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SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

USE OF MICROWAVE OVENS ON *SHABBAT*

Microwaves are waves generated by electromagnetic radiation and include frequencies between 100 million and 300,000 hertz (cycles per minute) and hence are located in the spectrum between ultra-high-frequency television and the far infrared. They are known as "microwaves" because they are between 30 centimeters and one millimeter in length. Microwaves pass through some objects, e.g., pottery and paper, without effect, much in the same way that light waves pass through transparent substances. Substances such as metal reflect microwaves in a manner analogous to that of a mirror reflecting light. Other substances, primarily liquids, absorb the microwaves which then vibrate the molecules of the substance they have penetrated with the result that heat is produced.

Microwave ovens are box-like appliances that produce microwave radiation than can be harnessed for purposes of cooking. Microwave radiation cooks by means of vibrating liquid molecules within the food placed in the oven. Since the walls of the microwave oven and the food containers are made of substances that do not absorb microwaves they are unaffected by the cooking process and remain cold other than for a minimal amount of heat that may be transferred secondarily through contact with the heated food or that may be radiated by the food. Microwave cooking differs fundamentally from other forms of cooking in that other forms of cooking are accomplished by means of transference of heat from an external source to the foodstuff, whereas microwave cooking involves no external source of heat whatsoever; rather, the heat is produced internally within the food as a result of friction caused by vibration of molecules.

The question which has been raised with increasing frequency in recent years in the wake of increased use of microwave ovens is whether or not utilization of this medium in preparation of food constitutes "cooking" in the halakhic sense of the term. The question is usually framed as a query with regard to whether such an act is intrinsically forbidden on *Shabbat* as one of the thirty-nine forbidden forms of labor. The identical question may be raised with regard to whether microwave cooking of milk and meat in combination is forbidden. Although, by virtue of rabbinic decree, milk and meat that have been mixed together in any manner may not be eaten, the ban against the act of cooking milk with meat as well as the prohibition against deriving any benefit from the cooked dish is limited to the halakhically defined notion of cooking. Upon reinstitution of sacrifices, one may anticipate a similar question will be posed with regard to whether or not it is permissible to roast the paschal sacrifice in a microwave oven.[1]

For purposes of Sabbath strictures, the Gemara, *Shabbat* 39a, declares that it is entirely permissible to use the heat of the sun for cooking. A dispute exists between R. Jose and the Sages with regard to whether a secondary form (*toladah*) of solar heat may be used for cooking purposes on *Shabbat,* e.g., whether food may be roasted in a material that has been heated by the sun's rays. The normative ruling is that such cooking is forbidden by rabbinic decree lest

confusion arise between materials that have been heated by the sun's rays and materials that have been heated in a similar manner by fire. No such decree was promulgated to forbid use of solar heat directly because it was assumed that the distinction between utilization of the heat of the sun and application of heat produced by fire was readily apparent and that permitting the practice of cooking in the heat of the sun to continue unabated would not lead to forbidden forms of cooking.

Rashi, in his commentary on *Shabbat* 39a, explains that utilization of the heat of the sun for cooking on *Shabbat* is permitted "because such is not the manner of cooking." R. Moses Feinstein, *Iggerot Mosheh, Orah Hayyim,* III, no. 52, points out that, although use of direct solar heat may not constitute a usual form of cooking, there is nevertheless nothing unusual about the use of derivative forms of solar heat for cooking purposes. Thus, use of boiling water for cooking is entirely usual. The nature and quality of such cooking is the same regardless of whether the water has been boiled over a fire or has been brought to a boil by exposure to the sun.[2] Yet, boiling in the thermal "waters of Tiberias" is permitted by biblical law because the original source of heat is the sun rather than fire. Such cooking, argues *Iggerot Mosheh,* cannot be regarded as "unusual."[3] Moreover, it should be noted, that although forbidden acts are not biblically proscribed when they are performed in an unusual manner, they are forbidden by virtue of rabbinic decree. Why then, queries *Eglei Tal, Melekhet Ofeh,* sec. 44, is cooking in the sun's rays not similarly forbidden by rabbinic decree? *Iggerot Mosheh* explains that Rashi must be understood as focusing, not upon the unusual nature of the act of cooking *per se,* but upon the fact that such cooking, because of the source of heat involved, is not comparable to the "cooking" that was undertaken in the course of construction of the Tabernacle in the wilderness, i.e., the boiling of dyes used in preparation of the various materials that entered into the construction of the Tabernacle. It is, of course, the various forms of labor utilized in constructing the Tabernacle that serve as the paradigm for acts forbidden on the Sabbath. Ordinary fuel, rather than the heat of the sun, was used for purposes of cooking in the construction of the Tabernacle and hence, for that reason alone, solar cooking is not forbidden on *Shabbat.* Rashi's comment to the effect that this is not the usual form of cooking must be understood as necessary in order to explain why cooking by means of the heat of the sun is not regarded as a derivative (*toladah*) form of cooking since it is at least comparable to the method of cooking employed in the construction of the Tabernacle. The proscribed forms of labor include many activities that, although they were themselves not employed in the Tabernacle, are sufficiently similar in nature to be included in the prohibited categories of labor. In order to obviate that question, Rashi indicates that use of solar heat for cooking is uncommon; hence such cooking is not regarded as even derivatively similar to the type of cooking associated with the construction of the Tabernacle. Accordingly, cooking by use of any form of heat derived from the sun, rather than from fire, is not excluded because such forms of cooking are unusual; rather, cooking by means of such heat is excluded because, since such sources of heat are derivatives of solar heat, those forms of heat are not encompassed within the paradigmatic form of cooking that serves as the basis of the prohibition.

