars as definitive, may not rely
upon these leniences. Obviously, the Torah scroll should not be transported other than for purposes of public reading. [See also Rabbi Eliezer Waldenberg, Tzitz Eliezer, XI, no. 16.]

EMPLOYMENT DURING THE POST-NUPHTAL WEEK

Among the halakhic prerogatives of a bride is the privilege of rejoicing with, and being gladdened by, her new husband. A previously unmarried bride is entitled to enjoy the undivided attention of her groom for a period of seven days. Rambam, Hilkhot Ishut 10:12, indicates that it is because of this obligation that the groom may not engage in labor or in commercial activity. Bet Yosef, Even ha-Ezer 64, cites a somewhat different rationale for restrictions enjoining the groom from engaging in work. Pirkei de-Rabbi Eliezer, chap. 16, records: "A groom is likened unto a king — just as a king does not go to the marketplace and performs no labor, so also a groom [does not go to the marketplace etc.]

Chelkat Mechokek, Even ha-Ezer 64:2, points out that acceptance of this rationale as cited by Bet Yosef serves to prohibit gainful employment on the part of the groom in circumstances under which such employment would otherwise be deemed permissible. Save for Bet Yosef it would be assumed that the obligation with regard to "rejoicing" during the seven-day period is designed to guarantee satisfaction of a prerogative of the bride. Accordingly, if the bride voluntarily surrenders her privilege the groom is relieved of his responsibility to "gladden" the bride. Were this line of reasoning the sole basis for the prohibition against work — as indeed seems to be Rambam's position — the groom would then be permitted to engage in gainful employment as well. However, the reason advanced by Bet Yosef serves to prohibit work under such circumstances. The groom is always "compared to a king" even if the bride foregoes her privilege of "rejoicing" and, by virtue of his "royal" status, the groom may not engage in activity unbecoming to a kingly personage. In this light it is understandable that Rema, Even ha-Ezer 64:1, finds it necessary to append a statement embodying a blanket prohibition against a groom engaging in work.

Of interest in these days when so many women are employed outside of the home is the question of work on the part of the bride during the post-nuptial week. This issue is raised by Rabbi Ephraim Grunblatt in the Adar 5734 issue of Ha-Pardes. The question concerns a bride who was unable to obtain leave from her job for the entire seven-day period and wished to know whether, according to Jewish law, she might report to work during the week following her wedding. Since the previously cited sources speak only of a prohibition against work on the part of the groom it would appear that there is no explicit ban with regard to employment on the part of the bride. Teshuvot Maharsham, III, no. 206, does permit a bride employed as a seamstress to work at her trade during this period, but
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stipulates that she may do so only with the acquiescence of her husband. Maharsham, however, does not explain why he deems permission of the husband to be necessary. Maharsham's position may perhaps be understood in light of comments by Rabbi Simchah Elberg, Shalmei Simchah, I, no. 70. Citing the verse "... on the day of his wedding and the day of the rejoicing of his heart" (Song of Songs 3:11), Rabbi Elberg argues that the groom is bound by a twofold obligation, viz., to gladden his bride and also himself to rejoice. Maharsham may well have reasoned that the bride may engage in work only with the acquiescence of the groom since it may be assumed that her employment will mar the groom's own joy. It should be noted that one source, Pesikta de-Rav Kahana, no. 22, while giving no reason, clearly indicates that a bride may not engage in labor for a period of seven days following her wedding.

Not cited by Rabbi Grunblatt is the comment of R. Meir Arak, Minchat Pittim, Even ha-Ezer 64:1, who, while not issuing a definitive ruling, indicates that on the basis of the codification of the Shulchan Arukh it would appear that there is no restriction whatsoever on work by the bride. According to this position, prior permission of the husband would be unnecessary.

Parenthetically, students frequently ask whether they are permitted to attend shi'urim during the week following their wedding. R. Chaim Josef David Azulai, Teshuvot Chaim Sha'al, no. 38, sec. 60, declares that a scholar should not engage in studies requiring intensive concentration during this period in order that he not be distracted from fulfilling his obligation with regard to gladdening his bride. A similar statement is recorded in China ve-Chisda I, 74a. It would appear, however, that with the consent of his bride, the groom may be permitted to attend classes and to engage in study. While labor is indeed forbidden to the groom because he is "compared to a king," this status in no way prevents him from engaging in study. Labor is antithetical to royal status but Torah study is indeed a kingly pursuit. Of course, time devoted to study cannot be spent in festivities or other activities designed to gladden the bride but the bride may, at her option, forego this prerogative in whole or in part. Accordingly, if the bride does not object, there is no halakhic impediment to attendance at shi'urim by the groom.

