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SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

STATUS OF THE DEAF-MUTE IN JEWISH LAW

Some months ago the Anglo-Jewish press carried reports of a decision, by a two-to-one vote, on the part of an Israeli *Bet Din,* to reject the candidacy of a deaf-mute for conversion to Judaism. According to *The Jerusalem Post,* February 11, 1977, the case involved a deaf-mute woman who emigrated to Israel from Iran. She was reportedly proficient in the use of sign language and also capable of speaking some Persian, although her speech was barely comprehensible. The case was heard by three members of the Tel Aviv District Rabbinic Court, Rabbis Chaim Zimbalist, Abraham Azulai and Shlomoh Deichovski. Many perceived the decision not to accept the woman as a proselyte as a form of discrimination against persons suffering from this handicap. Unfortunately, there is no published decision in this case, and it is therefore impossible to determine accurately either the factual material submitted to the *Bet Din* or the sources and reasoning upon which the majority and minority opinions were based.

It is possible, however, without entering into the merits of this particular case, to dispel the inevitable misconceptions which have arisen with regard to the status of the *cheresh,* or deaf-mute, in Jewish law. The restrictive statements regarding deaf-mutes must be understood in terms of the context in which they apply.

The basis of all special provisions concerning deaf-mutes is that, according to Jewish law, they are not considered to be mentally competent. The phrase "the deaf-mute, the mentally incompetent and the minor" recurs repeatedly in rabbinic literature in reference to persons who cannot be held responsible for their actions and who lack the requisite intelligence for the performance of various ritual and civil acts. Thus, deaf-mutes cannot serve as ritual slaughterers or as witnesses before a *Bet Din,* cannot be counted in a *minyan,* cannot dispose of property, etc. They are considered incapable of entering into contracts or transactions requiring responsibility and independence of will. These provisions are predicated upon the halakhic presumption that one who can neither hear nor speak has not acquired the maturity of intellect necessary for legal responsibility. The deaf-mute, since he does not communicate, is deemed to be intellectually undeveloped and enjoys a legal status similar to that of a minor.

Mankind has long recognized that speech and reason go hand in hand, although whether it is reason which gives rise to speech, or speech which is a prerequisite for the ac-

quisition of reason, has been a matter of dispute among philosophers. It is no accident that man alone among the animal species has developed speech, for it is only man who is a rational animal. Indeed, the Greeks employed a single term *"logos"* for both speech and reason. Similarly, the Arabic term *"kala"* means both "to speak" and "to reason." Medieval Jewish philosophy refers to man as a *medabber,* not because he possesses the faculty of speech, but because he possesses the faculty of reason. Some philosophers asserted that there can be no reasoning without speech. Thus, Thomas Hobbes writes in the fourth chapter of his *Leviathan,* "The Greeks have but one word, *Logos,* for both *Speech* and *Reason;* not that they thought there was no Speech without Reason; but no Reasoning Without Speech." Later, in chapter 5, he remarks, "Children, therefore, are not endued with Reason at all, till they have attained the use of Speech."

Halakhah does not necessarily view reasoning as a form of subliminal speech. Speech is indicative of a certain level of intelligence but the ability to speak is not the sole criterion in determining legal responsibility. The hearing person, although he may be mute, is accounted fully responsible. *Teshuvot ha-Rosh,* no. 85, sec. 13, followed by *Shulchan Arukh, Choshen Mishpat* 235:19, declares unequivocally that even minimal hearing is sufficient to convey full halakhic obligations and responsibilities. Since the great majority of those considered to be deaf, even those who have not developed the capacity for speech, do possess at least minimal hearing, they must be considered fully competent insofar as Jewish law is concerned on this basis alone. Conversely, the deaf person who is capable of speech is also deemed fully responsible. Citing Rambam's remarks in his commentary on the Mishnah, *Divrei Chaim, Even ha-Ezer,* no. 72, explains that speech without hearing is empirically impossible; hence, the ability to speak is assumed by Halakhah to reflect at least minimal hearing ability. [Cf., however, *Kesef Mishneh, Hilkhot Mekhirah* 29:2.] R. Shlomoh Drimmer, *Bet Shlomoh, Orach Chaim,* I, no. 95, recognizes that speech may be developed in the absence of hearing on the basis of lip-reading alone. Although others disagree, as will be shown later, *Bet Shlomoh* asserts that the ability to speak, no matter how acquired and even if the speech acquired is imperfect, is yet sufficient to establish full competence in all areas of Halakhah. Thus it is the ability to engage in intellectual communication which is seen as the necessary condition of intellectual development. Similarly, it is the ability to comprehend human communication which Hobbes posits as the basis of human intelligence. As he states in chapter four of the *Leviathan*:

> When a man upon the hearing of any Speech, hath those thoughts which the words of that speech and their connexion, were ordained and constituted to signifie; Then he is said to understand it; *Understanding* being nothing else but conception caused by Speech. And therefore if Speech be peculiar to man (as for ought I know it is,) then is Understanding peculiar to him also.

Until comparatively recent times, it was usually quite difficult to engage in meaningful communication with deaf-mutes and they were, to all intents and purposes, uneducable. At the present time, this is manifestly not so. It is recognized that the deaf who are also mute are not physically incapable of speech. Such persons possess normal vocal mechanisms but, since they suffer from lack of hearing, are incapable of developing speech by imitating sounds. Speech pathologists and audiologists have developed, and now utilize, a variety of other methods in developing the faculty of speech. As has been noted, most deaf persons retain some residual auditory capacity. Sounds of speech may be communicated in amplified form either by means of hearing aids or auditory training units. Moreover, the deaf are capable of developing speech by imitating visual presentation of phonetic elements and through utilization of tactile and kinesthetic methods of stimulation. As a result today, fortunately, there are very few deaf persons who remain totally mute. Moreover, many deaf-mutes, even those who are totally lacking in speech, have received specialized training and have taken their places as intelligent and responsible members of society. It is the status in Jewish law of such persons which requires investigation.

The specific halakhic question which requires analysis is whether the limitations placed by Jewish law upon the responsibilities and prerogatives of deaf-mutes are categorical in nature and remain unchanged despite changing circumstances, or whether the halakhic categorization of deaf-mutes as mentally deficient is *ad hoc* in nature and hence does not apply to deaf-mutes who have overcome their handicap and manifest normal intelligence. The incongruity of classifying deaf-mutes who have overcome their handicap as mentally incompetent was recognized and commented upon by R. Abraham Samuel Benjamin Sofer, popularly known as *Ketav Sofer,* as early as the middle of the last century. His son, R. Simchah Bunim Sofer, *Shevet Sofer, Even ha-Ezer,* no. 21, reports that, while on a visit to Vienna, his father was invited to visit the Vienna Institute for the Deaf and Dumb. Rabbi Sofer was greatly astonished at the accomplishments of the pupils he observed and remarked that he was in doubt as to whether the exclusion of deaf-mutes from halakhic responsibility was applicable to persons who had been trained in such a manner. *Shevet Sofer* further reports that he "thinks" his father told him that he had requested that the students of the Institute be provided with *tephillin* for regular use. This would indicate that *Ketav Sofer* was of the opinion that performance of *mitsvot* was incumbent upon those students despite their disability. Sentiments similar to those recorded by *Shevet Sofer* are expressed by R. Ya'akov Chagiz, *Halakhot Ketanot,* II, no. 38, who remarks that, nonetheless, he hesitates to rule in accordance with his instinctive feeling because in rabbinic literature restrictions applying to deaf-mutes are stated categorically without provision for exception.

The late Chief Rabbi of Israel, Rabbi Yitzchak ha-Levi Herzog, *Heikhal Yitzchak*, II, no. 47,, similarly states, ". . . as a result of this education which was non-existent in the days of the Sages, [the *cheresh*] has exited from the category of the mentally deficient; at the very minimum [the matter] is doubtful."