Basing himself on this analysis, *Iggerot Mosheh* concludes that any form of cooking that is entirely usual and common must be regarded as a derivative of the proscribed cooking employed in the construction of the Tabernacle, regardless of the source or nature of the heat used in the cooking process. Accordingly, *Iggerot Mosheh* rules that use of a microwave oven for cooking on *Shabbat* constitutes a transgression of a biblical commandment.

R. Benjamin Silber, *Oz Nidberu,* I, no. 34, notes that if Rashi's comment is to be understood in this manner, it would follow that, if use of solar heat in cooking should at any time come into vogue as a common practice, such cooking would have

to be regarded as prohibited by biblical law. This, he argues, is already the case in Israel where solar heaters are commonly used for heating tap water. Such heating constitutes a form of "cooking." R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilkhatah,* 2nd edition (Jerusalem, 5739), chapter 1, note 127, presents a similar objection in the name of R. Shlomo Zalman Auerbach. *Magen Avraham, Orah Hayyim* 301:57, compares drying clothes in the sun to cooking by means of solar rays and rules that drying clothes in the sun on *Shabbat* similarly involves no biblical transgression. Rabbi Auerbach cogently notes that drying clothes in the sun is certainly a common and usual practice. If so, the clear implication of *Magen Avraham*'s remark is that even conventional use of solar heat for cooking does not render the act biblically forbidden.[4]

Iggerot Mosheh's analysis of Rashi's view leaves a serious question unresolved. As recorded in Exodus 12:9, the paschal sacrifice must be roasted and cooking the sacrifice in water is explicitly forbidden. The Gemara, *Pesahim* 41a, declares that cooking the paschal sacrifice in the thermal "waters of Tiberias" does not constitute a transgression of the negative commandment prohibiting cooking in water. *Eglei Tal, Melekhet Ofeh,* sec. 44, notes the obvious difficulty. If cooking by means of the heat of the sun is merely an uncommon or unusual mode of cooking it must nevertheless be categorized as being intrinsically a form of cooking. Unlike the rule with regard to Sabbath prohibitions, unusual forms of cooking are included in the prohibition regarding preparation of the paschal offering.[5] If so, cooking the paschal sacrifice in the "waters of Tiberias" should constitute a transgression of the prohibition against cooking the sacrificial animal. *Eglei Tal* explains that, in terming solar cooking an "unusual" form of cooking, Rashi intends to indicate that cooking by means of solar heat is intrinsically different from conventional cooking, i.e., for halakhic purposes, solar heat and heat of a fire are regarded as qualitatively different. Hence, preparation of food by means of solar heat does not constitute "cooking," not because it is not analogous to the cooking performed in the construction of the Tabernacle, but because, by definition, it is not "cooking." There can be no question that, according to *Eglei Tal,* microwave cooking is similarly, by definition, not to be regarded as cooking; microwaves are even less similar in nature to a flame than are solar rays.[6]

R. Benjamin Silber, *Oz Nidberu,* I, no. 34, understands Rashi's comment, not as addressing the question of why cooking in the heat of the sun is not forbidden by biblical law, but as addressing the question of why such cooking was not proscribed by rabbinic decree. In resolving that question, Rashi comments that, since cooking directly in the rays of the sun is uncommon, such cooking is not likely to be confused with forbidden forms of cooking and hence the Sages found no reason to prohibit use of solar heat in cooking on the Sabbath.[7] If Rashi's comment is understood in that light, there is no basis for regarding microwave cooking on *Shabbat* as halakhically forbidden.

Moreover, even if *Iggerot Mosheh*'s understanding of Rashi is accepted as correct, it seems to this writer that his conclusion to the effect that cooking in a microwave oven on *Shabbat* is a transgression of a biblical prohibition does not necessarily follow. Whether or not use of solar heat is sufficiently similar to the mode of cooking employed in the construction of the Tabernacle to constitute an analogous form of cooking may well be a matter of debate. However, the basic premise, *viz.,* that only those modes of cooking are forbidden that are similar in nature to the type of cooking employed in the construction of the Tabernacle is unexceptionable. The cooking employed in the making of dyes involved the transfer of heat from one body to another, i.e., from the flame to the dyes. Thus, transfer of heat seems to be a necessary condition of "cooking" as an activity prohibited on *Shabbat.* Indeed, it is certainly arguable that this element is a *sine qua non* of the definition of cooking as a halakhic concept for all areas of Jewish law. Heat generated by microwaves involves no

transfer of heat whatsoever; rather, it is *sui generis* to the foodstuff itself. If so, not only would microwave cooking be excluded from the biblical prohibition against cooking on *Shabbat,* but boiling the paschal sacrifice in water heated by microwaves would not constitute a violation of the prohibition against cooking the sacrifice.