SALE OF ISRAELI REAL ESTATE TO NON-JEWS

"And in the seventh year shall be a sabbath of solemn rest for the land ... you shall not sow your field, nor prune your vineyard" (Leviticus 25:4). The commandment concerning the sabbatical year — shmittah — prescribes that land in Eretz Yisrael be allowed to lie fallow every seventh year. According to rabbinic exegesis, not only is it forbidden to till the soil, it is also forbidden to sell produce which grows of its own accord. "And the sabbath-produce of the land shall be for food for you ..." (Leviticus 25:6). The Torah grants permission
for the produce which grows of its own accord to be used “for food, but not for merchandise” (Bekhorot 12b). The year 5733 was a shmittah year and quite appropriately the fifteenth annual Torah She-be‘al Peh colloquium held in Jerusalem under the auspices of Mosad ha-Rav Kook was devoted to matters pertaining to the sabbatical year. A number of the papers presented at this gathering, all of which were subsequently published in the Torah She-be‘al Peh annual, dealt with the practice of selling farms and orchards to a non-Jew in order to circumvent the prohibition against tilling the land and the restriction against commercial dealings involving the produce of the sabbatical year.

The problem of shmittah came to the fore as a matter of pressing concern in modern times a little less than a century ago when the newly established yishuv in Eretz Yisrael faced its first sabbatical year in 5649. Since that time a vast literature has emerged centering primarily upon the efficacy of the sale of land to a non-Jew as a means of lawfully circumventing the strictures of shmittah. Those who permit this procedure base themselves on the premise that laws governing the sabbatical year do not apply to territory in the possession of non-Jews. This premise is itself the subject of considerable controversy.

Granting argumneto that sale of land to a non-Jew constitutes a method of obviating the need for observance of the shmittah laws a second, equally weighty problem arises: Is it permissible to transfer title to land within the boundaries of Eretz Yisrael to a gentile? Indeed, R. Naftali Zevi Yehudah Berlin in a treatise entitled “Kuntres D’var ha-Shmittah” (published in Teshuvot Meshiv Davar, II, following responsum no. 56) writes, “This is like one who runs from a wolf and is come upon by a lion! If you desire to escape the prohibition of working the land in the seventh year in our day, which according to the majority of authorities is a rabbinic transgression, you are caught in the prohibition of selling land to a gentile, which is a biblical transgression according to all.” Chazon Ish, Shevi‘it 24:4, invokes the Talmudic principle “There can be no proxy for transgression” and argues that not only is such sale forbidden but that if an agent or proxy is used in effecting sale of land to a non-Jew the sale is invalid. It is a principle of Talmudic jurisprudence that an agent cannot be appointed for the performance of an act involving a transgression. If the sale of land in Israel to a non-Jew constitutes a transgression, such a sale cannot be effected by means of an agent. In practice, the Chief Rabbinate acts as the agent for most landowners who seek to effect such sales. Since Chazon Ish maintains that sale to a non-Jew is forbidden he deems such sales to be null and void when executed through a proxy and hence of no possible effect in mitigating restrictions concerning the sabbatical year. The Chief Rabbinate, of course, views sale of land to a non-Jew as a permissible procedure and hence efficacious.

The considerations upon which this dispute is based are discussed
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in a number of contributions which appear in Torah She-he-'al Peh. The permissibility of selling land in Eretz Yisrael to a non-Jew is discussed by Rabbi Ovadiah Yosef in the course of a detailed analysis of the general question of sale of land to a non-Jew as a means of avoiding the onus of shmittah observance and by Rabbi Shmu'el Tanchum Rubenstein in his treatment of the same topic. A third article by Rabbi Eliyahu Bakshi-Duran is devoted exclusively to the specific question of whether or not it is permissible to sell land in Eretz Yisrael to a non-Jew. Also included in this volume is a responsum on the same subject authored by the late Rabbi Mordecai Zvi Tannenbaum.

