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TITLE "Birth Control According to Jewish Law as Reflected  
in the Responsa of Moshe Feinstein"

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BIRTH CONTROL ACCORDING TO JEWISH LAW  
AS REFLECTED IN THE RESPONSA OF MOSHE FEINSTEIN

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Thesis submitted in partial fulfillment  
of the requirements for Ordination

Hebrew Union College-Jewish Institute of Religion

1982

Referee, Professor Alexander Guttman

## DIGEST

This thesis is a translation of twelve responsa written by Moshe Feinstein, pertaining to the topic of birth control, and published in his great work Igrot Moshe. Feinstein's opinions represent a strict orthodox line of thought, but his keen insight of the twentieth century affords him the opportunity to present novel decisions within halakhic guidelines.

The first section of this thesis involves an overview of the arguments concerning the use of birth control by Jewish men and women. This section surveys the opinions of rabbis from the Talmudic period to modern day, bringing the judgments of those who are restrictive and those who are permissive, as well as outlining the basic statements which have led to all discussions surrounding the question of birth control in Jewish law.

The second section of this thesis is the responsa presented in the order they were translated. The first ten responsa consider questions of cases where birth control use is being deliberated as an option or cases concerning the legal, according to Jewish law, use of certain birth control devices. Some of the devices discussed are mokh,<sup>"</sup> diaphragm,<sup>"</sup> the "Pill", intrauterine device, contraceptive jellies, as well as abstinence. Cases that Feinstein responds to are post-partem psychosis, removal of the uterus, Tay-Sachs disease, and the general situation of a woman for whom it is dangerous to become pregnant. The last two responsa are regarding artificial insemination, a subject not always included under the heading of birth control.

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## Preface

The second half of the twentieth century, beginning in the 1960's, brought to a collision the sexual mores of the past centuries and the sexual revolution of modern day youth. Everyone in the Western world was caught up in this collision including Orthodox Jewry. Though Orthodox Judaism maintained its own set of sexual standards, because of the easy availability of obtaining birth control devices, the leading rabbis of Orthodox Judaism had to consider the legality of these devices as well as reaffirm the limits of their use as decided by rabbis of the past generations.

Reform Jews today, when seeking answers to questions that deal with Jewish law, want to know what Orthodox Judaism says first. This is part of the basis for deciding what rules, criteria, choices they will follow in their religious, moral, and ethical lives. Birth control is a religious, moral and ethical question that contemporary society is facing and Reform Jews want to know what "Judaism" says about birth control. Therefore, it was my objective in translating the following material that Reform Jews have access to primary material involving decisions made by a leading rabbi on the topic of birth control. As in all cases of Reform Judaism, the discussions of Orthodox rabbis are not binding, but can and should be used as guide in what many consider a religious decision.

The responsa of Moshe Feinstein translated here involve a wide range of questions from the permission to use birth control to what kind of devices are permissible. I believe that anyone who reads the cases presented here will find the discussions simple to follow and the decisions easy to understand.

I would like to express my gratitude at this time to my referee,

Dr. Alexander Guttmann, who not only guided me in translating this material, but has shown me true love for Torah and Talmud. Though Judaism continues to evolve and change, we must never forget the sages of our past who struggled to keep Judaism alive. Also, I would like to say thank you to my friend, Cindy Barsman Moritz, who typed this thesis. Her patience and concern, as well as her hard work, have made the completion of this thesis possible.

The controversy in Jewish Law concerning birth control reflects the post-Talmudic rabbis attempt to understand the Talmudic rabbis' statements, and, the later authorities<sup>\*</sup> endeavor to comprehend the ever-changing world outside of the Talmud. The concept of birth control was not new to the Talmudic rabbis. The idea of controlling birth, meaning not only to negate the possibility of life, but also to enhance the multitudes of the living, is weighed in several passages of the Torah.<sup>1</sup> No clear-cut law is stated in the Torah as to the limits of birth control. The questions the rabbis asked ranged from the question of allowance of birth control at all to what birth control methods could be used, when, and how often.

It is the aim of this chapter to survey the issue of birth control from the Talmudic era to the present. Presently, a detailed work of this subject is written by David M. Feldman, Birth Control in Jewish Law, in 1968. Feldman's book is used extensively in this chapter, though by no means, exclusively. The effort here is to understand what has been said not to break new ground in, yet, untouched fields. Feldman himself, noted in his preface to the second edition, 1970, "No significant rabbinic responsa or related literature have appeared in the interim. This is still true today.

Two major ideas are juxtaposed concerning birth control methods.<sup>3</sup> Genesis 1:28 tells us "to be fruitful and multiply", implying, many rabbis say, that Man has no right to prohibit what is natural. The definition of "be fruitful and multiply" is found in Mishnah Yebamot 6:6 (61b) where it says, "A man must not cease from procreation unless he has children. Bet Shammai says, 'two sons,' and Bet Hillel says, 'a son and a daughter.'" The second idea concerning birth control stems from Exodus 21:10, "If he takes another wife to himself, he shall not diminish



her food, her clothing, or her onah." The meaning of the Hebrew word onah troubled the rabbis who commented on this verse. Onah is used several times in various forms in the Bible. In Genesis 31:50 it says, "If you ill-treat my daughters, although no man is with us, remember, God is witness between you and me." Te-aneh--meaning ill-treat in this verse--is derived from the same root נָחַם as onah. According to the Talmud,<sup>4</sup> ill-treat means denying sexual relations. Another place onah is used is in Hosea 10:10 where it refers to time. The Talmud (TB Yebamot 62b and TB Niddah 7b) also uses onah to signify a specific length of time--twenty-four hours. Onah, as it appears in Exodus 21:10, combines the meaning of time, Hosea 10:10, with the concept of sexual relations, Genesis 31:50, arriving at the conclusion that the verse refers to a husband's conjugal obligations to his wife.

Judaism differs from Christianity in the notion of the place of sexual relations in a marriage. Catholicism, in particular, believes in intercourse for the specific purpose of procreation. The traditional Jewish approach, though, divided intercourse into two distinct parts. There is intercourse for procreation; procreation is demanded in the Torah in Genesis 1:28. There is also intercourse for the sake of gratification. Baale Hanefesh by Ravad says that there are "four purposive intentions of the marital act."<sup>5</sup> The first is procreation. The second is, "The conferral of those 'benefits' which are said to accrue to the child and mother through intercourse during pregnancy."<sup>6</sup> Intercourse during pregnancy, in particular the final trimester, is encouraged by the Talmud,<sup>7</sup>

During the first three months marital intercourse is injurious to the mother and to the child. During the middle three months it is injurious to the mother but beneficial to the child. During the last three months it is beneficial for both the woman and child,

since on account of it the child becomes well-formed and of strong vitality.<sup>8</sup>

The third intention of the marital act is the performance of the mitzvah of onah which "has nothing to do with procreation, but is a fulfillment of her yearning when she is nursing or when he is about to leave (or return) on a journey."<sup>9</sup> Finally, intercourse is used in gratifying her pleasure, but not his own. From what Ravad wrote about onah, and also what others wrote,<sup>10</sup> the mitzvah of onah rests on the man, as it says, "A man is required to give joy to his wife in the matter of mitzvah."<sup>11</sup>

The rabbis were not satisfied with only declaring that the husband must fulfill the conjugal rights of his wife. In Mishnah Ketubot 5:6, the problem of how often a man is obligated is defined:

The onah prescribed in the Torah is for Tayyalim, every day; for laborers, twice a week; for ass-drivers once a week; for camel-drivers, once in thirty days; for sailors, once in six months; these are the rulings of Rabbi Eliezer.<sup>12</sup>

Whether these rulings were enforced is difficult to say, as intercourse between husband and wife has always been a private matter. Suffice it to say that this mishnah was not written to insure procreation, but, it was written to insure gratification of a woman's needs. The wife, though not forced to observe this mitzvah of onah, did perform a mitzvah by helping her husband to do so. Rabbi Jacob Emden defined the pure goodness of intercourse when he wrote, "To us, the sexual act is worthy, good, and beneficial even to the soul. No other human activity compares with it; when performed with pure and clean intention it is certainly holy. There is nothing impure or defective about it, rather much exaltation."<sup>13</sup>

As we have seen, onah is commensurate with non-procreative intercourse. Feldman defines onah as, "A separate mitzvah . . . concerned with

the woman's other-than-procreative needs."<sup>14</sup> Nimmukei Yosef, a commentary on Alfasi's code, in Yebamot, chapter five, states:

It follows from here and from all discussion elsewhere that intercourse with a woman incapable at all of child-bearing is permissible, and the prohibition of hash-hatat zera<sup>15</sup> is not involved so long as the intercourse is done in the manner of procreation; for the rabbis have in every case permitted marriage with women too young or too old for child-bearing.

Feldman adds to this definition by bringing the words of Rabbenu Tam, "Such intercourse is in the natural manner, just like that with a child-bride or a barren woman which was not forbidden on the grounds of unfruitfulness."<sup>16</sup> As the rabbis discussed the concept of onah in general and non-procreative intercourse in particular, the need for the husband to fulfill this mitzvah of onah and the gratification of the woman's desires, shelom-bayit--peace in the home--pervaded the totality of the marriage relationship, and into "old age" as well; in any case, the concept became a governing factor in the contraceptive question.<sup>17</sup>

What exactly are the man's obligations concerning onah? Since the mitzvah is on the husband's shoulders, there must be obligations. Jacob Z. Lauterbach, writing in the first quarter of the twentieth century, said, "To begin with, the rabbinic law not only permits but even commands the husband to fulfill his conjugal duties to his wife, even after she has experienced the change of life and has become incapable of having children,"<sup>18</sup> and, he adds, that the Shulchan Arukh supports this notion. "The husband is permitted to have sexual intercourse with his wife even if she is congenitally incapable of conception, as, for instance, when she is an הקרה--sterile--or an אין בריה: wombless."<sup>19</sup> Despite the command of procreation, considered one of the primary commandments in the Torah, rabbinic law permits a man who has never had children to marry a woman who cannot possibly bear children.<sup>20</sup> Therefore, assuming

there is conjugal intercourse, a man would be fulfilling the mitzvah of onah while not possibly fulfilling his duty of procreation. "Non-procreative intercourse, such as occurs if the wife is too young to bear children or is barren . . . is not only allowed, but required."<sup>21</sup>

Thus far, we have seen that the act of cohabitation is in itself not immoral or forbidden<sup>22</sup> when no conception is possible. In fact, to deprive a woman of her sexual rights, as set down in the concept of onah, causes a personal hardship for the woman.<sup>23</sup> The halakhah, concerning the conjugal relationship between a husband and wife, takes into consideration the wife's feelings, and does not put any restrictions on the husband's gratification of his sexual desires.<sup>24</sup> "What it all adds up to," writes Feldman, "is a concept of marital relations as the duty of the husband and the privilege of the wife."<sup>25</sup>

Despite the positive stand towards conjugal intercourse, a problem did occur which diminished the rabbis' enthusiasm and confused the entire picture of marital relationships. Hash-hatat zera, the spilling of one's seed (a more complete definition follows) entered into the question of onah and marital rights, "Just as marriage has two essential functions, the procreational and the relational, so the marital act has two essential functions."<sup>26</sup> To desist from the procreational through artificial or "unnatural" means is a violation. This violation is part of the hotly debated concept of hash-hatat zera. Some problems with this term stem from the reading of the original source Genesis 38:7-10; its interpretation and application by the Talmudic rabbis; and the continuing conservatism of the medieval rabbis and later authorities.

Hash-hatat zera is connected with the ejaculation of the sperm outside of a woman's vagina. Subsequently, with the advent of various contraceptive methods, ejaculation inside the vagina became suspect.

Virtually every rabbinic responsum on the subject of birth control begins with a review of the laws surrounding hash-hatat zera. In fact, how a rabbi uses the sources available to him--Talmud, responsa, codes--will influence him in the direction of his own opinion. One important point which must be kept in mind is that according to the broader definition, the discharge of sperm has a purpose other than its pro-creative one, namely to afford the inherent gratifications of the sex act.<sup>27</sup>

There are three possible sources for hash-hatat zera in the Torah. First, we have Exodus 20:13, "You shall not commit adultery." According to the rabbinic theory that nothing is superfluous in the Torah, and since this verse is repeated in Deuteronomy 5:17, the rabbis expanded this verse to mean immorality in general, meaning, that the evil of self-pollution (masturbation) is included in this injunction against sexual offenses.<sup>28</sup> However, masturbation is not an explicit negative commandment, therefore, the explanation of Exodus 20:13 is purely homiletic or eisegesis.

An interesting source for the evil of hash-hatat zera is found in the explanations of Genesis 6:12, "When God saw how corrupt the earth was, for all flesh had corrupted its way on earth." Despite the exegetical entanglements caused by this verse, the Zohar sees the sinfulness of this verse as the "last straw" in a series of evil deeds committed by that generation, "they had corrupted themselves in many ways, but this sin made their liquidation inevitable."<sup>29</sup>

Lastly, there is Genesis 38:7-10; the act of Er and Onan. Genesis presented the rabbis with a text filled with complications, as well as their being no analogous situations. But despite the problems, this passage became locked into the debate surrounding contraception. Here

is the complete passage:

But Er, Judah's first-born, was displeasing to the Lord, and the Lord took his life. Then Judah said to Onan, "Join with your brother's wife,<sup>30</sup> and provide offspring for your brother." But Onan, knowing that the seed would not count as his, he let it go to waste whenever he joined with his brother's wife, so as not to provide offspring for his brother. What he did was displeasing to the Lord, and God took his life also.

To dissect this passage, looking for the simple meaning and the hidden message, we will use the rabbinic method of peshat and derash. With peshat, the plain meaning of Genesis 38, we find nothing unnatural in Onan's act except, possibly, coitus interruptus.<sup>31</sup> Therefore, what was Onan's offense? Was it the purposeful wasting of his sperm, or the neglect to fulfill the commandment of levirate marriage found in Deuteronomy 25:9? Feldman writes, "According to Deuteronomy 25:9, the punishment for neglect of this (levirate marriage) is not death, but public disgrace. Does this mean, then, that the contraceptive act itself was the offense incurring the death penalty? But the overall context suggests that the levirate dereliction is the burden of the narrative, and, if so, Onan's sin."<sup>32</sup> We must act on the question then, why was Onan killed, since the punishment, according to the Bible itself, did not fit the crime? The rabbis answer this question by saying that Onan's death was due to an accumulation of ethical offenses, not just coitus interruptus. What did the rabbis and later sages think of coitus interruptus? Rambam stated that it is forbidden to destroy (improperly emit) seed. Therefore, a man may not practice coitus interruptus.<sup>33</sup> The codes hold Rambam's opinion.<sup>34</sup>

While coitus interruptus was banned, unnatural intercourse was permitted by the rabbis. Ri, i.e. Rabbi Isaac, wrote in Tosaphot, a commentary on the Talmud, two solutions. One, no semination is contem-

plated in the law's leniency, therefore, the permitted practice is, unlike even the act of Onan. Two, semination is indeed allowed, but only when the intent of the ordinary husband is unlike that of Onan.<sup>35</sup> Er and Onan whose intent was to avoid pregnancy sinned, but he whose intent is for pleasure does not sin.<sup>36</sup> As long as the husband's intentions were honest, as long as he did not habituate himself to having intercourse in any unnatural manner, a man was permitted to have intercourse in any manner he wished. Opposition has been voiced in the last centuries to this opinion. The Zohar, a restrictive influence on liberal ethics and morals, stated that one pollutes himself more (in this manner) than through any other sin in this world. The Zohar was not the final word of this debate about coitus interruptus as unnatural intercourse. Rabbi Mordechai Silberer, writing in the nineteenth century, expressed the view similar to Ri that unintended coitus interruptus, as part of an ordinary heterosexual act, is not blameworthy.<sup>37</sup> Feldman, trying to sort out this dispute between the restrictive and permissive schools noted that hash-hatat zera can be read two different ways: improper emission of seed versus destruction of seed. "Hence, 'abuse' of the generative process of improper seminal emission, rather than 'waste of nature' is intended."<sup>38</sup> But, another modern thinker deeply involved with the question of contraception, Alan Guttmacher, said that Orthodoxy leaves no doubt that a male is never permitted to do anything that interferes with his procreative potential.<sup>39</sup> The question of acceptability of a contraceptive method is the extent to which it "abuses the prohibition of wasting one's sperm.