The leading exponent of the position that classification of true deaf-mutes as legally incompetent is categorical insofar as Jewish law is concerned is R. Menachem Mendel Krochmal of Nikolsburg, author of *Teshuvot Zemach Zedek* (not to be confused with R. Menachem Mendel Schneersohn, also author of a responsa collection entitled *Zemach Zedek*). *Zemach Zedek* no. 77, describes two different deaf-mutes each of whom was a highly skilled tailor. One is described as a successful businessman and a consummate litigant as well; the other is described as literate and proficient in the use of the prayer book and in the order of the various prayers for the Sabbath and Festivals, as well as of the daily services. Despite the fact that both were highly intelligent individuals, *Zemach Zedek* ruled that the provisions of Jewish law applying to deaf-mutes extended to them as well. As explained by subsequent writers, this position is based primarily upon a statement which appears in *Gittin* 71a to the effect that a deaf-mute is considered legally incompetent even though he is capable of communication by means of the written word. Since such communications, no matter how rational, are not accepted as evidence of mental competence, concludes *Zemach Zedek*, it may be inferred that no individual deaf-mute, no matter how intelligent he may be, is considered legally competent. The principle is that the law provides for no distinction between various deaf-mutes. This is also the position of a number of other authorities including *Pri Megadim*, introduction to *Orach Chaim*, chap. 2, sec. 3; *Divrei Chaim*, II, *Even ha-Ezer*, no. 72; *Halakhah le-Mosheh*, no. 262; *Maharam Schick*, I, *Even ha-Ezer*, no. 79; *Divrei Chaim*, II, *Even ha-Ezer*, no. 72; *Maharsham*, II, no. 140; *Bet Shlomoh, Orach Chaim*, no. 95; R. Abraham Wolf Hamburg, *Sha'ar ha-Zekenim*, II, 135; and R. Shimon Bamberger, *Teshuvot Zekher Simchah*, no. 9. However, as will be shown, there is strong reason to argue that such pre-eminent authorities as Rambam and Bertinoro adopt the opposite view.

The question of whether the classification of a deaf-mute as legally incompetent is absolute in nature or whether this classification admits of exceptions should logically be resolvable on the basis of the provisions of Halakhah with regard to the status of a person who is normal at birth but who becomes a deaf-mute as a result of disease or traumatic injury subsequent to having acquired speech. The rationale underlying the special status of deaf-mutes, viz., that since they lack the ability to communicate they are incapable of normal mental development, is not applicable in the case of one who has matured mentally before becoming a deaf-mute. However, if this legal classification is categorical in nature, admitting

of no exception, the halakhic provisions governing deaf-mutes may well extend even to the normal person who subsequently becomes a deaf-mute. In point of fact, the status of a normal person who subsequently becomes a deaf-mute is the subject of controversy among halakhic authorities. *Bach, Yoreh De'ah* 1; *Shakh, Yoreh De'ah* 1:22; and *Divrei Chaim,* II, *Even ha-Ezer,* no. 72, consider the status of such persons to be identical with that of congenital deaf-mutes. This would indicate that the applicable provisions of Jewish law are categorical in nature and do not admit of exceptions in cases of manifest intelligence. However, two earlier authorities, Rambam and Bertinoro, in their respective commentaries on the Mishnah, *Terumot* 1:2, indicate that such persons are *not* regarded by Halakhah as legally incompetent. [Cf., however *Shevet Sofer, Even ha-Ezer,* no. 21.] *Pri Megadim,* in the introduction to his Commentary on *Orach Chaim,* chap. 2, sec. 5, opines that such deaf-mutes must be considered to be in the category of *safek* and accorded doubtful status. The doubt expressed by *Ketav Sofer* with regard to the status of obviously intelligent deaf-mutes can readily be comprehended within the context of this disagreement. [See also Rabbi Ephraim Oshry, *She'elot u-Teshuvot Mi-ma'amakim,* III, no. 2.] Most later authorities, including R. Menachem Mendel Schneersohn, *Zemach Zedek, Even ha-Ezer,* no. 35, sec. 1; *Keren le-David, Orach Chaim,* no. 27; as well as a number of other authorities whose opinions are recorded by *Sedei Chemed, Chelek ha-Kellalim, ma'arekhet chet,* reject any distinction between a congenital deaf-mute and one who becomes a deaf-mute as a result of injury or illness.

Although the status of an educated and intelligent deaf-mute is the subject of doubt, there exists at least one authority who maintains that this doubt does not extend to the question of including such a person as part of a *minyan* required for public prayer. Although *Zekher Simchah,* no. 9, disagrees, R. Wolf Breuer, *Nachalat Binyamin,* no. 31, rules that a deaf-mute who understands the nature of prayer may be included in the requisite quorum of ten without question. This position was subsequently endorsed by *Keren le-David, Orach Chaim,* no. 27. [R. Ovadiah Yosef, *Or Torah,* Elul 5737, also agrees but opines that in such situations the Reader should omit the repetition of the *shemoneh esreh.* Cf. R. Moses Feinstein, *Iggrot Mosheh, Orach Chaim,* II, no. 18.]