It further appears to this writer that microwave cooking on *Shabbat* does not constitute a forbidden form of cooking even by virtue of rabbinic edict. The Sages forbade only cooking by means of a medium heated by the sun's rays, e.g., water or cloth; they did not forbid cooking in the sun's rays directly. The underlying rationale is that the observer will not be aware that the heat of the water or of the cloth was derived from the sun and may err in assuming that all forms of cooking, other than cooking directly over a fire, are permitted on *Shabbat.* The same observer will readily recognize that the sun is not fire and that, although cooking in the sun is permitted, cooking over a flame is not. Microwaves should certainly be treated no more stringently than sun rays and indeed microwaves are far less comparable to fire than the sun. Thus, although cooking in water that has been heated in a microwave oven may well be included in the rabbinic transgression, cooking directly by means of microwaves themselves is entirely analogous to cooking in the heat of the sun.[8]

R. Israel Rosen, *Shanah be-Shanah,* 5743, draws attention to an entirely different consideration in arguing that microwave cooking may constitute a biblically prohibited form of cooking on Sabbath. R. Shlomo Zalman Auerbach, *Kovez Ma'amarim be-Inyanei Hashmal be-Shabbat* (Jerusalem, 5738), p. 85, note 3, makes an interesting observation with regard to use of a heating element[9] for purposes of boiling water on *Shabbat.* Rabbi Auerbach argues that since the heat is generated by means of an electric current rather than by a flame it must be regarded as being a derivative of the "sun" and hence cooking in such a manner is forbidden only by virtue of rabbinic decree. Accordingly, Rabbi Auerbach advised that hospitals, for example, use such a method for boiling water on *Shabbat* when hot water is necessary in the treatment of seriously ill patients, e.g., for purposes of sterilizing instruments or the like. Rabbi Auerbach reports that the *Hazon Ish* disagreed and asserted that since electric current "generally" produces a flame it must be regarded as an "embryonic" fire and, asserted *Hazon Ish,* an "embryonic" flame is no less a fire than is a "derivative" of a flame. One can readily understand that Rabbi Auerbach finds this comparison farfetched, to say the least.

Rabbi Rosen purports to find a source for *Hazon Ish*'s position in the comments of R. Menachem ha-Me'iri, *Shabbat* 38b. Me'iri rules that an egg may not be cooked in lime (*sid*) on *Shabbat.* It is readily understood that one may not cook in lime that has been heated by fire. Me'iri, however, asserts that it is also forbidden to cook in lime that has been heated and that has become cold because, even if it has cooled, "the heat coming from the power of fire has not departed from it; rather, it becomes concentrated at the time [the fire] is extinguished." Me'iri, presumably, is describing a procedure in which the lime becomes hot as a result of a chemical reaction set into motion by means of mixing the lime with water.[10] However, as Rabbi Rosen quite correctly notes, remarkable as Me'iri's position is, heat released by lime is readily distinguishable from heat generated by an electric current: Lime—on the basis of Me'iri's own description—at one point absorbs the heat of a fire and hence the fire may be regarded as latent in the lime; electric current used to heat a coil is not the stored heat of a fire and never produces a flame. Nevertheless, Rabbi Rosen tentatively argues that, since microwaves are generated by electricity, the use of microwave ovens should be regarded as biblically forbidden according to the position of *Hazon Ish.* This argument is only tentative for, as Rabbi Rosen himself notes, the electric current does not heat the food cooked in microwave ovens; the current merely produces microwaves. The microwaves, in turn, generate heat in the foodstuff. It is difficult to perceive the

microwaves—removed and separate as they are from the electrical current and themselves entirely incapable of generating a flame—as constituting an "embryonic" flame.

A quite similar discussion of Me'iri's view and its application to microwave cooking is presented by Prof. Ze'ev Low, *Tehumin,* VIII (5747), 26, reports that microwave ovens commonly contain "a burning wire that emits electrons." Accordingly, basing himself upon the comment of Me'iri, he advances the argument that the heat produced by the effect of the microwaves should then be considered a derivative of fire. Prof. Low dismisses that argument on the basis of a number of considerations. Chief among those considerations is the fact that the microwaves are separate and distinct from both the wire and the food. Since, unlike lime, the microwaves themselves are at no point heated, they cannot be regarded as a receptacle or conduit of heat.