There are various methods of birth control. Some are totally adverse to rabbinic thought, some walk the thin line of acceptability within the framework of Jewish law, and some, open to question, are

used. One of the most controversial methods to be discussed later in greater length is mokh. Mokh can be equated with the modern diaphragm. It is a fiber mixture, possibly cotton, wool, or flax, and was inserted into the vagina either precoitally to stop the sperm from entering the vaginal canal, or post-coitally to absorb the sperm before it entered the vaginal canal. The post-coital usage is not debated, except by those rabbis holding extremist positions; it is accepted by the Talmudic rabbis. Unfortunately, this method of birth control is less than effective. Therefore, precoital use of mokh was the only viable birth control method used during the Talmudic period, and thus, the one the rabbis discussed and debated. The use of precoital mokh spawned the debate, "Does it cause hash-hatat zera?" We will examine this when we review the central baraita and commentary surrounding its use.

Rabbi Hayyim Sofer brings the use of mokh into focus for us in our quest to understand what are the limits of permissibility surrounding hash-hatat zera. He writes:

If the mokh obstructs the entire area of the vaginal canal, with the result that the membrum is insulated and accordingly prevented from impinging upon the vaginal walls--then the husband is guilty of hash-hatat zera for such intercourse is not in the proper manner as implied by Genesis 2:24. Intercourse is not permitted except where the excitation derives from the unimpeded conjunction of the genital organs and the sperm runs its course in the vaginal canal.<sup>40</sup>

Though Sofer's opinion in the nineteenth century was greatly respected and observed by the traditional Jewish community, he came under attack by the new liberal Jewish thinkers at the beginning of the twentieth century. The most prominent thinker and spokesman, Jacob Z. Lauterbach, wrote that some rabbis are inclined to regard all forms of birth control as causing sperm to be wasted, but, he states that these rabbis, instead



of deciphering law, have based their decisions on aggadic sayings from the Talmud, "Such method is unscientific and not justified in the discussions of such a serious and important question."<sup>41</sup>

Not all rabbis acted as extremists in this question. Rabbi Jacob Emden, in the eighteenth century, wrote that the use of a contraceptive device offsets hash-hatat zera because of the commandment of onah, "The prohibition of hash-hatat zera is annulled of itself for reasons of mitzvah; mitzvah of marital relations renders the act no longer in vain."<sup>42</sup> This intermediate view was passed over by Sofer and Lauterbach, as were other compromises. Even in the Talmud itself, a centrist attitude was forming, already recognizing the inherent problems of connecting the act of Onan with normal husband-wife relationships. In Yebamot 34b, the practice of coitus interruptus was allowed, if not commanded, when certain situations prevailed during intercourse.<sup>43</sup>

The above paraphrase of Yebamot 34b leads us to ask, how could the rabbis consider cohabitation with one's wife, when procreation is impossible, as an act of perversion; or when legitimate gratification is derived from a normal natural desire, how could this be considered hash-hatat zera?

We have so far seen that sexual intercourse between husband and wife is commanded for two reasons: procreation and gratification. That even though there was never any debate about the former, the latter came under severe attack and scrutiny. The issue of emitting sperm in vain--spilling it on the ground--was debated continuously by rabbis seeking to determine the truth of the law. With the on-set of birth control methods, the rabbis had to determine if they caused hash-hatat zera. Feldman noted that Rabbi Eliezer, in whose name the Talmud quotes a dictum warning against even unintentional improper emission of seed, endorsed

coitus interruptus for reasons of health of the child; this is all the more constructive.<sup>44</sup>

It is important to consider one final point of view, that of Rabbi Pinchas Elias who wrote in his book Sefer HaBrit, Part I, chapter 16:3:

Since this evil (hash-hatat zera) is so great, and since many do yield to temptation, the Torah, therefore, did not forbid it explicitly in keeping with (the Talmudic principle), "Better that they sin unwittingly rather than knowingly." But, yet, the Torah let us know through a narrative, such as that of Er and Onan, that the practice is evil.

After having reviewed the general concepts and views of onah and hash-hatat zera, we now come to the famous baraita of "The Three Women"; the central rabbinic statement concerning the approval or disapproval of birth control. Here is the baraita with Feldman's annotations and additions:

R. Bebai before R. Nahman: Three (categories of) women must (or may) use a mokh (absorbant) in marital intercourse: a minor, a pregnant woman, and a nursing mother. The minor, because (otherwise) she might become pregnant and die. A pregnant woman because (otherwise) she might cause her foetus to become a sandal. A nursing mother, because (otherwise) she might have to wean her child prematurely, and he would die. And what is a minor? From the age of eleven years and a day until the age of twelve and a day. One who is under or over this age carries on her marital intercourse in the usual manner--so says R. Meir. But the (other) sages say: The one as well as the other carries on her marital intercourse in the usual manner, and mercy be vouchsafed from heaven, for (Ps. 116:6) "The Lord preserves the simple."<sup>46</sup>

There are several problems and definitions which must be introduced and discussed. The first is mokh mentioned previously and defined briefly: a tuft of cotton or wool, at least a fiber mixture. The earliest mention of mokh is in Mishnah Shabbat 6:5. Here, mokh is divided into three categories: an absorbant, removing moisture from an ear for example; an insertion for comfort, as into a shoe; or, a tampon

for feminine hygiene. We also find mokh, outside of our central baraita, in other places in the Talmud. Mokh is used in TB Yebamot 35a and Ketubot 37a when the concept of hav-hanah--the three month waiting period which must take place between a woman's marriages; in TB Yebamot 36b and Ketubot 60a when a widow or divorcee is pregnant or nursing; and, at the beginning of tractate Niddah, called "Reish Niddah", where mokh is described as in the woman's vagina before and during intercourse. This last reason is primary in the development of our baraita, as it explicitly states pre-coital usage of mokh.

Who are these three women and what distinguishes them from the general population? These are the beginning questions asked by every scholar as he or she tackles this difficult baraita, seeking relevant answers. The minor would be characterized as a child bride in her 12th year of life or younger. This fact is not arguable, but the morality of a child bride, not only placed on her by our standards but by medieval commentators and earlier is questionable. The Talmud addresses the question of a child-bride and states that intercourse with her is immoral and would delay the Messiah.<sup>47</sup> In another section of the Talmud discussing the marriage of a young woman to an older man, the Biblical verse Leviticus 19:29 is used as proof to prevent these marriages. "Do not profane your daughter by making her a harlot." Rambam, in his Mishneh Torah, attacked the marriage of a man to a barren, sterile, old, or minor woman who is not fit to give birth unless he has fulfilled the commandment of procreation.<sup>48</sup> Rambam steadfastly disapproved of a minor having intercourse as can be seen throughout his code. Rabbi Meir had the most sensible and rational statement in the early stages of this controversy when he said that a pregnancy at this stage is hazardous to both mother and fetus.

Though the greatest number of difficulties are with the child-bride, the factors surrounding the uniqueness of the pregnant wife and nursing mother are no less important. The pregnant wife was singled out for mokh usage because of moral and physical factors. The moral reason, as we saw previously, is that intercourse is deemed beneficial, at different stages, for both mother and foetus. Physically, the rabbis were afraid of superfoetation (Niddah 27a), resulting in the foetus possibly being born a sandal (flat). In modern times, the possibility of a second conception taking place has been disproved. Scholars assume that what the rabbis found, possibly several times, were twins where one died and the other survived. The death of the foetus was believed caused by superfoetation. Also, Rabbenu Tam, who we will meet again shortly and more in depth, believed that sperm damages the foetus.

The question of the nursing mother is more real, rational, and practical. If a woman became pregnant while nursing another child, the lactation would cease, the baby would be weaned prematurely and die. Modern doctors and modern technology have proved this false and rendered the question useless, nevertheless, the rabbi's concern for this woman and the other women was genuine and must be considered in such a manner.

With the background discussion behind us, we can now proceed to the dispute between Rabbi Meir and the sages, based on the question that R. Meir was saying that these three women "may" or "must" use mokh. According to Feldman's analysis, the question reads like this, "If Meir is shown to mean 'may', then the sages in differing mean they 'may not'; if he means 'must', then they mean 'must not', i.e. "need not, but may."<sup>49</sup> The law is always according to the sages in case of a disagreement, and as a result, other problems arise. These other problems are brought to the front by Rashi and Rabbenu Tam, Rashi's grandson, with

their different interpretations and commentary on our baraita, and in particular, over the question of 'must' versus 'may'. Feldman outlines these arguments:<sup>50</sup>

Rashi would say that R. Meir means "may" (mutarot) and, hence, the sages mean "may not" (asurot). The law, then, is that even these three women may not; the mokh is assumed to be precoital; hence, hash-hatat zera is involved here; for him as well as her. Nevertheless, R. Meir sought to permit the mokh for these three women because of the special circumstances of what to him are potentially dangerous pregnancies--the sages disagree. Other women certainly may not use such a device.

Rabbenu Tam disputed with Rashi in his commentary in Tosaphot:<sup>51</sup>

To Rabbenu Tam. . . R. Meir means "must" (tz'rikhot, hayyavot), hence, the sages, in differing, mean "must not" (need not) but "may" (mutarot); a precoital mokh is clearly inadmissible. . . hash-hatat zera would be involved; for him, but technically not for her. If however, the precoital mokh is not used, and the sex act is unimpeded, although later rendered non-procreative by her, then his act does not differ from that of coitus with a barren woman; R. Meir would not suggest that precoital mokh even to avoid danger as long as there is a permissible alternative. That alternative is the post-coital mokh, which is what the baraita is talking about. R. Meir requires the use of this mokh for the three women; the sages do not. Being unobjectionable in and of itself, it would be permissible to all women even without the justification of potential hazard.

At this juncture, after determining whether mokh can or cannot be used, the portion in the Talmud called reish niddah (Niddah 2af.) must be examined, "And if a woman uses testing rags when she has marital intercourse, this is indeed like an examination...." In the discussion following this statement, a case of a woman using mokh precoitally is considered. The concern in the Talmud is with the detection of menstrual blood and intercourse, but assumptions from this passage can be made. First, mokh is assumed to be used almost as a matter of course, and second, mokh usage was clearly precoital. Rashi agreed with these

assumptions, but said that precoital usage is generally not permissible. Others say that this whole passage only refers to delinquent women and should not be considered with regard to moral, pious women. The fact remains that precoital use of mokh, despite various interpretations, is acknowledged in the Talmud.

Though we have attributed the above statements to R. Tam, there also exists a book he wrote, published later, called Sefer HaYashar which contradicts his earlier statements in Tosaphot. In this book he states:

Three women etc. . . (the meaning is) they must use the mokh to avoid danger. It is wrong to read here "may". . . even hash-hatat zera, which would make the mokh impermissible to women not in danger, is not involved here, as we see in reish niddah (where precoital mokh is taken for granted). Thus what is attributed to Tam may not be his words.)

In trying to sort out the words of baraita, R. Meir, the sages, Rashi, and R. Tam, Emanuel Jakobovits wrote:<sup>52</sup>

Several authorities assume that this dispute applies only to these particular cases (the three women) where the danger of a conception is in any event rather remote; hence, they infer that, in cases of a more definite threat to the mother's life, arising from a pregnancy, there would be no objection at all to the uses of contraceptives. Others hold that the three women are mentioned to illustrate the attitude to cases of resultant danger to life in general; while yet others regard the entire sanction as limited to these three women only.

The controversy concerning the use of mokh did not begin with Rashi's comments on the baraita, nor did it end with R. Tam. Instead, sides were formed with those who supported Rashi and with those who supported R. Tam, and even some who fell in between these two camps. "One after another (the early rabbinic authorities) are led by the logic of Rashi's opinion to reject it: if R. Meir means 'may' the other sages mean 'may not', how can the sages forbid taking precautions to avoid

danger?...Or in the case of the child-bride, how can they forbid something that will make no difference?"<sup>54</sup>

In the tenth century, Rabbi Hai Gaon, a predecessor of Rashi, wrote in a responsum that the sages did not forbid the mokh's use, women merely did not have to use it, "Women who do wish to rely on 'mercy vouchsafed from heaven', they and their husbands should use the mokh, and there is no fear at all. Responding to this leniency, Rabbi Solomon Lifschutz, nineteenth century, asked, "How could the sages permit her to place herself in danger?"<sup>55</sup>

Rabbi David ben Zimra, Radbaz, writing in the sixteenth century, summarizes the debate between the school of R. Tam and the school of Rashi, trying to enlighten his readers to the crux of the controversy. The greatest problem, by his assertion, is that R. Meir means "may" and, therefore, the sages' opinion must be taken to mean "may not". With the question of the possible physical danger impending on these three special women, how can the sages forbid these women from taking precautions to save their own lives:<sup>56</sup>

The sages could not be saying that the three women may not use the mokh. For she can say "maybe I don't have enough merit that mercy be vouchsafed from heaven." Therefore, all agree that the three women in fact may use the mokh, but others are forbidden. . . And know that even though Rabenu Tam holds that...mokh is permitted to all women, we shall not rely on him (and permit) this ugly deed, but on Rashi.

Ben Zimra can thus subscribe to Rashi's view, and yet, salvage permission for the three women while denying permission to other women.<sup>58</sup>

While some rabbis believed in the truth of R. Tam's words that the three women "must" according to R. Meir, and they "need not", but "may" according to the sages, other rabbis saw R. Tam's logic as too lenient, permitting "other women" the discretion of using mokh at any time. Rabbi

permitting "other women" the discretion of using mokh at any time. Rabbi Jacob Joshua Falk argued that Rashi's "may" actually implies "must": by "may" Rashi means she legally may; since she may, it is her duty to take this legal means to avoid danger.<sup>59</sup>

A significant reason this controversy is without end is the lack of laws in the codes concerning the issue. Other situations, unanswerable by the controversial Talmudic logic, found their solutions in the codes by Maimonides, Rosh, Rif, or Karo. Here, later rabbis could turn for solutions; not so with our problem. Rif, Alfasi, did no more than simply relate the baraita, no ruling, not even prejudicing the reader. Rambam omits any reference to the three women (possibly effecting omissions in the later codes) in his work. Some scholars theorize that Rambam saw this question as no more than theoretical of hazard to the women; mokh was not his concern. Karo also omits any reference completely. The rabbi is left to find his own solution.

The on-set of the nineteenth century involved not only the ramifications of the French revolution towards politics, but Judaism as a religion came into conflict with itself. The question of birth control found two camps: those who were non-permissive and those who were permissive. Jewish law predicated itself on this principle: the earlier the law, the more authoritative the law. With this, each side, armed with responsa, opinions, and statements fought for their own beliefs.

The teachers of the non-permissive side were rabbis Eger, Sofer, and Ettlinger. Their battle dealt almost exclusively with the violation of hash-hatat zera. Eger, the earliest one, feared by many of his colleagues because of his great influence, said that even post-coital use of mokh was a violation of hash-hatat zera. His view, though obeyed by many of his followers, was hotly disputed by his colleagues who could not understand the basis for his comments, as all laws were



contrary to his position. Eger's son-in-law Rabbi Moses Sofer sided with him, except that he saw only precoital use of mokh as forbidden. He said that post-coital usage was permitted if danger of the woman becoming pregnant was a fact. Rabbi Ettlinger, even more extreme than R. Eger, was discounted, leaving most non-permissivists to side with the Eger-Sofer opinion.