Even according to the authorities who maintain that the classification of deaf-mutes as legally incompetent does not admit of exception, there is one aspect of the training given to deaf-mutes in contemporary society which does affect their halakhic status. As stated earlier, a person who possesses speech is legally competent in every way even though he may be deaf. The question of whether the speech acquired by deaf-mutes affects their status in Halakhah is discussed in a variety of sources. At least one authority, *Ne'ot Desha,* no. 132, states unequivocally that the imperfect, guttural speech of a deaf-mute does

not qualify as speech for purposes of effecting a change in that person's status. The argument advanced by this authority is that such barely intelligible speech is, for legal purposes, no more to be considered speech than is communication through the written word. *Maharam Schick,* in his earlier cited responsum, expresses doubt with regard to the question of whether "artificially" acquired speech is sufficient to remove the person from the category of a deaf-mute. This doubt is echoed by R. Eliezer David Greenwald, *Keren le-David,* no. 27.

However, there exist a host of other authorities, some far more prominent, who are unequivocal in their view that one who has acquired speech by any means whatsoever cannot be considered a deaf-mute. Their position is that the ability to speak, albeit imperfectly, is a greater indicator of intelligence than the ability to communicate in writing. This is clearly the position of R. Shalom Mordecai Schwadron, *Teshuvot Maharsham,* II, no. 140, who permitted a deaf-mute who had acquired the ability to speak to perform *chalitzah,* even though his speech was unclear. Similarly, *Divrei Chaim,* II, *Even ha-Ezer,* no. 72, and R. Shlomoh Drimmer, *Bet Shlomoh, Orach Chaim,* no. 95, deem a deaf-mute who has learned to speak to be legally competent even though his speech is understood only with difficulty. R. Ya'akov Emden, in his commentary on the *Siddur, Hilkhot Kri'at ha-Torah,* sec. 20, permits such a person to be called to the reading of the Torah. [*Keren le-David, Orach Chaim,* no. 27, disagrees with this ruling, arguing that since the person in question cannot pronounce the words properly, he may not pronounce the blessings upon the Torah on behalf of the assemblage.] It would also appear that the position of R. Moses Feinstein, *Iggrot Mosheh, Even ha-Ezer,* III, no. 33, is that one who has acquired speech, no matter by what means, cannot be considered to be a deaf-mute.

In conclusion, those who possess even minimal hearing or have acquired intelligible speech are certainly not subject to any of the halakhic restrictions which apply to deaf-mutes. Furthermore, there is a highly significant body of rabbinic thought which deems even one who has acquired barely intelligible speech to be beyond the category of the rabbinic deaf-mute. Moreover, in light of the degree of education attained even by true deaf-mutes in contemporary society, it is doubtful that they are to be considered examples of the *cheresh* described in rabbinic references. Hence, they should be encouraged, and indeed required, to participate fully in Jewish religious life, including performance of all ritual obligations as well as in Torah study.

In light of the remarkable strides made in educating the deaf, it is certainly incumbent upon the Jewish community to provide them with every opportunity for instruction and study in all areas of Jewish knowledge. They are to be encouraged to participate fully in all areas of communal and religious life.

WHO *IS* A JEW?

The Halakhah with regard to the children of a union between a Jew and a non-Jew is well established. The child acquires the religious status of the mother. "Your son by an Israelite woman is called your son, but your son by a heathen is not called your son, but her son" (*Kiddushin* 68b). Thus the son of a Jewish mother and a non-Jewish father is a Jew, while the son of a Jewish father and a non-Jewish mother is not a Jew.

While this is clearly the position of normative Halakhah, in recent years these provisions of Jewish law have been questioned. On the one hand, those who challenge the halakhic process itself advocate a policy of regarding a child of a single Jewish parent — whether mother or father — as a Jew. On the other hand, one rabbinic writer has questioned whether even the child of a Jewish mother and a gentile father can, in every instance, be considered to be a Jew.