However, distinguishing microwave cooking from prohibited forms of "cooking" does not necessarily mean that no other form of prohibited activities are associated with use of a microwave oven for purposes of cooking. One of the thirty-nine forms of labor prohibited on the Sabbath is "banging with a hammer" (*makeh be-patish*), i.e., completing a manufacturing process. The Palestinian Talmud, *Shabbat* 7:2, maintains that this prohibited activity is applicable to the preparation of food as well. Although there is some controversy with regard to this matter, many authorities, including Rema, *Orah Hayyim* 318:4; Levush, *Orah Hayyim* 318:4; *Pri Megadim, Eshel Avraham, Orah Hayyim* 318:16; and *Teshuvot Maharsham,* I, no. 164, rule that cooking of food on *Shabbat* involves this infraction. *Nishmat Adam, Hilkhot Shabbat* 20:5, asserts that the prohibition is attendant upon food that cannot be eaten without cooking. In disagreement with this position, *Tehillah le-David, Orah Hayyim* and *Bi'ur Halakhah, Orah Hayyim* 314:4, maintain that the Babylonian Talmud rejects the view expressed in the Palestinian Talmud and maintains that this category of forbidden labor does not include the preparation of foodstuffs on the Sabbath. *Iggerot Mosheh, Orah Hayyim,* III, no. 52, regards the controversy as unresolved.

Quite apart from the prohibition against "cooking" food on *Shabbat,* any act resulting in the heating of a wire or coil is obviously forbidden. Moreover, *Hazon Ish, Orah Hayyim* 50:9, maintains that the completion of any electrical circuit on *Shabbat* constitutes a proscribed act of "building" (*boneh*).[11] Somewhat similarly, R. Isaac Schmelkes, *Teshuvot Bet Yizhak, Yoreh De'ah, Hashmatot,* no. 31, and R. Chaim Ozer Grodzinski, *Ha-Darom,* no. 32, (Tishrei 5731), reprinted in *idem, Teshuvot Ahi'ezer,* IV (Bnei Brak, 5746), no. 6, maintain that generating a flow of current is rabbinically forbidden as a form of "causing to be born" (*molid*), i.e., the generation of a new entity similar in nature to the generation of a flame which is forbidden by rabbinic decree even on *Yom Tov* when cooking is permitted. Although, theoretically, a microwave oven could be constructed in a manner such that there is a constant flow of electricity even when it is not in use, in practice, the electrical circuit is completed by the closing of the door of the microwave oven.[12] Furthermore, as has been noted earlier, the microwaves themselves are emitted by "a burning wire that emits electrons." Thus closing the door of the microwave oven also serves to cause the microwave-producing wire to become heated. Accordingly, even if the microwave oven is turned on before *Shabbat,* closing the door of the oven—as it is presently designed—constitutes an act forbidden on the Sabbath. Since this arrangement has been adopted not only for reasons of economy and practicality, but for considerations of safety as well, construction of an oven designed to produce microwaves even when the door is open would be highly inadvisable.

Yet another barrier exists with regard to the use on *Shabbat* of most currently manufactured microwave ovens for purposes of cooking. Unlike food baked or broiled by means of external sources of

heat, food cooked by means of microwaves does not brown on the surface. In order to give food cooked in microwave ovens the taste and appearance of conventionally cooked food many manufacturers have added an electrical element for the specific purpose of browning food cooked in microwave ovens. Since cooking on *Shabbat* by means of an electrical element is forbidden, use of an oven containing a browning element on the *Shabbat* is obviously also forbidden.

For all of these considerations, including the unequivocally negative view of the late Rabbi Moses Feinstein, use of microwave ovens on *Shabbat* remains a matter of theoretical speculation rather than practical application.

Fasting during Pregnancy

In recent years a significant number of obstetricians have been routinely advising their pregnant patients not to fast on any fast day, including *Yom Kippur.*[13] This advice is reflected in at least one contemporary rabbinic source. R. Yisra'el Fisher, a member of the *Bet Din* of the *Edah ha-Haredit,* in note 11 appended to his letter of approbation to R. Baruch Goldberg's *Pnei Barukh: Bikkur Holim ke-Hilkhato* (Jerusalem, 5745), writes, "In this day in [which] the generations have become weak and tens of women miscarry because of fasting, all pregnant women other than in the ninth month should eat less than the amount [for which punishment is incurred] on *Yom Kippur.*" It is clear that, heretofore, Halakhah, as recorded both in *Pesahim* 54b and *Shulhan Arukh, Orah Hayyim* 617:1, assumed that, in the absence of unusual circumstances, fasting poses no danger either to the fetus or to the pregnant mother who is otherwise in good health. Rabbi Fisher predicates his remarks upon a presumption that a process of general physical deterioration has occurred over the ages.