R. Sofer's grandson, Rabbi Shimon Eger-Sofer, saw things quite differently from his relatives:<sup>60</sup>

Since the mokh baraitha, which appears so often in the Talmud, is omitted by Maimonides and the codes, apparently they hold with (R. Tam) that the three women--and others too--may use even the precoital mokh, as other authorities have concluded. Since Maimonides and Karo did not say, "The child-bride, the nursing mother, and the pregnant woman must abstain from marital relations," and since they did not say, "These three women must use the mokh," we can conclude that they hold with the lenient interpretation, that mokh is permitted under any circumstances, adopting the leniencies of both Rashi and R. Tam.

Mordechai, a commentator, of Rosh's code, also concludes that where the act of intercourse is in the normal manner, no hash-hatat zera is involved; coitus with a non-child bearing woman is not prohibited.

We now come to the most lenient ruling which, though preceeding Rabbis Eger and Sofer as well as R. Eger-Sofer, was not available to most rabbis who ruled in this area. Solomon Luria based his ruling on the idea of gratification as the single most important idea in non-procreative intercourse; one body deriving pleasure from another. He sets up his ruling like this: one, the plain sense of the meaning of reish niddah; two, Asheri's commentary; and three, the integrity of the sex act does not require the possibility of procreation, but it does require the circumstances allowing for normal heterosexual pleasure attendant on the act.<sup>61</sup> Lauterbach, considering Luria's opinion, con-

curred with him on the use of precoital mokh for the express purpose of non-procreative intercourse, not equating it to hash-hatat zera as did R. Tam, "After all, it is a normal manner of having sexual intercourse, and the two bodies derive pleasure from one another and experience gratification of their desire. It is, therefore, not different from any other normal sexual intercourse with a woman who is incapable of having children."<sup>62</sup> Feldman also points to Luria's logic in discussing reish niddah, as it says, "What about women using the mokh. . ." not, "What about women who are using the mokh."<sup>63</sup>

Rabbi Abraham Isaac Kuk, Chief Rabbi of the Holy Land earlier this century, looked at the argument between Rabbi Meir and the sages through new eyes. He saw the dispute not as "must" versus "may", but as "requires" and "does not require", meaning that legality or "violation" is not the issue, but hazard is.<sup>64</sup> In a slightly later responsum, he declared that R. Akiva Eger had obviously and demonstrably not seen Luria's view, that if he had, he may well have concurred.<sup>65</sup> In the Orthodox community, the dispute still exists (as will be seen in Moshe Feinstein's responsa). R. Eger's opinion is followed as strictly by the non-permissivists, as is Luria's by the permissivists. Mokh has given way to new birth control methods with new controversies imbedded within them.<sup>66</sup> Hash-hatat zera is still the concern with its violation taken as a serious matter. Without the proper law codes written to give direction, the issue will remain always unsolved. Opinions can be stated, counterarguments debated, interpretations unending, of what the sages meant. With our baraita, reish niddah, and the silence of Maimonides, no solution will be binding. In the end, individuals who trust their rabbi may test their own case, but another rabbi may always rule differently.

One group of Jews attempted to break the stranglehold of law and

approach the question of birth control from a different point of view. Reform Judaism is unquestionably a liberally oriented religion. There is no central body whose authority is binding on its members. Since this chapter has fostered rabbinic interpretation, the writings of the organization of Reform rabbis, the Central Conference of American Rabbis--CCAR--was consulted for their statements and opinions.

The question of contraception was first called to the attention of the CCAR when it was asked by the National Catholic Welfare Conference to protest against an amendment to the Federal Penal Code, making it lawful to transmit information encouraging contraception through the mail.<sup>67</sup> This was 1926. The matter was referred to the Committee on Social Justice. The committee, after consideration, issued a long involved statement which, in essence, sought the need for studies in birth control, population control, and other related subjects. No conclusion was drawn as to its religious permissability, only that social justice was at stake.<sup>68</sup> The committee stated in its report the following:<sup>69</sup>

The question of birth control is one of growing insistence and of national moment, and should be considered from the standpoint of social health, of national welfare, of economic exigencies and, at the same time, of moral considerations as these latter bear on the individual, on family life and on human happiness generally. The traditional religious points of view ought to receive consideration but these should not, in the opinion of the Commission, constitute the determining factor.

They further stated in the same report:

. . . that the subject of birth control should not be treated as suspect from the standpoint of the law and should not be relegated to clandestine discussion and agitation, but, on the contrary, should be brought out to the light of day from the secret places to which it has been, by old habit and an out-worn morality, consigned.

In 1929, Jacob Lauterbach issued his responsum on birth control. The Committee on Social Justice, reviewing this responsum, stated that caution must be taken in "The delicate and complicated problem of birth regulation, in view of the widespread dissolution of . . . marriage and family life."<sup>70</sup> And, at the end of their report, it stated, "We, therefore recommend that the CCAR urge the recognition of the importance of the control of parenthood as one of the methods of coping with social problems."<sup>71</sup> In 1947, the resolution was adopted once again.

In 1960, with the question of overpopulation coming to the front in the minds of world leaders, the CCAR addressed this question by stating:<sup>72</sup>

As Jews we take pride in our historic emphasis upon the values of family life. We believe that it is the sacred duty of married couples "to be fruitful and multiply," unless child-bearing is likely to impair the health of the mother or the offspring. This is the position which we took in 1929 and which has support in traditional sources. We believe, moreover, that a righteous God does not require the unlimited birth of children who may by unfavorable social and economic circumstances be denied a chance for a decent and wholesome life. Therefore we declare that parents have the right to determine the number and to space the births of their children in accordance with what they believe to be the best interests of their families. We hold, moreover, that apart from its procreative function, the sex relation in marriage serves positive spiritual values. Contraceptive information and devices should be legally and inexpensively available to married persons.

In 1964, this statement was reaffirmed.

Always, the CCAR looked at traditional Judaism's approach, but their considerations were different from the world pressing problem of overcrowding. In essence, except for Lauterbach's pro-contraceptive responsum, the CCAR, the rabbis of Reform Judaism, have not looked at right or wrong, only the question of necessity for the good of the world.

Let us conclude with two quotes by Lauterbach from his responsum.

First he says, "When a man is married to a woman whose health is in such a condition as to make it dangerous for her to bear children," the use of contraceptives is permitted. And second, "The Talmudic law does not consider the use of contraceptives, as such, immoral or against the law. It does not forbid birth control; it forbids birth suppression."<sup>73</sup> This is the essence of Reform Judaism's view toward birth control.

Summary

Responsum 61

This responsum is concerned with the question of privacy and morals. The question of two men boarding at the house of a single woman is considered from the aspect of the woman. Can she assume safety during the night is not the primary consideration, rather is she or is she not an observant woman? By the answer to this question, the outcome of this case is determined; the consequences differ. The woman must also be single. If she were married and her husband is away she is absolutely forbidden to allow one, two, or even three men in her home overnight.

The conclusion is that if the woman is ritually clean, then the two men could rent the room overnight. If she is not ritually clean, then they are prohibited from being alone with her according to the Torah. There is no reason to presume immorality on the part of the men, as with two men one is a check for the other.

Responsum 61

Question: ABOUT THE PROHIBITION OF TWO MEN BEING ALONE AT NIGHT  
IN THE CITY.

Answer:

I was asked this year that where there is a great difficulty in finding a room to rent for sleeping in a city, if it is permissible to rent a room in the house of an elderly widow, if she sleeps in a closed room and they (the two men) will be in another room which has no walk way through her room? Perhaps this is forbidden because it is at night in a city where a woman needs three men (in order to spend the night in the house of a single woman) as it is written by Rabbi Moses Isserles in Even Ha-Ezer, chapter twenty-two, note five.<sup>1</sup>

I answered that if she is observant and remains a widow in her senior years, since she already stopped menstruating and she immersed herself for the last time in the mikveh<sup>2</sup> after seeing her final menstrual period, the prohibition of being alone with two men is only a rabbinical law.<sup>3</sup> The fear, lest one of the men will be sleeping and one will be awake, and that the one awake will rely on his friend remaining asleep, this is only a matter of doubt: *ספק דרבנן*, and when doubt concerns a rabbinic law the decision must be lenient. Perhaps, also the law that a woman traveling on the road needs three men with her, which the Gemara<sup>4</sup> speaks about, applies only to a married woman or a single menstruating woman, in which case, the prohibition of being alone is Toraitic. But if we are strict about being alone on the road, the Gemara speaks of a woman not menstruating. Anyhow, at night in the city, it is plausible that this is a more lenient case because it is possible for the one man to wake-up the other man, and the only fear is that he will be alone with her and have sexual relations with her in the presence of the other

man, as it says in Bet Shmuel, note nine,<sup>5</sup> but this is a minor worry. Moreover, perhaps his friend is not sleeping and only appears as if he is sleeping, or perhaps he will wake-up. Therefore, we should be lenient with an unmarried woman who is no longer a menstruant in a case of such urgency. But, if she remains a widow and is still menstruating during her years as a widow, or she has not immersed herself, or she is not an observant woman, in which case the woman, in her elderly days, she is still considered a menstruant, because she has not immersed herself in a mikveh after seeing her menstruation for the last time, it is therefore prohibited to be alone with her according to the Torah.<sup>6</sup> Therefore, we have to prohibit her from being alone with two men because if doubt about her being a menstruant or not concerns a law from the Torah, we must interpret it strictly. Moshe Feinstein



Summary

Responsum 62

This case concerns a woman who had given birth to two children who died by the age of two as the doctor had predicted. (Possibly Tay-Sachs disease.) Since it appeared that all of her children would be born with this disease, the woman sought the approval of the rabbi to use birth control. In this case either mokh<sup>1</sup> or a liquid (moist) drug--some sort of contraceptive jelly.

Feinstein prohibited the use of mokh on the grounds that even some of the authorities before him prohibited use of mokh even if the pregnancy would endanger the woman's life. In our case, there is no threat to her life. But, with respect to a liquid drug, which would not make intercourse anything but normal, it is permitted. Feinstein equates this drug with the kos shel ikarin<sup>2</sup> which a woman is allowed to drink.

Therefore, considering the pain of losing children and the availability of methods which would prevent this calamity, the woman is permitted the drug, but only for two years; God willing, she may heal and be able to bear healthy children after two years.

Responsum 62

Question: CONCERNING PLACING A LIQUID (MOIST) DRUG OR MOKH IN A WOMAN'S VAGINA BEFORE INTERCOURSE BECAUSE OF AN ILLNESS THAT CAUSES HER TO BEAR SICK CHILDREN WHO ARE LIVING ONLY A SHORT TIME: ABOUT TWO YEARS.

January 6, 1952

8 Tevet 5712

Answer:

Concerning a woman, may this not happen to us, that had given birth to two children and both suffered with an illness that the doctors had diagnosed, according to the nature (of the illness), that the children would not live more than about two years; the entire time they would be sick. So it was with the first born who was sick and died about the time as indicated by the diagnosis. Now the second one is also sick all the time, just as the doctors diagnosed, may God heal him, and according to the doctors it is necessary to worry about all the children that the woman will bear from now on that they, too, will have this disease, God forbid.

Since it has happened already twice, they asked a rabbi and he decided you have to worry about the matter (and do something about it). Then I was asked if the woman is permitted to use mokh or something that would be spread on the vagina before intercourse, some effective drug that prevents conception. The drug is moist, therefore there is nothing which prevents the entering of the sperm into the uterus, but the liquid kills the sperm so that the woman will not conceive. The husband has already fulfilled the positive commandment of procreation; as he has already from his wife a son and a daughter.<sup>3</sup>

I answered that birth control with mokh is forbidden, even according

to those who would permit its use in a case of danger to the woman and, since, in our case, there is no danger to her (it is not permitted to her). In regards to the child, it is better that he be born than not born at all. Because those who are born are coming to the olam ha-ba<sup>4</sup> right after the moment that they are born (even if they die immediately), and according to one opinion, even from the moment of conception (is the child destined for the olam ha-ba), as it is stated in Sanhedrin 11b.<sup>5</sup> Also, behold (the opinion of) Rav Huna in Yebamot 62A<sup>6</sup> that the fetus is accounted even as fulfillment of the mitzvah of procreation because they took from the souls of the guf.<sup>7</sup> Therefore, even though the law is according to Rabbi Yochanan<sup>8</sup> that he has not fulfilled the mitzvah of procreation because the fulfillment requires that the child also must be living, he admits that one must consider the reason of *פירא דמיתא*<sup>9</sup> as is mentioned at the beginning of the chapter Kol Ha-Yad,<sup>10</sup> "That everyone thinks that the law is according to Rabbi Yossi." Therefore, even though the mother and father may have great pain, suffering, and trouble (from the birth and death of the child), birth control is still not permitted, even to those who are otherwise lenient.

But concerning the matter of the application and spreading of a liquid drug where there is nothing which prevents the sperm from entering the uterus, only that it eliminates the strength to beget which (normally) exists within the sperm, it is plausible that this is similar to the kos shel ikarin and is unquestionably preferred over kos shel ikarin even though it is forbidden to the man because he may become barren which is similar to castration. And, so what is implied from Chelkat Mechokek in Even Ha-Ezer chapter five note six, that it (castration is forbidden) is according to the Torah, even if he had already fulfilled the mitzvah of procreation, although there is no flogging (see there).

Anyhow you can not derive a prohibition from the scripture unless it is similar to castration in which he becomes really barren; However here (when the liquid was used) only the sperm at this occasion is dead. Also, it is more plausible that since the destruction (killing of the sperm) is after the sperm goes forth from the man it is considered that the destruction is not done by the man, but in the woman, and the woman is permitted to drink the kos shel ikarin even without great pain (of childbirth or losing a child) according to many opinions. Also according to Solomon Luria, and those who side with him, it is only permissible for women to drink (the kos shel ikarin) when she has great pain. There is no greater pain than having a sick child; she is certainly permitted to drink the kos shel ikarin. It is more justified to permit her to use the contraceptive in this case than in the case where he (Solomon Luria) permits it when her children are not going on the straight path. The concept of presumption<sup>12</sup> does not apply even after many bad children were born, but here with sick children, there is the presumption that she will have great pain. All the more so in our case with this liquid drug, it does not have the disadvantage that there is with the kos shel ikarin.

Therefore, it appears to my humble opinion, to permit in practice (not only in theory) the spreading of a moist contraceptive drug, since the husband also agrees to this. Anyhow, when about two years pass, in my opinion, there is no longer any worry because the presumption (of having sick children) was with the quick succession of (bearing) children, but after two years have passed from that day, it will be all together four years, there is the hope that she will heal, God willing, and there will be no need to worry and the man will fulfill the commandment of procreation. "And at night he will not rest."<sup>13</sup> Your Friend, Moshe Feinstein

Summary

Responsum 63

This responsum is Feinstein's definitive answer as to whether birth control is allowed under Jewish law. The translation before you is only a part of his answer, but the most important parts. Both sides of the question, the pro and the con side are carefully discussed to their fullest extent. It is easy to see from reading this responsum that Feinstein did not approach the question lightheartedly, rather he took into account the very strong and persuasive opinions of the authorities he consulted.

The conclusion that Feinstein draws from his research is that birth control is allowed when the health of the would-be mother is threatened. Feinstein considers in this responsum the following factors. One, that in a marriage relationship two types of intercourse are necessary. The first is sex for procreation and the second is sex for gratification as can be seen in Ketubot 61b. Second, that these three women, of the baraita mentioned in the introduction, are of inferior health and that their danger of childbirth is considerable, therefore any woman in a state of inferior health, who is endangered by becoming pregnant, should also be allowed to use birth control. Thirdly, though in general we can rely on God's mercy to protect us in times of danger, this only applies when the state of affairs is normal, sick women are not in a normal state of health, therefore we cannot rely on God's mercy for protection. Therefore, birth control is allowed when the circumstances call for it.

After determining that birth control is allowed, Feinstein then continues by stating that abstinence from sexual intercourse, which seems like a logical alternative, violates the concept of prescribed sex or onah and that post-coital use of birth control is ineffective and should not be considered.

Responsum 63

Question: CONCERNING THE MATTER OF INTERCOURSE FOR A WOMAN USING MOKH  
OR A DIAPHRAGM WHERE THERE IS DANGER FOR HER TO BECOME  
PREGNANT.