Advocacy of the position that the Jewish identity of either parent is sufficient to confer status as a Jew upon the child is, to a great extent, a product of the pressure generated by intermarried parents who have immigrated to Israel and seek recognition of their children as Jews on the part of the Israeli government. The landmark cases in this area are analyzed in detail in a recently published book, *The Impossible Dilemma* (New York, 1976) by Oscar Kraines. In an article which appeared in the Summer 1976 issue of *Conservative Judaism*, Solomon Goldfarb called for what he candidly termed "a revolutionary change in the law" and a "daring interpretation of the law of conversion" in order to effect the desired recognition of the children of Jewish fathers and non-Jewish mothers as Jews. This proposal, which received widespread coverage in the Anglo-Jewish press, calls for an innovation which is halakhically indefensible. The Palestinian Talmud, *Kiddushin* 3:12 (and not only the less authoritative *Midrash Rabbah*, Numbers 19:3, quoted by Goldfarb), does discuss the admissibility of such a view only to reject it peremptorily by pointing to Ezra's insistence upon casting aside not only non-Jewish wives but their children as well. Ezra's rejection of the children of Jewish fathers born of non-Jewish wives is a clear indication of the gentile status of such children. To seize upon random views explicitly refuted in the Talmud itself and rejected by Jewish tradition over the centuries is to make a travesty of the halakhic process.

The surprising suggestion that even the child of a Jewish mother and a gentile father may not be a Jew was advanced by a member of the Haifa *Bet Din*, Rabbi Shlomoh Yaluz in *No'am*, XIV (5731). While Rabbi Yaluz' thesis cannot, in the final analysis, be accepted as compelling, it is nevertheless based on sources which are entirely germane.

The Gemara, *Kiddushin* 75b, records two conflicting opinions with regard to the status of a child born of a Jewish mother and a gentile father. One opinion maintains that the child has the status of a *mam-*

zer (bastard); the second opinion, which is accepted as authoritative, recognizes the child as *kasher* (legitimate). The vast majority of early authorities understand the term *"kasher"* used in this context as meaning that the child is a Jew of legitimate birth by virtue of having acquired the genealogical status of the mother. However, *Tosafot, Yevamot* 6b, understands the term *"kasher"* simply as the antonym of the term *"mamzer,"* signifying only that the child does not bear the stigma of bastardy. According to *Tosafot,* this is so precisely because the child is *not* a Jew. An eighteenth-century commentary on Rambam, *Sha'ar ha-Melekh, Hilkhot Issurei Bi'ah* 15:3, interprets *Tosafot, Kiddushin* 75b, in a similar manner, as does the *Piskei ha-Tosafot,* no. 142, although Maharsha differs. In any event, the view that the child is a non-Jew is clearly a minority opinion, although R. Akiva Eger deemed it to be of sufficient importance to be cited in his commentary on *Yoreh De'ah* 266:12.

While he recognizes that the prevailing view is that the term *"kasher"* means "legitimate Jew," Rabbi Yaluz, in his article in *No'am,* cites authorities who maintain that the status of such a child as a Jew is, nevertheless, not clear-cut. These authorities maintain that even according to the accepted view that the child of a Jewish mother and a non-Jewish father is deemed to be a Jew of legitimate birth, the Jewishness of the mother does not, in and of itself, automatically guarantee that the child is to be deemed a Jew in the eyes of Halakhah. These authorities adopt a most unusual stance. They maintain that in cases where the father is a non-Jew the child is accorded the status of a Jew only if he "conducts himself as a Jew"; otherwise he is deemed to be a non-Jew. In effect, the child of a Jewish mother and a non-Jewish father may elect to acquire the halakhic status of a Jew and is deemed to have done so if he is raised as a Jew and conducts himself accordingly. If the child is raised as a Jew he is not required to undergo a conversion ceremony, as is the case with the issue of a union between a Jewish man and a non-Jewish woman. However, the child of a Jewish mother and a non-Jewish father who is not raised as a Jew is deemed to have renounced his option to acquire the status of a Jew by virtue of birth and would subsequently require a formal conversion ceremony to be considered a Jew. Here, according to these authorities, is an isolated instance in which birth does not confer automatic status as a Jew, but merely provides the option for acquiring Jewish identity. This anomalous thesis is advanced by Maharshal in his commentary on *Yevamot* 16b. Maharsha, *ad locum,* sharply contests this view and advances the obvious argument that, axiomatically, matters of personal status are contingent upon parentage alone and cannot be prejudiced by subsequent deportment; a change in status can be effected only by means of formal conversion.