The Mishnah, Avodah Zarah 19b, expressly forbids the sale of real estate in Israel to non-Jews. The Gemara explains that this prohibition is derived from the biblical injunction “lo techanem,” (Deuteronomy 7:2) which, according to rabbinic exegesis, is to be understood as meaning “You shall not grant them permanent encampment (chaniyah).” Rambam, Hilkhot Avodah Zarah 10:4, amplifies this statement with the explanation, “For if they will not own land their inhabitation will be temporary.” Ramban, in his commentary on the Bible, Leviticus 25:23, finds that conveyance of land to a non-Jew involves yet another transgression. Scripture provides that all fields revert to their original owners in the jubilee year and explicitly commands “and the land shall not be sold in perpetuity.” Ramban, understands this verse as banning the sale of land to a non-Jew since the latter would retain permanent possession and not return the land to its original owner in the jubilee year. The verse concludes with the explanation “. . . for the land is Mine” indicating that in actuality the land is the possession of G-d and that it is only by virtue of His largesse that man is permitted to dwell in, and derive enjoyment from, his terrestrial habitat. Accordingly, this passage gives expression to the divine will that Israel be the homeland of the Jewish people and that they not be displaced by foreign land-owners. According to Ramban the purchase of land in Israel from a non-Jew constitutes a fulfillment of the commandment “You shall give a redemption unto the land” (Leviticus 25:24). Rabbi Bakshi-Duran argues that, according to Ramban, there is yet another source militating against the sale of dwellings or fields in Israel to a non-Jew. According to Ramban, the verse “And you shall inherit the land and dwell therein” (Deuteronomy 11:31) is not simply a prophetic prognostication or a divine promise but constitutes a positive commandment. [See “Survey of Recent Halakhic Periodical Literature,” TRADITION, XI (Summer, 1970), 91.] Ramban comments, “We have been commanded to inhabit the land which G-d gave to our forefathers, Abraham, Isaac and Jacob, that we not allow it to remain in the possession of any other nation or allow it to be desolate.” Rabbi Bakshi-Duran understands the second clause in Ramban’s comment as referring not to the establishment of political sovereignty but to actual ownership of territory. Thus any act which re-
sults in a non-Jew acquiring title to any portion of the land of Israel constitutes a violation of the commandment concerning settlement of Eretz Yisrael.

Yet, over the years, a number of rabbinic authorities have sanctioned sale of real estate to non-Jews, at least in certain limited circumstances. Mizbeach Adamah, an important nineteenth-century Sephardic source, reports that noted rabbinic authorities had themselves done so in the past and cites several by name. Indeed, earlier scholars were perplexed by the narrative in I Kings 9:11 which reports that King Solomon bestowed twenty cities in the Galilee upon Hiram, King of Tyre, in appreciation of the latter's assistance in providing materials needed for use in the construction of the Temple. There is no record of Solomon having been censured for this action. [See, however, commentary of Abarbanel on I Kings 9:10.] Mizbeach Adamah explains that the prohibition against the sale of real estate to a non-Jew is applicable only to idol worshippers but not to other gentiles. Indeed, idolaters are specifically denied the right of domicile in the land of Israel lest they cause the Jewish populace to become enmeshed in pagan practices. “They shall not dwell in your land lest they cause you to sin against Me for you will serve their gods” (Exodus 23:33). Many authorities (with the notable exception of Rambam, Hilkhot Avodah Zarah 10:6) rule that since specific reference is made to idolatrous influences only pagans are excluded from the right of domicile. Mizbeach Adamah views the prohibition against the sale of property as being simply an extension of the prohibition against domicile in the land of Israel and hence similarly limited in its application solely to idolaters. [This position is also cited by R. Abraham I. Kook, Mishpat Kohen, nos. 58, 61 and 63, and by R. Zevi Pesach Frank, Kerem Zion, III, 13, as well as by R. Eliyahu Klatzkin, Teshuvot Imrei Shefer, no. 92 but is rejected by R. Ya’akov David Wilosofsky (see Mishpat Kohen, no. 61), R. Naftali Zevi Yehudah Berlin, “Kuntres Dvar ha-Shmittah” and Chazon Ish, Shevi’it 24:3.] In accordance with the above distinction Mizbeach Adamah rules that there is no restriction against the sale of real estate to Moslems who profess a monotheistic belief. This thesis also serves to explain Solomon’s gift to Hiram. Since Hiram was not an idol worshipper there existed no halakhic obstacle to the transfer of land to him by King Solomon. Rabbi Yosef notes that, quite obviously, this line of reasoning is cogent only with regard to the prohibition of lo techanem, but fails to satisfy objections which might be raised on the basis of Ramban’s position that the sale of land to a non-Jew also entails transgression of the commandment “And the land shall not be sold in perpetuity.” He notes that there is, however, the possibility that Solomon expressly stipulated as a condition of his gift to Hiram that the cities were to revert to their original owners upon the advent of the jubilee year. Rabbi Yosef opines that consideration of Ramban’s position would not preclude sale of
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land "in our day" since observance of the jubilee year lapsed with the destruction of the Temple. This contention may, however, be challenged since, even under contemporary conditions, all lands which are sold are subject to reversion to their original owners in the messianic era which is to be accompanied by re-institution of the observance of the jubilee year.