January 10, 1935, the Thursday of Parashat Bo  
14 Tevet 5706

My honorable brother-in-law, who is like my brother, the  
famous Rav, our teacher, Rabbi Yitzhak Isaac HaLevi Shmuel,  
may he live a good long life, Amen.

CHAPTER I

Answer:

Concerning a woman who doctors ordered must take care so that she  
would not become pregnant because it is dangerous for her, whether she  
is permitted to use mokh (as a contraceptive) at the time of intercourse?  
Behold, in Pitchei Teshuvah Even Ha-Ezer, chapter 23, note 2, a discus-  
sion is quoted between the latter authorities in a collection of re-  
sponsa called Chemdat Shlomo which permits (the use of mokh) and the  
collection of responsa of Rabbi Akiba Eger and Chatam Sofer in the book  
Binah Adam which forbids the use of mokh). And so, who am I to decide  
(this matter), but because the case might result in her becoming an  
agunah,<sup>1</sup> many sages have found it necessary to be alert for her welfare  
because preserving peace between a man and his wife is very important.  
In which case, if the Torah permits the destruction of His Holy name,<sup>2</sup>  
how much the less so must we worry about the honor of great men even if  
they are our rabbis, sages of the world, from refraining to write what  
is the correct opinion,<sup>3</sup> according to my humble opinion, with respect to  
the law and practice. God, may His name be blessed, help us in order  
that we will not stumble, God forbid, concerning the matter of this law.

Behold, the opinion of Rashi in Yebamot 12b about the three women of Rabbi Meir,<sup>4</sup> who thinks that if there is some fear of danger, women are permitted to insert mokh into their vagina before intercourse in order that that they will not become pregnant, see there. If this is so, how much the moreso is a woman permitted to use birth control when she would be in danger of giving birth due to her sickness and weakness. Also, the rabbis admit this that women are permitted (to use birth control) because it is clear that our rabbis were not divided on the permission (to use birth control) when there is danger, it is only with these three women<sup>5</sup> that they are disagreeing for the reason that Heaven will show mercy,<sup>6</sup> as it is explained in their words that only for this reason is it forbidden. It is necessary to solve this problem in order that it will not be a difficulty (for later generations). Rabbi Aharon HaLevi and Rabbi Yom Tov ben Abaraham in Shitah Mekubetzet, tractate Ketubot 39 on the commentary of Rashi, stated that since there is danger, how can our rabbis prohibit (the use of a contraceptive). Their reason is that even though with every case we do not say "Heaven will show mercy", it is forbidden to endanger oneself even in the case of profaning the Shabbat or transgressing a commandment. But, with these three women giving birth is a natural act as it is with every woman in the world. If there was danger in this matter, it would have been stated in the Torah explicitly. How much the moreso that the Torah would not obligate him (the husband) further in the commandment of onah because the obligation of sex is written in the Torah in a general way, even with pregnant women and nursing women, and the main commandment of sex which is written in the Torah is in connection with וְיָצְאָה<sup>7</sup> that it is with minors, this is written in a general way; not limited up to a specific age. Therefore, they hold that it is "an assurance from Heaven"

that danger will not come from this pregnancy. The prohibition of relying on a miracle does not apply here; "the Heavens will show compassion". It is already a natural thing that women will not become pregnant in a dangerous manner, that even in a rare coincidence that danger happens that women do become pregnant and endanger themselves, it is an intentional punishment from heaven, not because they protect themselves, but punishment from Heaven is impossible to escape. Therefore the rabbis forbid (birth control) as if there would be no danger.

And so it is the reason of Abaye in Niddah 31a who permits intercourse (even) when there is a doubt of the ninetieth day. It is taught in a baraita that a woman who has intercourse on the ninetieth day after becoming pregnant is as if one has spilled blood. The question is raised, how does he know? Abaye said that this man can have intercourse continuously; "God guards the simple ones".<sup>8</sup> Because it (intercourse) is a natural thing and it is not prohibited in the Torah to have intercourse (on the ninetieth day), then this means that it is an "assurance from Heaven" that she will not be in danger because of this (intercourse on the ninetieth day), if she is not guilty of punishment and this is not included in the definition of "relying on a miracle", that is prohibited. A man has to be very careful, he should not do the least bit to endanger her. But for her, the danger caused by "hooks and snares"<sup>9</sup> and like things is something else because it is "an assurance from Heaven," God, may His name be blessed, that she will not be endangered in case she is not guilty of punishment, and where one is guilty of punishment it is impossible to escape. Therefore, it is plausible that Abaye permitted (intercourse on the ninetieth day) even if he (the husband) knew that it was the ninetieth day. Not in a case of doubt that we say that his intention is God will guard so that they



will not engage in intercourse on the ninetieth day, because the time of intercourse for the idle person is everyday.<sup>10</sup> If there would have been danger, then we should have prohibited intercourse for the idle person every day that is close to the ninetieth day in order that this protection should apply. It will not happen that they will have intercourse on the ninetieth day, but we have to say that according to Abaye intercourse is permitted completely (without restriction), and this is for the reason that I stated that it is an assurance (by God) that the woman will not be in danger and God will protect her, God, may His name be blessed, from the danger even if she has intercourse whenever he wants (including the ninetieth day). It is correct that the words are chosen but Abaye said that he means that he disagrees and holds that there is no prohibition at all to have intercourse on the ninetieth day even if it is known to him. It is not so that he only explains that in a case of doubt (whether it is the ninetieth day or not) we do not worry because "God guards the simple ones." The baraita speaks about the case when it was known to them (the ninetieth day) or that the baraita prohibited intercourse everyday as if it were known to them, however Abaye permitted intercourse completely even if the ninetieth day was known; he still permits it for the reason that I stated.

Furthermore, there is reason to explain the statement, "That Heaven will have compassion," as the rabbis say all child bearing women in the world are in some fear of danger, therefore we desecrate the Shabbat and also every commandment of the Torah for them. And, all the moreso, they would have to disregard a positive commandment if it is necessary, but nonetheless they are still obligated to enter into this danger for the reason of procreation and prescribed sex (onah) and to rely on God for protection. Because, if she is not guilty of a punishment she would be

in no danger, and this is not considered relying on a miracle. Therefore, the rabbis hold that we learn from this that likewise in every matter of nature one can rely on Heaven's mercy. Therefore, they (the rabbis) prohibited intercourse with mokh as a contraceptive, also in the case of these three women because it is a matter of nature for every woman to be in danger at the time of childbirth.

Rabbi Aharon HaLevi and Rabbi Yom Tov ben Avraham hold that we do not learn with respect to the three women for whom the fear of natural danger applies, only that they are not prohibited from having normal sexual relations (meaning using no contraceptives) and are permitted to rely on Heaven. But we do not learn (with respect to these three women) that they should be prohibited to use birth control if they are worried because of their sins (and the worry being that they might die in child birth) as Rabbi David ben Zimrah wrote in responsum 1022.<sup>11</sup> Since they accept the second reason i.e., that it was not as if it had been said about the three women explicitly that there was God's assurance that they would not be in danger, but that we derive it from the very obligation of procreation and prescribed sex. Therefore, even though procreation is an obligation, one should not apply this to the three women who are of inferior health (strength) as compared to the rest of women, but we only learn that they are allowed to enter into natural danger relying on Heaven. But as to the obligation (of bearing children in spite of danger) it is possible that this applies to women in general (i.e., average women, healthy adults) for whom the danger (at childbirth) is small. Also, the Torah obligated the women in general to endanger herself because otherwise the institution of marriage could not exist. But it (the Torah) did not obligate the "three women" (to endanger themselves by childbirth) for whom the (problem) exists for a

limited time only and the danger of childbirth is considerable. But for the three women to have intercourse without mokh we derive the permission, as it is not plausible according to the sages that the matter should be so perplexing as this, that only the three women should be prohibited to rely on Heaven while with respect to the rest of the women, they should be obligated to rely on God's mercy, although for both of them there is danger. Therefore, we derive at least permission to rely on God's mercy with respect to the three women since it (birth) is a natural danger for all women, even if they do not learn it (relying on God's mercy) as being an obligation. For Rashi and his followers, interpreting the view of the rabbis, the three women are forbidden to have sexual relations while using mokh because they hold to the first reason as it was explained that the woman will not be in danger (by having intercourse) if she is not guilty of any punishment. Therefore, no woman can use mokh. But Rabbi Meir, according to those who follow Rashi's interpretations, states that they are permitted (may), but not obligated (must). In this case, they explained that Rabbi Meir and the sages argue in the following that Meir believes according to the first reason and the sages according to the second. According to those who explain that Meir obligates her only for intercourse with mokh, he holds that we do not derive at all the use of birth control for the three women from the law of procreation and proper intercourse which is given for women in general, since the three women are in an inferior physical condition with respect to intercourse. Therefore, even a natural danger that is present for women in general is like any other fear of danger in which case it is forbidden to rely on Heaven.

This being so, the prohibition of relying on God's mercy applies only to matters of nature pertaining to women in general (average women),

but if there is another type of danger which is not a natural matter for every woman, but applies only to this woman who is sick which makes becoming pregnant dangerous to her, in this case, the rabbis would agree that she is permitted to use birth control. Furthermore, she is even obligated, because where there is an obligation because of danger the rabbis make no distinction. It is certainly prohibited to rely in a case of danger on God's mercy, just like on Shabbat and all prohibitions in the Torah.

## Chapter Two

Behold, in regards to Rashi's reason that all women are forbidden from using birth control, there are two opinions. Rabbi Yitzhak in Tosaphot to Ketuvot 39a<sup>12</sup> holds that it is for the reason that since mokh is in her body at the time of intercourse, it is as if one spills the semen on trees and rocks.<sup>13</sup> Therefore, this does not resemble one having intercourse with a minor or a barren woman because with them it is done in the normal way of intercourse. According to this, the prohibition applies to him. Thus explained Rosh who cited Ketuvot, Shitah Mekubetzet and Rabbi Yom Tov ben Avraham in Yebamot 39. Anyhow, they permit birth control in a case of danger. At first sight, this is very perplexing. According to this, why is it proper to permit birth control in a case where it is dangerous to become pregnant while one can just completely abstain from intercourse and there will not be any danger? Is this not similar to all the prohibitions which can be disregarded (pushed aside) because of danger, in which case the danger is already present and when he transgresses the prohibition it is possible that he will remove the danger, but here, there is no danger when he is not doing anything at all. This being so, how can we permit him to have intercourse using mokh which is like spilling the semen "on trees and

rocks". And to transgress the prohibition of spilling seed in vain, it is obvious that this is the reason of Rabbenu Tam in Yebamot 12b<sup>14</sup> that he holds using mokh during intercourse is prohibited even for the three women, even for Meir, since it is like spilling semen on rocks and trees. And it is not proper to allow birth control because of the danger of pregnancy, since there is no danger when he is not having intercourse at all. Also in this matter I am perplexed about Chatam Sofer who wrote that R. Tam speaks about the severity of spilling semen in vain, he does not hold that Meir permits birth control even in a case of danger, see there. Because this is no reason at all, what is the difference to us with respect to danger whether it is a major prohibition or a minor one. Behold, it is also with respect to Shabbat where the prohibition is punishable by stoning. Why did he not say the correct reason which is as I have explained, because there is no danger at all if he abstains from intercourse, and therefore, it is not proper at all to allow intercourse with mokh. Rashi is very difficult to understand if we consider the opinions of HaRi, Rosh, and HaRitba in Yebamot, and one wonders why they did not raise this difficult question.

The correct reason according to my humble opinion is that this difficulty (objection) is even more perplexing with respect to R. Eliezar who was very strict in the matter of the prohibition of spilling seed in vain in TB Niddah 13a, and he is much stricter about this, even more than the sages, because he said, "Everyone who holds his penis and urinates is as if he brings a flood to the world and he is not afraid of giving his sons a bad reputation." Anyhow, he holds in TB Yebamot 34b that all twenty-four months (of nursing) he may thrash about inside and emit his semen outside, even though it is literally spilling his seed for no purpose.<sup>15</sup> This is in agreement with everybody's opinion. Why

is this so, granted that he agrees with R. Meir that it is necessary to be afraid that she might become pregnant and that it is dangerous to the fetus? Anyhow, how can he permit the spilling of seed because of this danger. Behold, when he abstains from intercourse completely there is certainly no danger. This is difficult in considering everybody's opinion, even according to R. Tam and according to the second explanation of Rashi's opinion.

#### Chapter Seven

See in the Turei Even, at the end of tractate Megillah<sup>16</sup> in the supplements (omissions), and it is cited there also in Chatam Sofer, that Esther was afraid to have intercourse with Ahashuverus (while) using mokh, but she did use mokh when having intercourse with Mordechai in order that she would not become pregnant by him because of havchanah.<sup>17</sup> It is certain that Esther was afraid (of Ahashuverus) while using mokh at the time of intercourse, lest Ahashuverus will feel it (noticing her using it and be angry), but with post-coital mokh her fear does not apply as it is explained by Chatam Sofer. This being so, it is definite (a must) that she wipes (her vagina) after having intercourse with Ahashuverus, in every little hole and fold in her vagina. That everything possible that she could do to prevent pregnancy by Ahashuverus, she definitely did. Nonetheless, Chatam Sofer holds that there is still the prohibition of havchanah, because with post-coital mokh one must say that it is not certain that she will not become pregnant. Therefore it was necessary to say that she used mokh when having intercourse in a normal manner with Mordechai because she was not able to rely on mokh (doing its job) after intercourse with Ahashuverus, although Rashi explains in Ketuvot 37a<sup>18</sup> that a prostituting woman uses mokh after

intercourse. Nonetheless, R. Yossi holds<sup>19</sup> that it is not necessary to wait the three months and nonetheless Turei Even had to say so lest there be difficulty with respect to R. Judah<sup>20</sup> who fears that post-coital mokh might not be effective, that without this reason, the difficulty pertains only to R. Judah. R. Yossi holds that she could have relied on the fact that she certainly twists<sup>21</sup> herself after intercourse with Ahashuverus. The Tosaphot<sup>22</sup> raised an objection only with R. Judah. Therefore she was not able to rely on post-coital mokh with respect to Ahashuverus, and therefore it was necessary for her when having intercourse with Mordechai to use pre-coital mokh. This is what was necessary to say with respect to Turei Even's explanation and also it compelling to say thus because his objection (argument) was very strong because of the consequence that she gave birth to Darius according to the Midrash and what is explicitly stated by the Tosaphot in Rosh HaShanah 3b.<sup>23</sup> Had she used mokh at the time of intercourse, then it would have been certain that she would not have given birth from this (intercourse with mokh).

What is written by Shmuel Adels, א"ע"ת, in Megillah 13b<sup>24</sup> that Esther became pregnant by Ahashuverus after she was forbidden to Mordechai (unable to remain married to Mordechai), because she no longer was using mokh; this is very perplexing. It is completely impossible to say this. First, it is certain that if she was able to have intercourse with Ahashuverus while using mokh she was obligated to do so at all times, since the reason for every marriage prohibition explicitly stated in the Bible is because the non-Jews will turn away your daughter's son since he is in reality a Jew,<sup>25</sup> as it is explained in Kiddushin 68b and Yebamot 23a.<sup>26</sup> This being so, how was Esther permitted to give birth to a son to Ahashuverus while transgressing this basic (fundamental) prohi-

bition if it was possible for her to use mokh during intercourse?  
 Furthermore, she was forbidden to Mordechai in Nisan<sup>27</sup> in the twelfth year of Ahashuverus' rule. This being so, the consequence was that she gave birth to Darius according to כ"ע"ג in Tevet<sup>28</sup> during the thirteenth year of his kingship. The entire reign of Ahashuverus was only fourteen years as is explained in Megillah 11b, "and then immediately afterwards, Darius ruled." The consequence is that he was not even two years old when he became king, and when he commanded to rebuild the Temple he was not yet four. This matter is highly impossible for us to say at all especially to say so when referring to such a young king as this as he has not even arrived at the age (eight or nine) where he is a good king when someone is able to conduct business, that when he (Darius) was eight years old, he became a bad king, as it says in Rosh Hashanah 3b.<sup>29</sup> Therefore, it is clear the כ"ע"ג is not accurate (he is wrong) here "and it is a mistake that was made by the ruler,"<sup>30</sup> that is כ"ע"ג. We are compelled to say, as does the Turei Even, that with Ahashuverus Esther was afraid to use mokh during intercourse, lest Ahashuverus would feel it at the time of intercourse and Esther would endanger herself. And as to the question that she could have done something to prevent conception like twisting her body or using mokh after intercourse, it is certain she did it because she was obligated to do it. But it did not help because they are not proven effective so that she would not become pregnant. Therefore, she gave birth to Darius immediately after her marriage in Ahashuverus' seventh year of rule; Darius was seven when he became king and nine when he commanded the Temple to be rebuilt, as it says in Seder Hadorot.<sup>31</sup>

It is possible that Esther gave birth to Darius before Ahashuverus made her queen in the seventh year immediately after he took her (had



sexual relations with her), when the young women were gathered together. This was the third or fourth year of his reign and Darius was ten when he became king and twelve when the Temple was rebuilt.