A view similar to that of Maharshal is formulated in greater detail by Rit Algazi in his commentary on *Bekhorot* 47a. Rit Algazi explains that a child born of a union

between a Jewish mother and a gentile father bears genealogical elements of both Jewishness and non-Jewishness. For this reason, the Gemara, according to the analysis of *Tosafot, Bekhorot* 47a, speaks of such a child as being "tainted," even though the child is legitimate. He is "tainted," states Rit Algazi, because of the presence of a non-Jewish element which, under certain circumstances, may become dominant. The Talmudic statement attesting to the Jewish status of the progeny of a "gentile who consorts with a Jewish daughter" is understood by Rit Algazi as referring to a child born of a casual act of fornication. In such circumstances, it is to be anticipated that a child born of the liaison will remain in the custody of the mother and be raised by her as a Jew. If, however, the father rears the child as a gentile, as is to be anticipated when the parents have established a permanent relationship, the child is retroactively accorded the status of a non-Jew. The verse, "Your daughter you shall not give to his son . . . For he will turn away your son from Me and they will serve other gods" (Deuteronomy 7:3-4), which serves as the basis of the Talmudic dictum, "Your [grand]son born of an Israelite woman is your son" (*Kiddushin* 68b), is explained by Rit Algazi as meaning that the child is considered to be a grandson in terms of identity as a Jew only if he is not "turned away" by his gentile father. Scripture, according to this interpretation, admonishes that if the child is reared by a non-Jewish father he will not be accorded the status of a Jew and, hence, will not be deemed to be a grandson.

Bet Yitzchak, Even ha-Ezer, I, no. 29, sec. 8, advances an interesting argument in support of this novel thesis. *Rosh Ha-Shannah* 3b identies Cyrus as being one and the same person as Darius and speaks of this person as being a righteous king, but as being non-Jewish. *Tosafot* indicates that this historical personality is the very Darius described as the son of Queen Esther. If so, an obvious question presents itself. Although Darius was the son of Ahasuerus, he should have been deemed to be a Jew by virtue of being born of a Jewish mother. According to Rit Algazi, the problem is resolved if it is understood that he was raised as a non-Jew by Ahasuerus. Nevertheless, *Bet Yitzchak* refrains from endorsing Rit Algazi's position since it is contradicted by so many authorities.

Another authority who maintains that the child of a Jewish mother born of a non-Jewish father requires conversion is R. Ya'akov of Lissa as stated in a responsum addressed to R. Shlomoh Zalman Lipshitz of Posen, published in the latter's *Teshuvot Chemdat Shlomoh, Even ha-Ezer,* no. 2, and quoted by *Pitchei Teshuvah, Even ha-Ezer* 4:1. Moreover, R. Ya'akov of Lissa advances the novel view that such a child, subsequent to conversion, is different from ordinary converts in that he is forbidden to marry a *mamzer* and that, if a first-born, he must be redeemed subsequent to conversion. This position is predicated upon the rationale that prior to conversion the child has the status of the

father but that, upon conversion, the child is not like a "newborn baby," but rather acquires the status of the Jewish mother. Although supported by *Torat Chesed,* II, no. 3, sec. 7, this view is rejected by *Teshuvot Chemdat Shlomoh,* no. 3, and *Chazon Ish, Even ha-Ezer: Nashim,* no. 6, sec. 7.

The unusual view advanced by these authorities is, for the most part, either ignored or dismissed out of hand by later scholars. Thus, for example, the late R. Dov Berish Weidenfeld, popularly known as the *Tchebiner Rav, Dovev Mesharim,* I, no. 7, sec. 3, cites this view and dismisses it as being "without a source," adding that "it is evident . . . that [the child] does not require conversion."