R. Moshe Sternbuch, presently deputy head of the *Bet Din* of the *Edah ha-Haredit,* writing in *Oraita,* no. 16 (Elul 5748), p. 177, does not quote Rabbi Fisher by name but cites an anonymous rabbi who permits "every pregnant woman" to eat on *Yom Kippur* upon experiencing even "slight weakness." Rabbi Sternbuch takes issue with that position in arguing that, since pregnancy in itself is not sufficient reason for breaking the fast, the expectant mother must fast unless "she experiences a particular weakness that can cause her complications." In medical literature the only mention of any possible untoward effect of fasting upon otherwise healthy pregnant women is with regard to women in the final days of gestation.[14] Hence Rabbi Fisher's comments are all the more remarkable since he finds no problem with regard to fasting in the ninth month. Doctors Michael Kaplan, Arthur Eidelman and Yeshaya Aboulafia, "Fasting and the Precipitation of Labor: The Yom Kippur Effect," *Journal of the American Medical Association,* vol. 250, no. 10 (September 9, 1983), pp. 1317–1318, report a significant increase in spontaneous term deliveries in Jerusalem's Shaare Zedek Hospital during the 24-hour period following termination of the fast in the years 1981 and 1982. There was no increase, and indeed a slight decrease, in premature births during those 24-hour periods. A less carefully thought-out survey of Jewish birth statistics by Ayalah Cohen, *Ha-Refu'ah,* vol. 102, no. 7, (April 1, 1982), pp. 306–307, showed similar findings for the general Jewish populace in 1975, 1978 and 1979. The authors of the Shaare Zedek study frankly admit that they cannot explain this phenomenon. They speculate that since total abstinence from food and liquid does lead to a substantial rise in blood viscosity, the resultant hyperviscosity may, in turn, decrease uterine blood flow and stimulate contraction.

Since the "*Yom Kippur* effect" hastens delivery only in women near term who would otherwise give birth in a matter of days at most, the authors conclude that "at

present we do not recommend that pregnant Jewish women refrain from fasting on Yom Kippur." They do, however, caution that there may be additional risk for "mothers with a tendency toward early delivery."

Halakhah adopts a far less sanguine view of parturition than does modern medicine. Jewish law perceives labor and the ensuing birth to be inherently dangerous and thus would presumably sanction suspension of halakhic strictures in order to prevent even minimal unnatural preponement of delivery.[15] Nevertheless, Rabbi Sternbuch's halakhic conclusion seems to be entirely correct.[16] Pregnant women have fasted from time immemorial with the result that the practice is regarded as entirely normal and natural. Since medical science also finds no danger in the practice, the principle "The Lord preserves the simple" appears to be entirely applicable. That principle reflects the truism that all human activity is accompanied by a measure of danger but that Halakhah takes no cognizance of danger below a certain threshold level. Hence "dangers" that are neither popularly nor scientifically perceived as such do not serve as a basis for setting aside religious obligations. In such matters one must rely upon divine providence and place one's trust in God who preserves the "simple" who do not seek to contravene His decrees. For the same reason, although fasting near term may hasten parturition by a day or two, since no medically recognized danger is entailed and there is no popularly perceived connection between these phenomena, the principle "The Lord preserves the simple" is applicable.

However, the concern voiced by the Shaare Zedek physicians regarding mothers with a tendency toward early delivery is well placed and would be cogent even in the absence of the findings of the Shaare Zedek study. Previous preterm delivery is itself an indication of a predisposition to preterm labor and delivery. It is well-established that a woman who previously gave birth remote from term has an increased likelihood of doing so again even in the absence of another identifiable predisposing factor.[17] A woman who experiences preterm labor in her first pregnancy has a 15% chance of a preterm birth in her second pregnancy. Curiously, if the first preterm labor is preceded by a term birth the danger of preterm birth in the third pregnancy rises to 24%. The probability of preterm birth following two such previous occurrences is 32%.[18] Dehydration results in reduced blood volume and studies indicate that reduced plasma volume is associated with preterm labor in the majority of cases. Conversely, approximately one half of women in preterm labor will respond to bed rest and hydration, i.e., therapies designed to increase plasma volume.[19] Accordingly, a woman at risk for preterm labor is well-advised to take precautions in preventing hypovolemia and should consult both her obstetrician and a competent rabbinic authority with regard to the need for, as well as the mode of, drinking on *Yom Kippur.* Although intake of fluids is a necessary precaution in order to prevent a deficit in blood plasma volume, consumption of solid foods is not necessary for that purpose.[20]

It should be added that any pregnant woman who finds herself in a state of dehydration should immediately rehydrate herself by drinking large quantities of liquid as quickly as possible. The danger to the mother represented by dehydration is greater the closer the mother is to term. Dehydration poses a risk not only because it may cause the onset of labor but also because giving birth while dehydrated constitutes an additional and even more significant danger since the resultant decrease in blood volume may cause the patient to go into shock with relatively minimal postpartum bleeding.[21] Dehydration during labor also leads to decelerative patterns in the fetal heart tones, maternal exhaustion and ineffective voluntary effort on the part of the mother in assisting in the birth process.[22] The pregnant woman should be informed of the symptoms of dehydration which include postural hypotension in the sitting or standing position, decreased skin turgor, excessive dryness of oral mucous membranes, severe thirst, decreased axillary sweating and unusual lethargy or weakness.

A woman concerned about possible dehydration during the course of the fast may take a number of precautions to prevent that condition from occurring. Drinking liquids before the fast in quantities larger than usual is of some, albeit limited, value. Reduced exertion and avoidance of heat will conserve body fluids. Spending the day in an air-conditioned environment, particularly during hot weather, is probably the most effective precaution available.

One cautionary mote must be added with regard to the problem of dehydration in general. In hot, arid climates, rapid dehydration may cause serious adverse effects before the usual symptoms become manifest. This "desert climate" is also characteristic of Jerusalem during some seasons. Individuals for whom the risk of dehydration constitutes a particular health hazard should be advised to consult a physician and a rabbinic authority.