Therefore it was necessary for Esther to consider the need for the ninety day waiting period, not only according to Rabbi Judah's opinion, but also according to Rabbi Yossi's opinion. After Esther became pregnant by Ahashuverus, it is possible that it was necessary to consider havchanah since to her there was no effect of the hepukh,<sup>32</sup> and the mokh used after intercourse. As to that which the Tosaphot wrote that she had intercourse using mokh, we are compelled to side with the Turei Even that with Mordechai she had intercourse using mokh. We are also compelled to say that the mokh was in place at the time of intercourse, because after intercourse it is not effective for the precise fulfillment of the law of havchanah according to Rabbi Judah and, here, also according to Rabbi Yossi, since with Esther the mokh was not effective after intercourse. There is then the need to fear lest Esther might also become pregnant by Mordechai as it happened with Ahashuverus. This being so, it was necessary to wait because of the law of havchanah and not to rely on mokh after intercourse. Therefore, it is clearly the intention of the Tosaphot that she used mokh at the time of intercourse with Mordechai. There is no difficulty at all based on the question raised by ק"ע"ן that only the "three women" are permitted the use of mokh. His intention is that only in a case of danger are they permitted use of mokh. Some raise the question that according to the rabbis even these three women are prohibited. But, I have already explained this with respect to the "three women" that the permission of using mokh is not applicable because the danger of life supercedes all prohibitions, there is no danger at all when there is no intercourse at all.

The very permission to use mokh is for the reason that it is necessary for the fulfillment of a woman's conjugal rights and need not be in vain (Intercourse is not in vain if there is no wasting of semen) or for the reason that it is normal intercourse if she uses mokh. All women are permitted use of mokh according to this law. Therefore, Esther is also permitted mokh because of the reason of havchanah. She was not allowed to become pregnant by Mordechai, therefore the mokh was necessary for the fulfillment of her conjugal rights. What difference does this make to us that for whatever reason she is not able to become pregnant? Since she was not allowed to become pregnant, mokh was necessary for the fulfillment of her conjugal rights, and therefore she is permitted to use it. And for the second reason, she is certainly permitted (to use mokh) although they prohibited mokh for all women because of the use of mokh after intercourse, but if there was a need for the fulfillment of mitzvah of onah they did not prohibit it. Also, ex post facto (intercourse), if she forgot and had intercourse with Mordechai without using mokh perhaps she was permitted to cleanse herself in order that Mordechai's child would not be mixed up (assimilated) and raised by non-Jews.

The conclusion is that there is convincing proof from the Tosaphot to Megillah and from Turei Even that a woman is allowed to use mokh during intercourse, at least for a woman that has a chance of possible danger in case of pregnancy.

As to the words of Chatam Sofer who explains his opinion forbidding the use of mokh at the time of intercourse, namely that with both Ahashuverus as well as Mordechai, she used the mokh after intercourse; although with respect to havchanah one cannot rely on mokh after intercourse. It is possible Esther was a real expert and could rely on herself "And it was

only from God that this one time" that she did not wipe herself well in order that she would bear Darius. And the fact that she knew that the child was from Ahashuverus and not from Moredechai is because of her expertise in wiping. Nonetheless, it was determined by God that she would be pregnant. The logic indicates (in the sense of religious logic) that he was Ahashuverus' son and not cause Mordechai to stumble that his son will be assimilated among the non-Jews, see there. Behold a part of the fact is that it is a forced interpretation, as he admitted to himself. It is totally impossible to say so because in a matter which concerns the law, there is no difference between the prophets and any other man as long as it was not said to him by God as an Ad Hoc decision (which can be contrary to the law) and God forbid us to say Esther was lenient with herself to rely on her own expertise. In particular, after she saw that the mokh was not effective with Ahashuverus, for this reason she relied on a miracle, not on her own expertise. Also, how could Mordechai rely on her in this matter and cause a possible assimilation of his son among the non-Jews. Also, it is perplexing, where did Chatam Sofer find that Esther's expertise applies here because it is more plausible that expertise is not effective because it is sometimes possible that his seed was absorbed immediately (immediate conception), see in the responsum of Rabbi Akiba Eger 62.<sup>33</sup> Therefore the words of Chatam Sofer are surprising and we have to give considerably more thought on this matter. With the above said, there is weighty proof from here for permitting the use of mokh.

Therefore, based on all that was explained, according to my humble opinion, it is permitted without hesitation that a woman in danger, for whom pregnancy is dangerous, may use mokh during intercourse, and we may rely on all the authorities against the opinion of Rabbenu Tam which is

recorded in Tosaphot since it is a time of emergency and great anguish.

Therefore, according to my humble opinion, with regard to the practical point of view, if it is possible to prevent conception by using mokh or with a diaphragm, which a woman inserts into her vagina in such a way that it would not be noticeable from the outside, a woman should do it and have intercourse. But, if it is impossible beforehand to put the mokh or diaphragm in her vagina in such a way that it would not be noticeable from the outside, it is also permissible if it is noticeable from the outside because this is also quite plausible. This is permitted according to both opinions which I explained. If she is afraid to rely on mokh or a diaphragm which a woman inserts in her vagina because her fear is great, then there is a reason to permit it (intercourse) also with a condom used by a man as it is permitted in Ahiezer because of his reasoning from this first reason I cited. Because most of the halakhic authorities, Rema among them, are honorable to rely on them at a time of great urgency and mental anguish as exist in this case. Also, in a case of calamity, such as a prohibition of having intercourse, for the sake of peace between a husband and wife, in which case the Torah and our sages have been lenient in many matters. But in spite of this, with respect to the last legal point as to permitting the man to use a condom, if she is afraid of using mokh or diaphragm in a case of such great danger she should discuss it with my uncle the great, honorable Rabbi Jacob, may he live a long life, or with any other of the great men of this generation he should show them my answer in which the permission was explained with good and convincing reasons which settled many matters with God's help. Your friend, who is like a brother, Moshe Feinstein

Summary

Responsum 64

The question of birth control is a private matter discussed only between a rabbi, a woman, and her husband. To openly discuss these things, before the public, invites couples to be lenient with themselves concerning their use of birth control. Moshe Feinstein angrily attacks the periodicals that publish articles on birth control as they undermine the sacred authority of the rabbis whose obligation is to render halakhic decisions in these matters. Feinstein calls for learned rabbis to assert their influence with truthful and correct decisions.

The case at hand is not different from responsum 63 and Feinstein arrives at his conclusion by consulting that work. He reiterates his warning against prolonged use of birth control and that every two years the case should be re-evaluated; hopefully the woman will heal and be able to bear children.

Responsum 64

Question: CONCERNING THE MATTER OF A WOMAN FOR WHOM PREGNANCY IS DANGEROUS.

April 1, 1958

11 Nisan 5718

Your honor, my friend, the scholarly and famous rabbi, our teacher, Mordechai Gershon Spalter, may he live a long and healthy life.

Answer:

Behold, it is not my habit to look into periodicals, but I wish I would have enough time to teach and to read the words of our early and later authorities by whom we live. Therefore, it was not known to me that such a serious matter like this (and especially in this country--USA--where you may say that many people desire and are eager to be lenient with themselves), for which the law is like an incest law which you are not allowed to lecture on (interpret), even in the presence of three men as it says in TB Hagiga 11b,<sup>1</sup> this was discussed in the monthly, which is like discussing a subject before thousands of people and also before simple people who have strayed far from the fear of God and the fear of sin, and who are only seeking the shadow of permission to deceive themselves. This is not similar to what our later authorities discussed (about this) in their books, because in their responsa volumes only learned men study who want to clarify the law (only) in a truthful way, and everyone writes what appears to him as truth (correct decision) according to his opinion because this is the obligation of teaching and rendering halakhic decisions. If this is done for the sake of heaven they said about this, "these and these are the words of the living God."<sup>2</sup> However, to discuss birth control in periodicals, is doing so

before unlearned (simple) men and it is far from being done for the sake of heaven. What your honor heard from one rabbi in Lithuania that they permitted every woman the use of birth control for two years after she gave birth to a child this is a lie, as I know many rabbis who are extremely strict and I have never heard that there was anybody permitting birth control for women not in danger. In general, every case where it is permitted to use birth control was a case of a woman in danger and in such matters local customs do not apply, but every great man, learned in Torah, expert in Talmud, and in words of our sages, he has the permission (authority) to judge according to his opinion with every individual case (problem, question) separately (according to its own merit). This being so, it is not proper to say that thus the rabbis decided in Lithuania; and he (who cited the case in Lithuania) gave a false testimony either intentionally or by mistake. Now let us come to the case and begin with the words of your great honor and afterwards I will write the correct decision according to my humble opinion and to cite what I already wrote about this matter twenty-three years ago.

And now I will write the correct decision according to my humble opinion with respect to the explanation of the words of Rabbi Meir and the sages respectively, and the interpretation of the early authorities, what is the legal implication of this to the law which is true and compelling. Already I answered this matter in 1935 and it was published in a responsum<sup>3</sup> in this my book.

With regard to the practical aspect, when a question like this occurs, I search and investigate much whether the woman is in danger in this (pregnancy). Only if the husband and wife are God fearing and are modest in their deeds (sexual matters), that they are not lenient with

themselves from more than what is proper, and also that others would not be lenient against the law. Also, it is only for a short time that I will permit leniency (about two years) and after this time passes, if they (the couple) say she is still in danger if she becomes pregnant, I search and investigate again. I warn them again of the seriousness of the prohibition of using birth control so that they should not be more lenient from what is necessary and that they must not make my decision public. And likewise, the permission is only for a short time. The same holds true for each succeeding time they come to me for permission. Therefore, I permit this to very few people and likewise, every outstanding rabbi must conduct himself in this manner. And, God forbid, a rabbi in general (an average rabbi) should render a decision in this serious matter for people. Behold, I am your friend and the one who honors you,

Moshe Feinstein



Summary

Responsum 65

Basing his decision on the concept of presumption (if something happens twice it is likely to occur a third time), Feinstein reaches a positive and courageous decision, allowing a woman to use a birth control method which could be considered as causing the intercourse to be in vain. But, Feinstein points out, it is extremely dangerous for this woman to become pregnant a third time as twice before after giving birth she went insane (possibly post-partem depression), and if she goes insane a third time she might not only endanger herself, but also her children. Therefore, the most effective drug or method must be used for this woman to prevent another pregnancy.

The most effective drug is the "Pill", but this causes menstrual bleeding which would cause the woman to be considered niddah (see glossary). This being so, Feinstein recommends the diaphragm which is extremely effective. Why does the couple not just get divorced or separated? This is an unnecessary hardship, as with the use of the diaphragm the couple can still fulfill the mitzvah of onah which is one of two important reasons for sexual intercourse.

Question: CONCERNING A WOMAN WHO BECAME INSANE AFTER GIVING BIRTH TO TWO CHILDREN AND THE DOCTORS FORBADE HER TO BECOME PREGNANT AGAIN. IS SHE PERMITTED TO USE A CONTRACEPTIVE DURING INTERCOURSE?

June 25, 1961

11 Tammuz 5721

To my honorable friend, the outstanding famous Rabbi Mordechai Gershon Spalter, may he live a long life, Amen.

Answer:

Behold, your great honor is right that insanity is a dangerous matter not only to herself, but also to the young children, that even for someone who is not violently insane, it is possible that she could change and that she would want to harm herself and the children, God forbid. It is impossible to have guards (nurses twenty-four hours a day) to watch for this. Therefore, she should be permitted to use a contraceptive during intercourse because she has the presumption<sup>1</sup> (to become insane again) since twice before she went insane after giving birth and was cured with great difficulty by the treatment called "shock". Even though the doctors did not warn her (against having children), since the halakhah is according to Rabbi that two times constitutes a presumption<sup>2</sup> (normally it is three times), we must be concerned for ourselves. And perhaps, even when the doctors say that she is permitted to become pregnant, that her illness was merely a coincidence that happened close to the time of her giving birth, it is (nonetheless) plausible that we will not rely on the doctors because of the presumption of the "two times" that she became ill after childbirth; becoming insane. And if the doctors say that even after the first birth that the

fact that she became sick was due to the birth, one should be concerned about her that she would become sick also after the second birth even though she did not have the presumption (of becoming insane), still we should permit her to use contraceptives because of the statement (judgment) of the doctors. The diaphragm that the woman places in her body is like mokh<sup>3</sup> that was mentioned in the Gemara.

True, that the drugs the doctors prescribe are to be placed in her vagina are better according to the (Rabbinic) law because it did not close off the entrance of her uterus from the sperm,<sup>4</sup> but this is not a proven contraceptive and for many women the drugs do not help. Since the woman is in danger, behold it is forbidden for her to have intercourse in a manner that is not safe (in preventing conception), that she will not become pregnant by this means is because if there is a danger we have to be concerned with every remote possibility, that what they (medical scientists) recently invented, the Pill which they swallow, they (the doctors) say this is a completely effective drug, that it prevents pregnancy. Behold, it is clear that a majority of women see, after using the Pill, a drop of blood which makes her niddah<sup>5</sup> as was made known to me by my nephew, Rabbi Moses David Tendler, may he live a long life, that he knows about these matters. He wrote to the doctor that invented this Pill and admitted to him that sixty percent of the women who use the Pill see a little blood after using it. However, non-Jews do not pay any attention to this matter, therefore we are compelled to permit her to use the diaphragm which she places in her body.

And in the matter of the question, your great honor, why is it proper to permit the woman to use a contraceptive in a situation which is dangerous to her, when, behold, they (the couple) can be divorced or separated? Behold, because of this great problem, I have presented

a novel decision that fulfills the mitzvah of onah<sup>6</sup> without causing the intercourse to be considered levatalah (in vain). Because if it is dangerous for her to become pregnant, then there is still the mitzvah of onah which is fulfilled by intercourse that cannot lead to pregnancy and it is self-evident that they violated no prohibition. I have proved this by overwhelming evidence and this is explained in the responsum which I wrote to your great honor earlier, and your honor should look into my words there.

The danger which your honor pointed out, and the danger which is that many women become insane because of lack of intercourse, this is not plausible. Refer to Chatam Sofer, Even Ha-Ezer, part two, number eighty-two, that he concluded that one must not permit things prohibited because of this concern.

And with regard to the question whether she is allowed to eat on Yom Kippur in case the doctors say that if she fasts (on Yom Kippur) she will again become insane; it is obvious that she is permitted to eat because insanity is dangerous. Although her sickness in itself will not kill her, because of the sickness it is possible that she might kill herself and others, it is considered pikuach nefesh<sup>7</sup> (contraceptive allowed) and as your honor also wrote. Your friend who always seeks your peace and who honors you very much, Moshe Feinstein

Summary

Responsum 66

In a case where a woman is physically able to become pregnant, but it is dangerous for her to do so, the question of intercourse and the use of a birth control method is valid. But here, in our case, the woman can no longer become pregnant as her uterus has been removed (or is about to be removed). Feinstein points to other cases of women unable to become pregnant who are allowed to have intercourse with their husbands. The question of the husband wasting his semen is not applicable as intercourse is done in the normal manner. Therefore, since the commandment of procreation has been fulfilled previous to this point in time, she has given birth to a son and a daughter, she is permitted to her husband.