*Teshuvot Yeshu'ot Malko, Yoreh De'ah,* no. 55, advances a number of other considerations which serve to render sale of land during the *shmittah* year a permissible procedure. One argument advanced by this authority is that there is no restriction against such sale when it is negotiated primarily for the benefit of the seller. Since sale of land for the period of the sabbatical year is entered into primarily for the purpose of strengthening the economic viability of the Jewish settlements in Israel, such transfer of property, in the opinion of *Yeshu'ot Malko,* does not fall within the parameters of this biblical prohibition. Similarly, he argues that property may be sold if it is the seller’s intention to repurchase the land after its agricultural potential has been enhanced by the purchaser. Since routine chores such as weeding and pruning may not be performed during *shmittah* the future agricultural yield of such lands is sharply reduced. Sale to a non-Jew, which enables these operations to be performed, serves to enhance the agricultural value of the property. Rabbi M. Rubin, *Shemen ha-Ma'or, Yoreh De'ah,* no. 4, adds that the ultimate purpose underlying the prohibition (viz., prevention of "permanent" residence by non-Jews which is a concomitant of the acquisition of real estate) would in this case be thwarted by a ban on the sale of land for the period of the sabbatical year. The economic hardships resulting from failure to obviate the difficulties associated with observance of *shmittah* through sale to a non-Jew would undoubtedly result in the abandonment of Jewish agricultural settlement and in a diminution of the Jewish populace. The net result would be greater "permanence" of the non-Jewish population. This point is also made by R. Eliyahu David Rabinowitz Teumim in a letter appended to Rabbi Kook's *Shabbat ha-Aretz,* p. 128.

*Yeshu'ot Malko* further argues that only sales which result in the property remaining in the possession of the purchaser in perpetuity are forbidden. Sales in which the property reverts to the seller at a future date do not constitute a bestowal of "permanence" upon the dwelling of a non-Jew. In accordance with this line of reasoning *Yeshu'ot Malko* rules than an explicit stipulation should be made at the time of sale to the effect that the land will be re-sold by the purchaser after the expiration of the sabbatical year.

While he does not himself accept the argument, Rabbi Kook (*Shabbat ha-Aretz, Introd.,* chap. 10, and *Minchat Kohen,* no. 68) cites a contention advanced by Rabbi Zalman Shach to the effect that there is no restriction against selling land to a non-Jew who already owns real estate in Israel. The reasoning underlying this position is
that since the purchaser already owns property he has already acquired "permanence." Since a state of "permanence" is not newly bestowed upon the purchaser through the acquisition of additional parcels of land, sale of real estate to such an individual is not forbidden.

The disagreement with regard to the permissibility of sale of real estate to a non-Jew who already owns property in the land of Israel is contingent upon an analysis of the nature of the prohibition "lo techanem." On the basis of a contribution by Rabbi Bezalel Zolti to an earlier volume of Torah She-be'al Peh (XI, 5729), it may be demonstrated that there exists a significant difference of opinion with regard to the technical nature of this prohibition. Some authorities deem sale of land to be forbidden under all conditions because, in their opinion, the concept of granting "permanence" is simply the underlying rationale of a prohibition which by definition encompasses any transfer of title. Hence, according to these authorities, any sale of property to a non-Jew is forbidden regardless of the effect such sale may or may not have upon the permanence of dwelling achieved by the purchaser as a result of consummation of the sale. Other authorities deem the essence of the prohibition to be the bestowal of "permanence" of dwelling rather than the sale itself and hence sanction sale for a stipulated period of time, exchange of parcels of real estate or even sale to a non-Jew who already owns property in Israel.