Dating the *Ketubah*

During the summer months wedding ceremonies frequently take place at an hour after sunset but before nightfall. The *ketubah* is perforce written and signed before the ceremony. Predated instruments, however, are invalid in Jewish law. The concern regarding predated instruments is that since they serve to establish a lien against property alienated subsequent to the execution of the instrument, a predated document may be used to seize property from a purchaser who, in reality, holds unencumbered title. Since predated instruments are invalid in Jewish law and since the obligations recited in the *ketubah* become binding only upon marriage, under these circumstances, the propriety of dating the *ketubah* on the day of its execution has been questioned. A *ketubah* dated the day prior to the actual marriage is, in effect, a predated instrument.

A number of articles were reviewed in the Spring, 1979 edition of this column in which the authors made the simple point that the groom may quite properly bind himself to the financial obligations of the *ketubah* even prior to his marriage. The obligation is, quite understandably, conditioned upon the solemnization of the marriage as indicated by the text of the *ketubah* itself, but subsequent to the marriage all financial obligations become binding retroactively. Although the *ketubah* serves to establish a lien on all the groom's property for satisfaction of the obligations spelled out in that document, any purchaser of property subsequent to the actual signing of the *ketubah* is on notice and assumes title subject to the conditional lien established by the *ketubah* even though the marriage has not yet been solemnized.

This view is sharply challenged by R. Moses Feinstein *Dibberot Mosheh, Baba Mezi'a,* I, no. 20, secs. 53 and 54, as well as in *Iggerot Mosheh, Even ha-Ezer,* IV, no. 100, sec. 5. Rabbi Feinstein bases his position upon the comments of *Tosafot, Baba Mezi'a* 7b. The Gemara states that if a *ketubah* is lost, the finder may return it to the wife provided that the husband acknowledges that it is a valid instrument. *Tosafot* suggest the possibility that the document may be invalid by reason of having been executed prior to the wedding ceremony and hence questions the propriety of returning it to the wife lest it be unlawfully used to seize property from a bona fide purchaser who has acquired unencumbered title. *Tosafot* responds by declaring that there is no reason for such concern because the basic obligation of the *ketubah* becomes binding upon the groom from the time of betrothal. Hence the document is not invalid by virtue of predating. It is, however, entirely possible that the *ketubah* was executed even prior to betrothal. That possibility is peremptorily dismissed by *Tosafot* with the comment that "there is no reason to suspect" that the husband drafted the document at so early a time. Rabbi Feinstein cogently infers that *Tosafot* means to say that, were the *ketubah*

indeed to have been executed prior to betrothal of the couple, it would be invalid by virtue of being a predated instrument.

The argument, however, is by no means as conclusive as it may appear. *Tosafot,* following the already cited comments, immediately proceeds to question the validity of the instrument as a means of seizing property in order to satisfy the obligations assumed by the groom in addition to the statutory minimum (*tosefet ketubah*). Such obligations are clearly not imposed by statute; accordingly, the document should be invalid insofar as the additional *ketubah* is concerned. In answer to that question, *Tosafot* invokes the principle "Witnesses, by virtue of their signature, acquire on his [or her] behalf" (*edav behatumav zokhin leih*), i.e., an obligation may be voluntarily assumed by means of written instrument, and since it is secured by bill, the attestation of the witnesses constitutes notice to subsequent purchasers. *Tosafot,* in formulating that principle, may well be understood as resolving, not only the problem of *tosefet ketubah,* but also as resolving the previous question regarding the basic statutory obligation of the *ketubah.* Having formulated the principle of *edav be-hatumav zokhin leih, Tosafot* may be understood as accepting the validity of a *ketubah* executed even before betrothal.

Rabbi Feinstein's position is unequivocally contradicted by the comments of one eminent latter-day authority. *Teshuvot Bet Ya'akov,* no. 133, cites the comments of *Tosafot, Baba Mezi'a* 17a, in demonstrating a position diametrically opposed to that of Rabbi Feinstein. The Gemara states that the *ketubah* may be returned to the wife provided that the husband acknowledges its validity. *Tosafot* indicates that, should the husband contend that the debt represented by the *ketubah* has already been satisfied, the instrument may not be returned to the wife. On its surface, such a position seems to flout the rule that, without substantiating evidence, a husband has no credibility in pleading that he has satisfied the statutory obligation of the *ketubah. Tosafot,* however, declares that the plea of prior payment is accepted only because the husband has available to himself an alternative pleading, *viz,* he might have denied that the woman in question was his wife. The principle invoked is that of *migo,* i.e., a litigant is granted credibility with regard to a plea actually advanced even though that plea may be defective if he could have advanced another plea which would have been given credence. This principle serves to assign to the litigant the advantages of alternative pleadings which have not been advanced. Obviously, the plea "You are not my wife" would be given credence only in a situation in which there exists no independent evidence establishing an existing matrimonial relationship. But, queries *Teshuvot Bet Ya'akov,* there is an obvious problem: the fact that the *ketubah* exists is itself clear and unequivocal testimony to the existence of a marital relationship. If the *ketubah* does serve *ipso facto* to establish the existence of a matrimonial relationship, then the husband's plea to the contrary—and hence his plea that the *ketubah* has already been satisfied—should be denied. The explanation must be, argues *Teshuvot Bet Ya'akov,* that although it is unusual to execute a *ketubah* prior to betrothal, nevertheless, it is perfectly possible for a prospective groom to do so. Since a groom may execute a *ketubah* prior to betrothal, the existence of such a document does not in and of itself establish the existence of a marital relationship. It is nevertheless clear that when the husband acknowledges the validity of that instrument it is to be returned to the wife. Quite apparently, concludes *Bet Ya'akov,* a *ketubah* drafted and dated prior to betrothal must be entirely valid; otherwise, it could not be returned to the wife in order to enable her to collect thereupon. The comments of *Tosafot* serve to establish the point that, without substantiating evidence, a husband has no credibility to plead that he has satisfied the statutory obligations of the *ketubah* in situations in which there is independent evidence that a marriage has taken place.