Responsum 66

Question: CONCERNING A WOMAN WHOSE UTERUS WAS REMOVED IF SHE IS  
PERMITTED TO HAVE INTERCOURSE WITH HER HUSBAND.

February 16, 1961

Erev Rosh Chodesh Adar 5721

With great honor, my friend, Rabbi Zev Wolf Silverberg, may  
he live a long life, amen.

Answer:

In the case of a woman concerning whom the doctors declared that since she has a large growth (tumor) in her uterus they are compelled to operate and to remove her uterus from her body, if he (her husband) will be permitted after the operation to have intercourse with her (his wife)? Behold, it is obvious that she is permitted (to have intercourse) with him and there is no prohibition involved in this even if she is not able to bear children. There is no prohibition in this case of wasting semen because it (intercourse) is done in the manner of normal intercourse just as it is permitted to have intercourse with an old woman (one past menopause) and also with a barren woman. This is not different from the woman who does not have a uterus at all. It is explained thus in Rashi Yebamot 42b<sup>1</sup> where he explains about the barren woman who is mentioned in a baraitha there that she needs to wait three months before marriage after her womb is removed and her uterus is taken out. This is a convincing argument that such is the eelonit<sup>2</sup> and the woman who is not able to have children who are listed there separately. This being so, what is an akarah,<sup>3</sup> but it is certain that she is someone whose womb is removed from her as Rashi explained and also as it is explained by Nimukei Yosef there.<sup>4</sup> And see in Rashi Ketubot 60b<sup>5</sup> that concerning a woman that it is her organ of conception which has been

removed, perhaps in order that it will not be considered this but this. Anyhow, referring to his two explanations, it is clear that the woman is permitted to marry after three months. But, if she were forbidden due to the consideration of wasting semen, she would be forbidden marriage forever and what would be the significance of waiting three months with respect to her. (This does not apply here.) Even though in Erubin 47b Rashi does not explain the matter that her uterus was removed, it is plausible that this is not mentioned because there is a distinction with respect to the law and that he holds that with the removal of the uterus she is forbidden to ever again marry, but he considers matters which occur more often. Perhaps he holds that when the uterus is removed through an operation she does not need to wait three months, but in any case with respect to the law we do not disregard a matter which is explained clearly in Rashi in two places to permit it just because it is some conjecture as explained in Erubin.

And although to those who hold that it is proper to be strict that a minor girl (in her twelfth year) should not be married in principle, all the less so an old woman or a barren woman as it says in Chelkat Mechokek, chapter 23, note 2. Anyhow, if one violated a law and married her, there is no prohibition of intercourse (with her). See there in Turei Zahav, note 1, and Bet Shmuel, note 2.<sup>6</sup> And all the moreso, when she already is his wife and gave birth to him a son and a daughter, in everybody's opinion, there is not any concern, (about his having intercourse with her) and he is prohibited from divorcing her. He is permitted to have intercourse with her as before (the operation). And according to the doctors, since it is necessary to perform the operation quickly, they should operate immediately, may God send to her His healing. Your friend, Moshe Feinstein

Summary

Responsum 67

The crux of the issue in this responsum is that the man and the woman are not yet married. Therefore, how can two people get married knowing that the commandment of procreation may never be fulfilled because the woman is sick, and may not get better, and the man is over forty and will not get any younger and the time left that he can beget children is running out. Rabbi Ochs, who wrote the question to Feinstein with the information that he permitted the use of birth control to the couple as soon as they are married, agreed with the lenient school who believe that birth control can be used in a case of danger. Feinstein does not dispute the later authorities on this point as he had previously written a responsum upholding this opinion also. But that was for married couples; this is not the case here.

Jeopardizing the law by making a forced interpretation is not correct. Feinstein believes that this couple has alternatives that exist within the framework of the law, despite the unpleasantness of this, they should be followed. He prohibits the couple to marry saying that the man should find another wife and fulfill the commandment of procreation. God-willing the woman will recover from her illness soon and find another man to marry. Feinstein adds, in a compassionate way though, that if this decision would cause a serious hardship to either of them, especially to the woman who may get sicker, then the couple should marry. Hopefully, the woman will recover.



Responsum 67

Question: CONCERNING A MAN WHO WANTED TO MARRY A WOMAN WHO IS SICK  
AND IS FORBIDDEN FROM BECOMING PREGNANT FOR SOME TIME.

July 20, 1951

16 Tammuz 5711

With great honor, my friend, Rabbi David Ochs, may he live  
a long life, Rabbi of Toronto, Canada, peace and blessing.

Answer:

Concerning a man forty years old who had not yet fulfilled the  
commandment of procreation<sup>1</sup> and wanted to marry a young woman, pleasing  
in his eyes, who observed the Torah, this is difficult for him to find,  
but she, God forbid this on us, is sick with a kidney disorder. It is  
the opinion of the doctors that there is danger for her in becoming  
pregnant at this time, but later, when she will improve, it is possible  
the danger of pregnancy and birth will no longer exist for her. Is it  
permissible for them (the couple) to marry and to have intercourse  
(while) using mokh,<sup>2</sup> that is they (the doctors) will prescribe for her a  
diaphragm in order that she will not become pregnant.

Behold, your great honor cited in your letter the words of our  
later authorities who permit the use of mokh in a case of danger. I am  
sure you saw also the words of our authorities who prohibited (the use  
of birth control). It appears you decided according to the opinion of  
those who permit it (birth control) in a case of danger and you did not  
give your reason perhaps because those who permit it (the use of birth  
control) are later authorities and also, the great authority Rabbi Chaim  
Ozer, may the memory of this righteous man be blessed, in his book  
Ahiezer<sup>3</sup> gave a lenient decision. He is a great pillar in rendering  
decisions; one can rely on him. The truth is that when I was younger,

sixteen years ago, I wrote a long responsum<sup>4</sup> with weighty reasons and convincing proofs to decide according to the opinion of those who permit it (the use of birth control) in a case of danger for a woman when she is already married. And even for a married woman, as to rendering an actual decision, since this is a (morally) loose generation because of our numerous sins and behold many women are frivolous and also the men who will publicize these matters (rabbis lenient in birth control decisions) and women will come to compare one case to another until they will be lenient even when there is no danger, merely for the sake of lewdness which is prohibited. Therefore, one rabbi cannot give a lenient decision except in the individual case of a husband and wife who are of high moral standing (morally modest) and with many warnings that the permission will not become known through them lest the result, God forbid, cause a sin by acting in a lenient way in a case where this is prohibited, and that women will not compare their situations with each other.

But this (the lenience) is permitted only when she is already married in which case he is obligated to her to fulfill the duties of marriage<sup>5</sup> and divorce would be a hardship. We need to enter the narrow space (the crack: make a great effort and a forced interpretation) to permit them (the couple) the use of birth control according to the opinion of those who are lenient. However, in our case he is not yet married (to the woman) and he has no obligations towards her as he can marry another woman. Why should we enter into a narrow split (why make a forced and questionable decision) in a case like this. Furthermore, among the reasons which I explained in my responsum, there are some which are valid only in a case where she is already married, but a woman like this is not allowed to be married a priori. Therefore, it would be

proper to prohibit it. In particular, since the man has not yet fulfilled the commandment of procreation, that even though Isserles wrote that it is not the custom to force a man to marry a woman who cannot have children,<sup>6</sup> nonetheless when he asks we should certainly say to him that he is obligated to fulfill the commandment of procreation and he should marry a woman who can have children. Even though that after awhile she may improve and it would be possible for her to become pregnant, he is already older than forty years and who knows how long he may be able to beget children, even though until he may find another woman also some time will pass and also it is still better that he should wait than marry (that woman) until it will be possible for her to become pregnant, he should look for another woman and perhaps God will provide.

But anyhow, if your great honor sees that this couple is so attached to each other until there is a fear of danger to one of them (if they do not marry) and in particular to her since she is sick and weak without this calamity and because of the great pain that she cannot marry him; also she is afraid that because of this (sickness) she will be prohibited to everyone and will become an agunah<sup>7</sup> and more sick, there is justification for your great honor to permit them and let them marry under the condition that they will be discrete and observant and after many warnings not to publicize this permission as stated above.

Behold, I heard that if she lies in bed during her entire pregnancy, there is no danger to the woman with the kidney disorder. Therefore, you cannot give permission to them, but you can give the advice that if she will become pregnant she should stay in bed during her entire pregnancy. Your friend, Moshe Feinstein

Summary

Responsum 21

The intra-uterine device, I.U.D., introduces new problems to the use of birth control. The I.U.D. is ring shaped with a long thread attached to it. The I.U.D. is implanted by a doctor into a woman's uterus at the spot where the fertilized egg would normally implant itself into the lining of the uterine wall. The thread, attached to the ring is extended into the vagina cavity. (This is done in order that the woman will always be able to check herself to see that the device is still in place as it has a tendency to move from the place where it was implanted.) The I.U.D. does not prevent the fertilization of the egg by the sperm, it only prevents the egg from attaching itself to the woman, beginning the growth process. It also terminates the fertilized egg by choking it.

Feinstein points out two problems with the I.U.D. First, the I.U.D. successfully prevents implantation of the egg by constant movement in the uterus. This movement is known to cause irritations which can result in bleeding. The bleeding caused by the irritation is indistinguishable from menstrual bleeding. Therefore, the woman would be in a constant state of impurity. The second problem is that by the I.U.D. choking off the life of the fertilized egg this could be considered killing a fetus, but Feinstein says this is a distant fear and we should not concern ourselves with it.

Feinstein's conclusion is that the woman whose life is in danger if she becomes pregnant again is prohibited from using an I.U.D., but he does give permission, as he does in other responsa, to use a moist liquid drug or the diaphragm.

Responsum 21

Question: CONCERNING A WOMAN WHO IS PROHIBITED FROM BECOMING PREGNANT, IF SHE IS PERMITTED TO PLACE AN I.U.D.<sup>1</sup> (IN HER UTERUS) THAT WAS RECENTLY INVENTED BY THE DOCTORS.

September 1, 1965

4 Elul 5725

Your great honor, my friend, Rabbi Jacob Emanuel Shochet, may he live a long life, rabbi of Toronto.

Answer:

Behold the case of a woman who is prohibited from becoming pregnant because of the illness of a bloodclot in her leg. We have to fear that by her becoming pregnant it (the bloodclot) will deteriorate and will move up, God forbid, to her heart or lung. This is certainly a dangerous sickness, and she is permitted to accept some advice so that she will not become pregnant. But what the doctors want to put there in her uterus is an I.U.D. and there would be no pregnancy as a result of using this device. Behold, this I.U.D. that was invented not long ago is not merely a ring, but also it has a long thread and the top of it is a ring and it is put in her uterus at a depth of two fingers. There applies the concept of petichat hakever--opening the uterus--according to Ezekiel Landau in his book Noda Binudah Tinyama at the end of chapter one hundred and twenty and it is quoted in Yoreh Deah, Pitchei Teshuvah, chapter one hundred and ninety-four, note four,<sup>2</sup> that even when the opening was from the outside it applies to the law of petichat hakever which is not without blood.<sup>3</sup> Even to the later authorities who disagree with him with respect to the opening from the outside, here it is worse that the benefit from this, according to what I learned from a specialist doctor,

is that this causes the uterus to move constantly and discharge the sperm from there that had entered it (the uterus). This being so, with this method there is a greater concern of seeing blood.<sup>4</sup> Thus said a specialist with respect to this case, that although from the viewpoint of medical knowledge there is no need to worry about the blood flowing from the uterus, with the I.U.D. there is good cause to worry alot about seeing blood. The pregnancy, about which the doctor said to your honor that it happens to one in a hundred cases that she becomes pregnant, is not a viable one, since it is possible that inside the I.U.D. an egg is impregnated and chokes when it begins to grow a little. This raises a question whether there is a prohibition (against an I.U.D.) because of the killing of the fetus, but it is a very distant fear and perhaps there is no need to be concerned with this. But to become pregnant in the uterus proper it is impossible because of the constant moving (of this device) which discharges it from there. Also, there is further concern because of the termination of her purity and her self-examinations, see Yoreh Deah, Pitchei Teshuvah, chapter 198, note 16.<sup>5</sup> Also with respect to the permission, it is even more difficult to permit it than permitting the women to use mokh<sup>6</sup> or a diaphragm at the time of intercourse because there is also reason to say it is the normal manner of intercourse as I explained in my book and thus is the opinion of Ahiezer, but with this I.U.D., it is sometimes noticeable<sup>7</sup> and he can feel the thread during intercourse. Therefore one should not use an I.U.D.

There is permission for the placing of a moist drug (on the vagina) before intercourse and it is preferable to cotton or a diaphragm. But it is not certain that she will not become pregnant because sometimes it (the moist drug) is not effective. If she is concerned because of the danger, even for a minority of women who become pregnant with this moist

drug, she is permitted to be concerned for this, and perhaps it is even necessary that she must be concerned, then she is permitted to put in her vagina the diaphragm that women are placing in their bodies which is like mokh. But a man is not permitted to use a condom<sup>8</sup> as I explained in my book that your honor saw. And that they permit it (birth control) for her, this is for a period of two years and perhaps she will get well (after two years) God willing. Your friend who blesses you, may you be inscribed and sealed in the book of life. Moshe Feinstein

Summary

Responsum 22

In the case where it is dangerous for the woman to become pregnant, there is no question that birth control is allowed. The question raised by this responsum is what are the parameters of danger? Is the danger specifically to the woman only? To the health of the unborn fetus? To other members of the family? Here, in our case, a woman had a nervous breakdown during her fifth pregnancy and was afraid of becoming pregnant again. So, without the knowledge or consent of her husband, she started using a diaphragm. To complicate matters, she vowed not to have intercourse with her husband in any matter that would lead to a possible pregnancy.

On reviewing this case, Feinstein feels it is obvious that the woman would be in danger if she became pregnant again. Not only would she be in danger, but the pains and fears that this woman would have might also jeopardize the safety of her family so the request for the use of birth control is granted. As to the vow, it is invalid from the outset, therefore not even an annulment is needed.



Responsum 22

Question: ANOTHER QUESTION CONCERNING A WOMAN FOR WHOM PREGNANCY  
IS PROHIBITED.

August 11, 1966

25 Menachem Av 5726

My highly honored friend, Rabbi Sheragah Feizo Yundaf,  
may he live a long life.

Answer:

Concerning the case of a woman who during her fifth pregnancy became sick with a nervous breakdown, it should not happen to us, and she improved after awhile. She was afraid of having intercourse in the normal way of the world and also she vowed<sup>1</sup> that she would not have intercourse with her husband in the manner which would lead to pregnancy. Because of this, she inserted a diaphragm (into her vagina) before intercourse without the knowledge of her husband. Now it became known to her husband and he separated from her and asked your great honor if it is permissible to have intercourse with her in this manner (with the woman using the diaphragm) because it is impossible for him to divorce her since they have five children and also to be separated all the time is impossible for him because he is still a young man and, God forbid, he might stumble in evil thoughts and spill his semen in vain.<sup>2</sup> Also, it is not good for his health not to have intercourse. Behold, the later authorities permit (the use of birth control) in cases of danger and I, myself, in my book, Igrot Moshe, Even HaEzer, responsum 63, I discussed at length this matter with great proofs and great reasons and that my conclusion, also, is to permit birth control in a case of danger. Since it is obvious that a nervous breakdown is dangerous not only for herself, but also for her children, that when she will not be

able to control the pain and the many fears that this woman has, we need to fear that she might kill herself and her children, God forbid. Because such women are irresponsible and even guarding them (with nurses) does not help, therefore you should permit them to have intercourse while using a diaphragm that she inserts in her (vagina) before intercourse. Because of the great moral looseness at this time (in our generation), one needs to caution the women that the matter must be kept secret in order that others will not come to be lenient with themselves in violation of the law.