Some measure of credence has, however, been given to this position within the very limited context of circumcision on Shabbat. *Maharam Schick,* no. 20; *Nediv Lev,* III, no. 32; and R. Ovadiah Hadaya, *Yaskil Avdi,* V, no. 47, rule that a child born to a Jewish woman and a gentile father should not be circumcised on *Shabbat* since, according to some authorities, the child is not a Jew. [*Derishah, Yoreh De'ah* 266:5 cites and refutes a similar view.] This opinion is expressed as a stringency with regard to Sabbath observance and does not reflect a normative rejection of the child's status as a Jew.

The overwhelming majority of halakhic authorities including *Pitchei Teshuvah, Yoreh De'ah* 266:14; *Chemdat Shlomoh, Even ha-Ezer,* no. 3; *Avnei Nezer, Even ha-Ezer,* I, no. 16; *Maharam Schick, Even ha-Ezer,* no. 20; *Nachal Eshkol,* III, p. 133; *Achi'ezer,* III, no. 21; as well as *Dovev Mesharim,* I, no. 7, clearly affirm that the child of a Jewish mother and a non-Jewish father is, in all instances, deemed to be a Jew. In view of these definitive opinions, Rabbi Yaluz' call for a review of the status of such children by the Chief Rabbinate of Israel and the Supreme Rabbinical Court has little merit and is ill-advised.

Carrying Nitroglycerine on *Shabbat*

Cardiac patients are often advised by their physicians to carry a supply of nitroglycerine capsules with them at all times. Patients are advised to ingest this medicine, which serves as a vascodilator, at the first sign of chest pain symptomatic of *angina pectoris,* in order to prevent heart problems of a more serious nature. Observant patients frequently ask whether they may carry this medication with them while going to, and returning from, the Synagogue or when taking a Sabbath stroll. Since the heart condition for which this medication is prescribed is life-threatening in nature, there is no question that, if necessary, Sabbath restrictions may be suspended for treatment of the medical problem. The question of carrying nitroglycerine requires careful investigation only because violation of Sabbath restrictions is not really necessary in order to safeguard the health of the patient: The patient has the option of remaining at home without compromising his health. The general rule is that Sabbath prohibitions

may be suspended in cases of *pikuach nefesh* only if the life-threatening danger cannot be eliminated in another manner.

A similar question was raised early in the century with regard to carrying identity cards on *Shabbat*. Carrying identity papers upon one's person at all times was mandated by government decree in some countries, particularly in time of war. Failure to comply with this directive constituted an offense punishable by imprisonment. R. Samuel Engel, author of *Teshuvot Maharash Engel,* was asked whether it was permissible for Jews to carry these documents on the Sabbath or whether they must restrict themselves to their own homes during the Sabbath in order to avoid either transgression of Sabbath Laws or violation of civil law. *Teshuvot Maharash Engel,* III, no. 43, permits these documents to be carried on *Shabbat,* but only in an unusual manner, e.g., under a hat rather than in a pocket. R. Engel further stipulates that this mode of carrying may be utilized only if it is necessary to do so for purposes of fulfilling a *mitsvah* such as communal prayer but may not be utilized in order to leave the house for purposes of a stroll or the like. He argues that "unusual" forms of carrying are forbidden by reason of rabbinic decree rather than by virtue of biblical prohibition. However, he admonishes that even this form of carrying is forbidden in an area which constitutes a public domain, according to the biblical definition of the term, even if failure to carry would prevent performance of a *mitsvah*. According to this authority, carrying identity papers on *Shabbat* is permissible only if three conditions are satisfied: 1) The area in which carrying is to take place does not possess the criteria of a "public domain" in the biblical sense of the term. 2) The act of carrying is performed in an unusual manner. 3) The purpose of such carrying is the fulfillment of a *mitzvah*. Thus *Maharash Engel's* permissive ruling does not apply to carrying in order to be able to go for a *Shabbat* stroll or to carrying in the streets of a major metropolis which, according to all authorities, constitutes a public thoroughfare. Other authorities dispute the permissiveness of even this limited ruling of *Maharash Engel.* [See R. Zevi Kinstlicher, *Teshuvot Be'er Zevi,* no. 10.]