It should also be pointed out that, although Rabbi Feinstein endeavors to interpret the comments of this authority in a manner compatible with his own

thesis, the statement of Rivash cited in *Helkat Mehokek, Hoshen Mishpat* 55:19, and in *Bet Shmu'el, Hoshen Mishpat* 55:13, certainly bears out the position of *Teshuvot Bet Ya'akov* and support the view that a groom may voluntarily assume the obligations of the *ketubah* even prior to betrothal.

NOTES

1. Other areas of Halakhah contingent upon a technical definition of cooking include the broiling of liver or meat without previous soaking and salting, baking of *mazah,* the blessing to be recited over baked bread, boiling water for purposes of *kashering* utensils, cooking wine so that it may be touched by a non-Jew, the biblical prohibition against consumption of uncooked blood, cooking of already cooked food on *Shabbat* which does not constitute a biblical prohibition and others. See *Pri Megadim, Orah Hayyim, Mishbezot Zahav* 318:1; *Minhat Hinnukh,* no. 7; and Prof. Ze'ev Low, *Tehumin,* VIII (5747), pp. 31–33.

   The availability of frozen bread and *hallah* dough for baking in a microwave oven renders the question of whether bread baked in such fashion requires recitation of *ha-motzi* and *birkhat ha-mazon* as well as the suitability of use of such bread for Sabbath and *Yom Tov* meals a topical issue. *Shulhan Arukh* 168:16 rules that the blessing for cake is pronounced over bread baked by the heat of the sun. *Tur Shulhan Arukh,* however, declares that if fashioned into a proper loaf the blessing for bread is to be recited. *Bi'ur ha-Gra* rules in accordance with the view of *Shulhan Arukh.* However, *Mishneh Berurah* 168:92 advises that one should be careful not to eat a quantity of such bread sufficient "to cause satiation" (*kedei sevi'ah*) other than with other bread upon which the requisite blessing has been pronounced. It would appear that, *mutatis mutandis,* the selfsame considerations and opinions apply to bread baked in a microwave oven.
2. Cf., however, R. Ezekiel Landau, *Zlah, Pesahim* 74a, and *idem, Noda bi-Yehudah, Mahadura Tinyana, Yoreh De'ah,* no. 43.
3. In rebutting this view, Prof. Low cites a talmudic description of cooking in the sun. There is, however, nothing in that text to indicate whether that mode of cooking was common or unusual.
4. Prof. Low similarly cites *Magen Avraham* in refutation of the position espoused by *Iggerot Mosheh.*
5. See, however, R. Elchanan Wasserman, *Kovez Shi'urim, Ketubot* 60a, who asserts that unusual acts are not only outside the ambit of Sabbath prohibitions but are also excluded from other biblical prohibitions. Thus, he argues, there is no biblical prohibition against cooking the paschal offering by means of solar heat. The same is true with regard to heat derived from the sun: Just as cooking in the "waters of Tiberias" on *Shabbat* is not biblically forbidden since the heat is derived from an unusual source so is cooking the paschal sacrifice in the "waters of Tiberias" excluded from the biblical prohibition. Cf., R. Benjamin Silber, *Oz Nidberu,* I, no. 34.
6. See also R. Gedaliah Rabinowitz, *Torah she-be'al Peh,* XXIV (5744), who attempts to explain the "unusual" nature of solar cooking in another manner.
7. A similar analysis of Rashi's comment is presented by Prof. Low, *ibid.,* p. 31.
8. Prof. Low, *ibid.,* p. 31, argues that microwave cooking is to be regarded as included in the rabbinic edict forbidding cooking in heat derived from the sun because it takes place within an oven and a microwave oven is readily compared with an ordinary oven. That argument may have merit with regard to promulgation of a new decree but is irrelevant to delineation of existing rabbinic legislation. It is certainly permissible to cook food enclosed within a box provided that the heat utilized for this purpose is exclusively solar heat. A box or oven using microwaves as the source of heat is no different.
9. For the sake of accuracy it should be noted that Rabbi Auerbach speaks of "an electric fork whose edges are distant and a circuit is created by means of the water ." This categorization seems to be imprecise since 1) there is no commercially available heating device that relies upon the water to complete the electric circuit and 2) such a method seems to be highly inefficient and impractical for use in boiling water. The theory propounded by Rabbi Auerbach seems equally cogent when applied to an ordinary immersion-heating element.
10. See *Teshuvot Lev Hayyim,* III, no. 74.
11. Cf., R. Shlomo Zalman Auerbach, *Kovez Ma'amarim be-Inyanei Hashmal be-Shabbat* (Jerusalem, 5738), *Milu'im,* no. 1, reprinted in *idem, Minhat Shlomoh,* no. 11.