Also, since some years have passed, it is good then to discuss with the specialist (doctor) that perhaps we do not have to worry any longer that she will become sick, God forbid, again, because in that case they would be prohibited birth control. As to her vow, it is invalid because she is obligated to her husband, even an annulment (of the vow) is not necessary. But if the husband sees that she is still nervous and she is very much afraid of becoming pregnant there is no need to ask a doctor, because, behold, he sees that she is still sick and that it is certainly possible she might get much sicker if she will become pregnant.

And if you look intensively at my responsum, you will understand that our case is not similar to the case of the minor or barren woman that they are permitted even a priori (to have intercourse) because it is the normal manner of intercourse.<sup>3</sup>

And I beg your honor that you do not publish this matter in order that they (the general population) will not learn leniencies and also violate the law. Until now my custom was to not answer in writing these matters, but when they (people) come to me to ask orally, then I caution them as I wrote at the end of Igrot Moshe, Even HaEzer responsum 64, but since this question comes from afar, that would involve great expenses

(or traveling) I do answer, but I rely on your honor that this matter should be handled in secrecy and with warnings. Behold, I am your dear friend,

Moshe Feinstein

Summary

Responsum 24

In responsum 22 a new birth control method was introduced along with its complications, here too, in responsum 24 a new birth control method is revealed. Instead of the use of the birth control being tied to a specific case, here the discussion revolves around the use in general. The new birth control method is the "Pill", can a woman use it without violating any halakhic principles? "From the aspect of the prohibition of spilling semen in vain," Feinstein points out, "There is no objection."

But the "Pill" has complications. Like the I.U.D., it causes bleeding, but not in the same way by causing an irritation, bleeding with the use of the "Pill" is a result of chemical reactions. If a woman wants to use the "Pill", then she must take precautionary steps for one month. She must use a tampon daily, checking thoroughly for drops of blood or, if a tampon is a difficulty to her, then she must dress in white underwear in such a manner that any bleeding that would take place would still be noticeable. Also she should check her urine daily to see if there is any blood. If a month passes successfully, without seeing blood, then there is no need to repeat this test and she can number herself among the women who do not bleed when using the "Pill".

Responsum 24

Question: CONCERNING THE "PILL" WHICH WOULD PREVENT A WOMAN FROM BECOMING PREGNANT IN CASE SHE IS SICK OR WEAK.

Your great honor, my friend, Rabbi Abraham Chaim Levine,  
may he live a long life.

Answer:

Behold the matter of the "Pill" which would prevent the woman from becoming pregnant. Certainly from the aspect of the prohibition of spilling semen in vain,<sup>1</sup> there is no objection, (she can still take the Pill) if it is because the pregnancy is difficult for the woman because of her sickness or even if it is only from the point of view of her weakness when this (the sickness) is more serious than that of women in general. From the point of view, even if he (the husband) has not yet fulfilled the commandment of procreation, if she is weak, then he can wait a short time until she regains her strength. All the moreso, if he has already fulfilled the commandment of procreation, then she is permitted to wait three years until she regains her strength, while using the "Pill", before a checkup is necessary again. If she is a sick woman, even if her life will not be in danger by pregnancy, but she may become sicker, it is plausible that if he has fulfilled the commandment of procreation she can prevent pregnancy in this matter (normal intercourse) completely, because of the commandment of shevet<sup>2</sup> the woman is not obligated to her husband to the extent of becoming more sick than women in general. Perhaps, even for the sake of the commandment of procreation she is not obligated to become sicker (from pregnancy), but he must divorce her even before the period of ten years, because she does not want to become pregnant because of sickness. And as to the commandment of shevet, he is not obligated to divorce her and it is obvious that

because she is not obligated to her husband she is permitted to prevent herself from having children, lest she will not become even sicker.

But the main point of this is that many women are seeing from using the "Pill" drops of blood,<sup>3</sup> about half of the women, and that what some doctor said to you that only a few women see blood and only after ten days of taking the "Pill", this is not true. Even when she takes exceptionally large pills, greater than ten milligrams, the number decreases of those women seeing blood. Nonetheless a few women do see blood even when the pill is big, (10 mgs.). Therefore, if she wants to take the pill, she needs to insert in her vagina tightly wadded cotton for one whole month and if she does not see blood (during this month on the cotton), then she can rely on the fact that she belongs to the women for whom the "Pill" does not cause bleeding. If it is difficult for her to hold in her vagina tightly wadded cotton, she must dress in white underwear for a month, day and night, in such a manner that the underwear should hold to her legs so that it will not be possible for the blood to get lost (not be noticed). Also, she should place around the area of the vagina white cotton in such a manner that if she bleeds (even a drop) it will certainly be found there. When she urinates she should look in the bowl and see whether there is redness from blood. Also, she should check herself daily inside every hole and crevice.<sup>4</sup> If all the days of one month pass in this manner and she does not see blood, she can trust this fact that she would not see (blood) and she can number herself among those women who do not see blood because of the "Pill". Subsequently, she will (again) be permitted in the future (to use the Pill) without this procedure and without checking, as all the women who do it for their husbands, even when she takes the "Pill". When there is great necessity, (husband's pressure) she is permitted

to have intercourse even during this month (of testing the Pill) by removing this white underwear for a short time and she should see that they are clean, checking inside all the holes and crevices before intercourse, and doing a thorough examination. If she is clean she can have intercourse and immediately after intercourse she should check herself and dress in the white underwear as before.

Know my friend that great and strong pills are dangerous for the woman causing real dangerous sickness. Therefore it is forbidden (to take pills) from the point of view of danger. Behold, your friend,  
Moshe Feinstein

Summary

Responsum 70

This case concerns a man who needs an examination by a doctor in order to determine if he is able to procreate. His procreative powers are determined by examining his semen which the doctors then study and reach their conclusion. The problem is not whether this is allowed, but how do we get the semen out of the man without violating the principle of spilling semen in vain.

Feinstein begins by quoting TB Yebamot 66a which concludes with two Talmudic prescriptions for removing the semen: placing warm barley bread under the man's anus and passing a woman's colored garments in front of the man to excite him. These are still permitted today. If these methods do not work, then there are several alternatives. First, according to Ahiezer a condom is permitted since the intercourse would still take place in the normal manner. Second, the man is permitted to initiate intercourse, but withdraw before ejaculation and then ejaculate into a specimen bottle. This method was even permitted in earlier generations. One method not allowed by Feinstein is to have intercourse and then let the doctor gather the semen from inside the woman's womb; he gives no reasons for this.



Responsum 70

Question: CONCERNING EXAMINATION OF THE SEMEN TO KNOW HOW TO HEAL  
HIM (IN ORDER) THAT HE WILL BE ABLE TO BEGET.

September 9, 1955

22 Elul 5715

Your honor, Rabbi Ephraim Greenblatt, may he live a long  
life.

Answer:

Behold the case of a man whose semen the doctors need to examine in order that they will know (learn) how to cure him so that he can procreate. You ask concerning this whether this constitutes a prohibition of bringing forth semen in vain.

Behold, in TB Yebamot 66a it says, "Rav Judah said, in the name of Shmuel, if there was a hole (perforation along the penis) and it closed up, whenever it becomes the least bit torn the man is declared unfit, if it does not reopen he is fit. Raba son of Rabbah sent to Rabbi Joseph (a question), 'How do we do this?' He said to him, 'We bring warm barley bread and place it upon the man's anus. Thereby the flow of semen sets in.' Said Abaye, 'We pass colored garments before him in order that he will be excited from the women (he will think about a woman) and he has an emission.' We learn there without his interpretation." These two methods are permitted. This being so, it is clear that since this is necessary for knowing if the man is permitted to marry an Israelite woman, it is permitted to do an act that will cause him to emit semen (not in vain). Also he is permitted to think about a woman even though it is forbidden by the Bible when it says, " **וְלֹא תִּשְׁכַּח**"<sup>1</sup> as it says in Ketubot 46a when quoting Deuteronomy 23:10. Anyhow, since the prohibition (about thinking of women) is in order that an emission

will not come, it is permitted here since it is necessary for the examination so that he may be permitted by this to marry an Israelite woman. You can learn more about our case by using a kol v'homer because there he can marry a proselyte and nonetheless it is permitted to examine the semen for the necessity of marrying an Israelite woman, because this case is also called a necessity and not considered as in vain (bringing forth semen), how much the moreso in our case where he is not procreating is there permission to bring forth semen in order to know how to heal him so that he will procreate; this is a necessity and not in vain.

But we see from here that masturbation is forbidden.<sup>2</sup> Therefore, the question is asked how do we get the semen (out)? The reason seems to be if it's done by masturbation there is a prohibition of improper sex acts as a Tana of the house of Rabbi Ishmael says in Niddah 13b, "Do not commit adultery: meaning do not do improper sex acts whether by hand or by foot," because this is not permitted, but by actions with other limbs like hot barley bread under the anus and, likewise, to excite him with a woman (think about a woman) in order that he will emit semen, with these there is no prohibition of adultery and the prohibition of emitting semen in vain is permitted for the necessity of examination, this is not considered as in vain. Therefore, in our case, there is no permission for masturbation, but according to the methods permitted there (in the Gemara) it should also be allowed for us here. Even though it is only a doubt (that nothing helps), there it is only a doubt. The essential reason is because after all it is for the necessity of procreation, but here, since he is permitted intercourse with his wife you cannot get him to do this by seeing women's clothing or hot barley bread, but you can with intercourse. If for examination it

is good to use a condom during intercourse, this method is better since according to the opinion of Hayyim Ozer in Ahiezer it is done in the natural manner of intercourse, even for a woman for whom pregnancy is dangerous, although according to my opinion this is not plausible at all, but anyhow Hayim Ozer thinks thusly. If this is not good for the examination, then he will be permitted to thrash about inside her and outside spill the semen into a bottle. I heard that the authorities from previous generations permitted this method for examination.

And to have intercourse in the doctor's office, and the doctor gathers the semen from her womb, even if this is better it is a great outrage and should not be done, you should do it as I have written.  
Your friend, Moshe Feinstein

Summary

Responsum 71

The question of the legality of artificial insemination in Jewish law is the topic of this responsum. Feinstein decides this case by first discussing the idea of two men being the father of one child. Though the Tosaphot, commenting on the Jerusalem Talmud say that dual fatherhood is possible, Rashi's opinion is that this is not the case, his opinion is accepted.

The second question that Feinstein considers is two sided. First, if artificial insemination was to be used, whose semen could be used? Is it better to use a Jewish man's semen or a non-Jewish man's semen? Moreover, if the child is conceived through artifical insemination, is the child fit to marry whomever it chooses or is the the child restricted like the mamzer?

Feinstein then concludes, after considering many sources on the subject that injecting semen into the woman which would act like a "booster" is not the best way to achieve conception in the woman. It would be better if the man's own semen is extracted with methods permissible according to Jewish law and that this semen be injected into the woman to cause conception.

Responsum 71

Question: CONCERNING THE INJECTING OF SEMEN INTO THE VAGINA OF A WOMAN  
A METHOD THAT THE DOCTORS INVENTED.

April 9, 1959

Rosh Chodesh Nisan 5719

Your honor, my friend, Rabbi Jacob Hamnik, may he live a  
long life, amen.

Answer:

Concerning the matter about which I was asked by your wife, the honorable Rebbitzin Mrs. Hannah, may she live, concerning a woman who was ashamed to ask your honor (this question). I delayed to answer because I wanted to research the matter with specialists. According to information I got from my son-in-law, Rabbi Moses David Tendler, may he live a long life, about the method that doctors are adding to the semen of one man the semen of another man which they call "booster", it is only a matter of deception to placate the spirit of a husband so that he will think that the child is by his sperm and he is the real father, but, in truth, he is not the father at all. According to the commentary of Rashi in Sotah 42b under the catchword which reads *וְגַם כִּשְׁמֵהוּ* it says that although that many men came (had intercourse) with a single woman during one night and she became pregnant, the pregnancy is a result of only one of the men; see there. Behold, this is completely impossible that two men should have a party in the fatherhood of one child, since the fetus is by only one of the men. Obviously, since his (the husband's) semen is not viable, but the other man's semen is viable, behold, the child is completely of the other man's. However, the Tosaphot wrote there in accordance with the conclusion of the Jerusalem Talmud, Yebamot perek 4, halakhah 2:<sup>1</sup> that it is possible for a woman to become

pregnant from the semen of two men. Then (according to the Jerusalem Talmud) it would be possible to have something like this: a mixture of the husband's semen and the other man's semen would produce in her a pregnancy by both men's semen and the two of them would have a part in the fatherhood of the child. Then there would be a reality (truth) by using the booster that it would also be even for him (the husband) a part in the fatherhood of the child, which would be not in accordance with information of my son-in-law, Rabbi Moses David Tendler. But this could be only if the semen is of two equal men. Because in this case, if the deficiency of this man is that his sperm count is only half-strength for what is necessary to cause a pregnancy, then the doctors would advise the man (husband) to ejaculate two or three times until the sperm count would be viable for contraception. But since the doctors did not advise him (to do this), this means that his semen is not suitable (to combine with other semen) at all, this does not apply (the method of combining). The pregnancy will be only by the other man's semen. And the fact that they will take also his semen is merely for deception. And the result is that this procedure is only like injecting the semen of the other man exclusively.

The law of (using) another man's semen is explained as being prohibited in Turei Zahav, Yoreh De'ah, chapter 195, note 7 which is cited in the name of Rabbi Peretz in the notes of Sefer Mitzvot Katan that a woman needs to be careful not to lie on sheets on which another man was laying on before, lest she will become pregnant by laying on the other man's semen. Behold, we see that it is prohibited for a woman to become pregnant from the semen of another man even without intercourse even though the child would still be considered kosher,<sup>2</sup> but because of the reason explained there it is a prohibition (law by decree),<sup>3</sup> lest

he marry his sister by his father.<sup>4</sup> So it is in Bet Shmuel, chapter one, note ten, that one may permit this (artificial insemination) if they use a non-Jew's semen since the child will be an Israelite because his mother is an Israelite, there is no need at all to worry since the child has no (recognized) relationship to the gentile father, even if the child was conceived through intercourse, all the moreso, when the child is not conceived through intercourse, but in a "bathtub" or artificial insemination. If there is doubt lest her husband might be healed within the three months from the time of injecting the semen of a gentile into her vagina, she must separate from her husband for these three months. If the doctors diagnose that it is not possible that he will be cured within three months, it is not necessary for her to separate from her husband because the principle of *עליו כד*<sup>5</sup> does not apply here. This is a matter that is not frequent and is not included in the decree (i.e., prohibition) concerning normal intercourse. It is also advantageous (good) that the semen should be from a non-Jew, even according to those who hold that a child by the semen of another man is a mamzer<sup>6</sup> even without intercourse. See in Otzar Haposkim, note forty-two, that he quotes there in the name of Sefer Bar Levai though it is obvious that his opinion does not count at all against (as opposed to that of) Rabbi Peretz and those who hold his opinion: Bayit Chadash, Turei Zahav, Chelkat Mechokek, Bet Shmuel. But concerning the semen of a non-Jew, even according to his opinion, behold the child resulting from intercourse with a gentile, (according to the) law, is not a mamzer. Therefore one may permit at the time of great urgency and much pain (unhappiness), because of their (the couple's) desire for a child, the injection into the woman's uterus of only the semen of a non-Jew. It is plausible

that one may assume with semen in general on its being of non-Jewish (origin), because a majority of those who donate their semen for this purpose are non-Jews, besides the fact that most of the people in the USA are non-Jews, particularly concerning masturbation, which is forbidden. Behold, one may not consider a great portion of Israel doing this, but only those who are not observant of the laws of Torah, that therefore it is a very small minority among Israelites. We must go after the majority who are Christian. If it is possible to know clearly that the semen is non-Jewish, it is good to inquire about this.