Maharash Engel is cited by Rabbi Yekutiel Yehudah Grunwald, *Kol Bo al Aveilut,* II, no. 1, sec. 6, as a precedent for permitting a diabetic to carry sugar cubes on *Shabbat* for use in case of insulin shock. Rabbi Grunwald stipulates, however, that the sugar be sewn into the garment before *Shabbat*. Rabbi Eliezer Waldenberg, in a sharply-worded dissent which appears in the 5737 issue of *Torah She-be-'al Peh,* argues that the issue to which R. Engel addresses himself does not constitute a paradigm for carrying medicine on *Shabbat*. Rabbi Waldenberg demonstrates that a careful reading of the responsum in *Teshuvot Maharash Engel* shows that R. Engel permits the carrying of identity papers under the conditions indicated only because such carrying is in the category of a *melakhah she-einah tzrik-*

hah le-gufah, i.e., the act of carrying serves no intrinsic need, but serves only to obviate an extrinsic contingency, in this case, possible arrest and imprisonment. Insofar as Sabbath restrictions are concerned, the biblical prohibition against any of the forbidden categories of labor applies only when the intended benefit is derived directly from the forbidden act itself, but not when the purpose is essentially extraneous to the act which is forbidden. However, in the case of sugar cubes or nitroglycerine capsules, the benefit which is derived from the act of carrying is a direct one.

Rabbi Waldenberg peremptorily dismisses Rabbi Grunwald's suggestion that a sick person sew objects needed for health reasons into the lining of a garment before *Shabbat.* Carrying in this manner is forbidden by rabbinic decree as is evident from the ruling recorded in *Orach Chaim* 301:33. A patient having the option of remaining at home would thus not be permitted to carry in this manner. Rabbi Waldenberg adduces further evidence in showing that a person must remain at home rather than carry medication on the Sabbath. The Sages did permit the wearing of an amulet of demonstrated efficacy, a fact which is cited by Rabbi Grunwald in support of his leniency with regard to carrying sugar. Rabbi Waldenberg argues that this citation is not germane: Such amulets were permitted to be worn because they were deemed "adornments" but were not permitted to be carried by hand. According to Rabbi Waldenberg, carrying sugar or medicine would thus not be permitted even if the only alternative for the patient would be to remain at home during the course of the entire Sabbath day.

However, a recently published compendium dealing with questions of medical Halakhah, *Lev Avraham* (Jerusalem, 5737), authored by Dr. Abraham Sofer Abraham, cites a number of conflicting views. *Lev Avraham* 6:83 cites Rabbi Waldenberg's negative opinion (in fact, Rabbi Waldenberg's contribution to *Torah She-be-'al Peh* is in the form of a responsum addressed to Dr. Abraham) as well as the permissive view of Rabbi Joshua Neuwirth, author of the popular *Shmirat Shabbat ke-Hilkhatah* together with a caveat of Rabbi Shlomoh Zalman Auerbach.

Although Dr. Abraham's comments are cryptic it would seem that, for him, the most cogent ground for permitting a cardiac patient to carry nitroglycerine is that denying him social intercourse on *Shabbat* is itself a form of pain. *Tosafot, Shabbat* 50b, opines that isolating oneself from people because of embarrassment is a form of pain and that a person in such a state has the status of a sick person suffering from a non-hazardous malady. [See *She'arim ha-Metzuyanim be-Halakhah* 80:81.] Sabbath restrictions which are rabbinic in nature are suspended for a person suffering from a non-hazardous sickness. Therefore, runs the argument, carrying in an unusual manner, which involves a rabbinic rather than a biblical transgression, is permissible in order to obviate the discomfort of isolation over the entire Sabbath.

Rabbi Neuwirth is quoted as permitting the carrying of nitroglycerine in an unusual manner, but not for the reason advanced by Dr. Abraham. According to Rabbi Neuwirth, medication may be carried in this manner solely for purposes of fulfilling a *mitsvah*.

Rabbi Shlomoh Zalman Auerbach is quoted as advising the patient carrying medicine in this manner not to come to a stop in the course of walking through a thoroughfare, but to carry directly from one private domain to another without stopping in order to minimize the severity of the restriction which must be suspended for reasons of health. If the patient does come to a stop in the street, Rabbi Auerbach advises that, if possible, the medication should be placed on a ledge higher than ten handbreadths above the ground and then removed by the patient before he continues on his way. Rabbi Auerbach reasons that since, in terms of Halakhah, there exists no "domain" above the height of ten handbreadths, the object is not deemed to have been removed from a "public domain" and the infraction is thus minimized insofar as possible.