12. Cf., the footnote appended by the editor of *Tehumin* to Prof. Low's article, *ibid,* p. 24, note 5.
13. The obligation to fast on *Yom Kippur* is suspended only in face of possible danger to life. The obligation of pregnant women with regard to other fast days is a matter of dispute. *Shulhan Arukh, Orah Hayyim* 554:5, rules that they are obligated to fast on *Tishah be-Av* but are exempt from other fasts. Rema, *Orah Hayyim* 550:1, records that they are obligated to fast on all fast days by virtue of custom unless they experience "great discomfort" (*miz'arot harbeh*). *Mishneh Berurah* 550:5 rules that "if they are weak" they need not fast.
14. There have been no comprehensive studies regarding the effects of a day-long fast upon an otherwise healthy pregnant woman with no history of medical abnormalities. However, the report of one study of the effects of 12- and 18-hour fasts upon pregnant women indicates that somewhat elevated levels of ketoacids and urinary ketones were observed, especially during the second half of pregnancy. See Boyd E. Metzger, Rita Vileisis, Veronica Ravnikar and Norbert Freinkel, "'Accelerated Starvation' and the Skipped Breakfast in Late Normal Pregnancy," *The Lancet,* March 13, 1982, I, 588–592. Although the authors indicate that "it has not been established" that those phenomena "are completely innocuous in the fetus" and that "this finding may be relevant to the controversial evidence that increased ketonaemia during pregnancy . . . may be followed by impaired intellectual development of the offspring" they fail to report any evidence of harm to the fetus.
15. See Rosh and Ran, *Yoma* 82a, as well as *Teshuvot Bet Shlomoh, Hoshen Mishpat,* no. 120.
16. His reasoning, however, is problematic. Rabbi Sternbuch argues that interruption of the fast may be sanctioned for reasons of *pikuah nefesh* only if some unusual phenomenon or identifiable cause of danger is already present and argues that it was this consideration that led the *Bet Din* of Vilna to dispute the position of R. Israel Salanter during the cholera epidemic of 1862 and was the basis of their refusal to grant blanket dispensation to break the fast. That analysis of the controversy as well as the conclusion to be derived therefrom is contradicted by Rabbi Sternbuch himself in his *Mo'adim u-Zemanim,* II, no. 140. See also this writer's "Returning from Missions of Mercy on the Sabbath," *Tradition,* vol. 22, no. 4 (Winter, 1987), p. 115, note 29. There is ample support in the writings of contemporary decisors for the position that statistically significant evidence of the likelihood of future danger constitutes sufficient warrant for disregarding halakhic strictures for reasons of *pikuah nefesh.* See, for example, R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilkhatah,* 2nd edition (Jerusalem, 5739), I, 40:68–69.
17. See F. Gary Cunningham, Paul C. MacDonald and Norman F. Grant, *Williams Obstetrics,* 18th edition (Norwalk, 1989), p. 748 and p. 753.
18. See *Williams Obstetrics,* p. 953.
19. See Denise M. Main, "Epidemiology of Preterm Birth," *Clinical Obstetrics and Gynecology,* vol. 31, no. 3 (September, 1988), pp. 529–530 and R.C. Goodlin, M.A. Quaife and J.W. Dirksen, "The Significance, Diagnosis and Treatment of Maternal Hypovolemia as Associated with Fetal/ Maternal Illness," *Seminars in Perinatology,* V (1988), 164.
20. Cf., R. Baruch Goldberg, *Pnei Barukh: Bikkur Holim ke-Hilkhato* 4:13, who advises any woman who has previously suffered two miscarriages to partake of food in quantities smaller than for which punishment is incurred. There is no medical evidence that abstinence from solid food or caloric intake over a twenty-five or twenty-six hour period will, in and of itself, precipitate either a miscarriage or preterm labor. Of course, a competent physician should be consulted in every individual instance since there are conditions in which abstinence from food can result in ketosis which is a life-threatening condition. It should be noted that when drinking of liquids is indicated by virtue of a history of preterm labor or for any other reason, there is no halakhic reason why the liquid should not be in the form of fruit juice or milk rather than water.
21. See J. Robert Wilson and Elsie Reid Carrington, *Obstetrics and Gynecology,* 8th edition (St. Louis, 1987), p. 450.
22. See Martin L. Pernoll and Ralph C. Benson, *Current Obstetric & Gynecologic Diagnosis & Treatment,* 6th edition (Los Altos, 1987), p. 488.