What is cited in Otzar Haposkim in the name of Sefer Menahem Meshev, "God forbid that a Jewish daughter make herself available for the lewdness of artificial insemination that doctors invented." These are merely words and there is no connection with lewdness at all. The prohibition is from the point of view lest he will marry his sister by his father. Without the permission of the husband, there is a prohibition of artificial insemination from the point of view of her duties to her husband. When she is pregnant from artificial insemination it is impossible for the husband to have relations with her as many times as he wishes, and also (it might be) that he does not want to be careful with her during intercourse as is necessary during intercourse with a pregnant woman. Also, there is a great expense (because of the pregnancy) and that it is forbidden for her to cause him great financial loss which is connected with pregnancy and birth, and the expenses of the child. But with permission of the husband and much grieving, one may permit insemination, but only with a non-Jew's semen.

(Just as he quoted there from Sefer Menchat Yechiel in the name of Sefer Zecher Lechagigah who hold that the child of the bathhouse is a mamzer because the concept of a mamzer is not dependent on pleasurable



intercourse, these words are nonsense, because certainly the fact that he is a mamzer, even when there was great mental pain involved in the manner that they declare a child a mamzer, this causes the parents great suffering, nonetheless, only when there was an act of intercourse is he a mamzer and not when she became pregnant in a bathtub, as holds Rabbi Peretz, and our rabbis who commented on the Shulchan Arukh agreed with him, as explained above.)

It is curious, since his semen does not have any effect at all, but to deceive him and placate him, it is forbidden to use a booster because of the reason of bringing forth semen in vain. It is forbidden for a man to bring forth semen without doing it by intercourse with his wife. Even though his semen is not suitable to cause a pregnancy, it does not result in permission to bring forth semen, not in a part of his wife-- not even by special means or causation (something done in an indirect way).

According to the Tosaphot on Sotah, who say that it is possible for a woman to become pregnant by the semen of two men, you have to doubt if it is known who are the two men. If there is involved in this a prohibition of havchanah, that even with the reason of Raba in Yebamot 42a that it is a preventative (protective) prohibition, lest he will marry the sister by his father, then he would perform the levirate marriage with his late brother's wife from his mother. There is nothing to worry about, because he (the child) would be prohibited to marry relatives of the two men since both of them are really half of his father. Anyhow, perhaps according to the reason of Rabbi Nahman in the name of Shmuel,<sup>7</sup> "From your seed after you" (Genesis 7:8) that Rashi explained that the Shechinah<sup>8</sup> does not rest except on those who are definitely his children, that his seed has a clear lineage after his father, one should also

forbid that (marriage) since he is not special to one father. This being so, this man (with two fathers) would be included among the people genetically mixed, this a quote of Rashi.<sup>9</sup> Or that since he is really the son of two men, he is considered as certain (definitely of proper descent). The child is not in this category (of mixed children). The concept of children of mixed genes applies only when we do not know who the father is. Like the case with intercourse (taking place) within three months with two men, as Rashi explained in TB Nedarim 20b<sup>10</sup> and also for Rabbenu Nissim there,<sup>11</sup> that he explained that she had intercourse with many men, this being so, it is possible that he holds like Rashi that it is impossible for a woman to be impregnated by two men at the same time, he is also among those who do not know whose child it is. One cannot cite proof from what was not said in the Gemara that the difference between them is in the case when two men had relations with a woman one night, because without this (questionable fatherhood) there is the prohibition of lewdness of an unmarried woman; this is more serious. You cannot say that according to the Raba it should be permitted. And when the two men transgressed and had intercourse with her with respect to the child there are no legal consequences with the law. Because in all circumstances certainly the child is kosher whether it is doubtful or it is certain that he is by two fathers. With regard to the case when the sperm of two known men impregnated her in the bathhouse, the Gemara did not say that there is a different view with the above rabbis, because it is an infrequent case. With respect to the final law, it needs further investigation according to Tosaphot. Likewise, one also should doubt according to the Tosaphot in the case when two Cohenim had intercourse with one single woman one night, if we silence him (the child) from the law of kehuna (advise him not to say he is a child of a Cohen)

according to Shmuel in Yebamot 100b, and it is decided by Rambam at the end of chapter twenty in Issurei Biah in accordance with him and in the Shulchan Arukh, Even HaEzer 3:9. Whether he should not be considered as a distinguished descendent of a Cohen after the father, since he is not definitely the son of either Cohen, or because, anyhow, he is certainly a distinguished descendent and he is proper Cohen, this case needs further study for a legal decision.

Behold, if his semen has strong spermatazoa (life giving, fertilizing strength) to a great extent, so that he lacks only some measure (potency) which is needed for conception, in which case, you may be advised, that they may take his semen two or three times. Sometimes it happens that she does not conceive through normal intercourse because he lacks only a little strength not allowing the sperm to arrive inside the uterus, in which case the advice may be given that a doctor should inject his sperm inside of the woman's uterus with a tube and she will become pregnant even by his sperm doing this just one time. If this needs to be done, then it is necessary to know that it is prohibited to bring forth sperm by masturbation with hands or by mechanical means which the doctors do, even if this is needed for conception. So we see in Yebamot 76a that even in a case where there is no prohibition of masturbation because it is necessary to permit him to marry a woman, therefore it is not bringing forth semen in vain--it is still prohibited to masturbate by hands or artificial means. If there was a hole on the top side of his penis that was closed (healed) in such a way that it happens that it tears open again (he is) unfit. If the closed hole does not come open (healed well) then he is fit. Rabah son of Raba asked how do we do it (bring forth the semen in a permitted way) and Rav Yosef answered by placing hot barley bread under the anus or according to

Abaye by passing colored women's garments before him so that he will become excited (think and meditate about women). Behold, they could have brought forth the semen by hands or artificial means, consequently it is forbidden and ejaculation is only allowed under the special means just stated above. Even though as to the prohibition to spill semen in vain, it is prohibited even by these special means and thinking about women (with excited thoughts) is a negative prohibition in the Torah based on the verse in Deuteronomy 23:10, "You will guard from everything evil," in order that he should not come by impurities from the point of view of spilling semen in vain. From the point of view of the law, the defilement is not a prohibition. It is permitted to defile oneself, but not on a festival with everyway (every kind of defilement) except priests with defilement by a dead body, that is forbidden, but the point of view of spilling semen in vain and as was explained, the prohibition to become excited by women is prohibited in Rambam and Shulchan Arukh in Halakhot Issur Hotza-at Zera.<sup>12</sup> However, it is permitted to check in this case that the hole was well healed to permit him to marry a kosher Jewess for the reason that this case is not bringing forth semen in vain since it is to permit him to marry a Jewish woman and to beget children. What is the reason of prohibiting masturbation by natural or artificial means? One needs to say that to spill semen by natural or artificial means there is another prohibition from the verse of scripture, "Do not commit adultery," which is explained in Tanna de be Rabbi Ishmael in Niddah 13b, "There must not be with you a lewd act whether by hand or foot." This prohibition is a separate prohibition and is not permitted even where there is the need to marry the woman and to beget children because prohibitions are not lifted for this purpose. Therefore, the question is raised in the Talmud, how do we do it? (What should we

do?) It was necessary for Rav Yosef and Abaye to explain that one can bring forth semen by placing hot barley bread under his anus or excitement by seeing woman's colored garments, the prohibition in this case is only in regards to spilling semen in vain, but here it is for the purpose of a man marrying a woman, this is not in vain and is permitted.

It was found that here, in our case, to bring forth semen in order to inject it into the woman to beget even though this is not in vain, it is still forbidden to masturbate because of the prohibition of not committing adultery by hand or by foot. Only by the special means which is difficult for many men like the objection of Rabah that not all the world (not everybody) is like Barzilai the Gileadite,<sup>13</sup> and the placing of hot barley bread under the man's anus, we are not expert in this. But it only applies where he does not have a wife (he is not married because he is impotent), but in our case, he has a wife and he can thrash about inside the woman and ejaculate outside the woman because the prohibition in this case is from the reason of spilling semen in vain, as it says in Yebamot 34b, but here in contrast, it is done in order that she will become pregnant by this. Therefore, it is not done in vain and it is permitted provided that when he is having intercourse with his wife he will enter his penis into his wife's vagina in the normal manner of intercourse, and when he feels his semen begin to go forth he will remove his penis and ejaculate into a glass as the doctors have directed him to do. The doctor will take this semen and will inject into the woman inside her womb. If the man needs to do this two or three times, so be it, and he will have intercourse with his wife two or three times. If it is also good for the conception to use a condom during intercourse, even though it is prohibited because of the law of spilling semen in vain, here where it is done in contrary in order that

his wife will conceive, this prohibition does not apply. Though I heard that this manner is not good in promoting conception and obviously it is prohibited from the law of spilling semen in vain. (Don't do it)

Your friend, Moshe Feinstein

Glossary

AGGADAH--A class of rabbinic literature which explains the bible homiletically. The opposite of aggadah is halakhah or the legal interpretation of the Bible.

AGUNAH--A wife deserted by her husband who, according to the law, may not marry again as long as it is not known whether her husband is alive or dead, or a wife whose husband's fate is unknown, e.g., a man went to war and did not return home, but no one can verify his death. V. Jerusalem Talmud Gittin IV, 45; Ruth Rabbah 1:13; TB Yebamot 90b; TB Gittin 33a; Leviticus Rabbah s. 20.

BARAITHA--Traditions and opinions of the Tannaim (rabbis before and after the destruction of the second Temple until 200 C.E.) not embodied in the Mishnah as compiled by Judah HaNasi. (A collection of such baraitas is the Tosefta [meaning--additions]). In the line of the oral tradition, baraitas are introduced in the Talmud to strengthen arguments or debate mishnahs. A baraita would have been passed from rabbi to pupil, explaining why certain rabbis knew them and others did not.

EELONIT (AYLONIT)--Barren, incapable of conception, v. Ketubot 11a.

GEMARA--That part of the Talmud containing those discussions, decisions, etc., which after the reduction to writing of the Mishnah were the materials of verbal studies until they, too, were put to writing.

HALAKHAH--The law or legal decision accepted by the rabbis.

HASHHATAT ZERA--An ejaculation not for the purpose of procreation or onah, i.e., an ejaculation from masturbation or possibly an ejaculation into the womb while a birth control method is being used, or withdrawal immediately before ejaculation.

HAVCHANAH--The ninety day waiting period necessary between marriages or after a woman has been raped or taken captive in order to determine whether she is pregnant or not.

HEPUKH--To turn and twist oneself around in violent motions thus preventing conception from taking place. This was the method of birth control practiced by prostitutes. V. Ketubot 37a.

KOS SHEL IKARIN--A potion of roots and herbs believed to cause temporary sterility in a woman and permanent sterility in a man. This potion was used as a birth control method and because of its oral ingestion method has led modern halakhists to accept the use of the "Pill" for women who need to use birth control.

KOSHER--Fit, ritually permitted, legal. A kosher child is legal regarding all matters of marriage, usually in regards to marrying a Cohen (priest).

LO PELUG--No distinction. Sometimes no distinctions are made between somewhat similar cases to avoid misunderstanding or confusion.

MAMZER--A child born of any relationship forbidden in the Torah punishable by death or karet, v. Leviticus 18 and Yebamot 4:13.

MIKVEH--Ritual bath of purification, v. Mishna Tractate Mikvaot.

MISHNAH--Traditional law or oral law, opposite of written law--the Torah. The Mishnah (i.e., our Mishnah) is a collection of oral laws redacted by Judah HaNasi. A mishnah is one of the laws or paragraphs of The Mishnah.

MITZVAH--Command, especially a religious act or a meritorious deed.

MITZVAH OF ONAH--The commandment of sexual intercourse which is incumbent on the man to fulfill, v. Ketubot 5:6 where it states how often a man is obligated to have sexual intercourse with his wife. This intercourse of onah is not necessarily for procreation, rather it could be merely for the woman's gratification.

MOKH--A soft spongy substance, possibly fibrous from cotton, flax, hackled wool, rag, or lint, used as a swab, compress, tampon, or absorbent to prevent conception.

NESHAMOT BA-GUF--Guf is, according to tradition, a storehouse of neshamot (souls) in Heaven. It states in Yebamot 62a that the son of David will not come before all the souls of the storehouse are exhausted.

NIDDAH--Isolation, condition of uncleanness, especially the period of menstruation. A woman is called niddah when she is in her period of menstruation. A tractate of the Talmud called Niddah considers the ramifications of being niddah.

OLAM HA-BAH--The term olam ha-bah refers to the hereafter, which (often) begins with the termination of Man's earthly life, v. Encyclopedia Judaica p. 1335f.

PIKUACH NEFESH--The saving of a life, v. Ketubot 5a, 15b, and 19a.

PRESUMPTION--Continuance of an actual condition until evidence of a change is produced; in certain instances three times indicates presumption.

RESPONSA (singular: responsum)--Answers to questions concerning an aspect of Jewish law to questions directed to someone (a rabbi) and this person's answer to the question.

SHECHINAH--The divine, in-dwelling presence of God which resides on earth. This concept is rabbinical and is found used extensively through rabbinical literature.

SHEVET--Sitting idle, indemnity for loss of time.

TB--TALMUD BAVLI (Babylonian Talmud).

Yer.--TALMUD YERUSHALMI (Jerusalem, i.e., Palestinian Talmud).



FOOTNOTES

Introduction

1. cf. Leviticus 15:19-22 and Genesis 2:24 and 1:28.
2. David M. Feldman, Birth Control in Jewish Law, (New York, 1968), p. VII.
3. Brooks Roger Sussman, Pregnancy Counseling Manual, Rabbinic Thesis HUC, (Cincinnati, 1974), p. 70 f.
4. Tosaphot, Ketubot, 47b.
5. Feldman, p. 69.
6. loc. cit.
7. Feldman, p. 185.
8. TB Niddah, 31a.
9. Felman, p. 69.
10. cf. Mekhilta, Exodus 21:10; TP Ketubot 5:6; TB Ketubot 47b f.
11. TB Pesachim 72b and SMaG 285 positive.
12. For a detailed analysis of Onah see William Blank's rabbinic thesis on the subject, 1974.
13. Fred Rosner, "Contraception in Jewish Law," Tradition, XII, 2, Fall 1971, 90-103.
14. Feldman, p. 65.
15. Defined later.
16. Tosaphot, Yebamot 12b.
17. Feldman, p. 75.
18. Jacob Z. Lauterbach, "Talmudic-Rabbinic view on Birth Control," CCARY, XXXVII (1927), 370.
19. Tosaphot Mordechai, quoted by Isserles, Sh. Ar., E.H., 23:2.
20. R. Isaac bar Sheshet quoted by Isserles, Sh. Ar., E.H., 1:3.
21. Rosner, p. 90.
22. Lauterbach, p. 370.
23. TB Ketubot 56a  
Kiddushim 19b  
Yad Ishut 12:7  
Lehem Mishnah to Yad 15:1.

24. Lauterbach, p. 371.  
cf. Nedarim 20b.
25. Feldman, p. 64.
26. ibid. p. 128.
27. ibid. p. 131.
28. v. Maimonides' Mishnah Commentary on Sanhedrin 7:4.
29. Zohar, Genesis, p. 56b-57a.
30. v. Deuteronomy 25:5.
31. cf. Genesis Rabbah, 85:5-6.
32. Feldman, p. 150.
33. Yad Issurei Biah, 21:18.
34. cf. SMaG 126 negative  
Tur Sh. Ar. and Levush E.H. 23:1 and 23:5.
35. Ri Tosaphot, Yebamot, 34b.
36. ibid., 12b.
37. Rabbi Mordechai Silberer, Teshuvah LeMarei Dakhaya, 1875.
38. Feldman, p. 109.
39. Alan F. Guttmacher, "Traditional Judaism and Birth Control," XVI, 2,  
(Spring 1967), 162.
40. Rabbi Hayyim Sofer, Responsa Mahaneh Hayyim.
41. Lauterbach, p. 369.
42. Resp. She'elat Ya'avetz, #43.
43. This statement is in reference to intercourse while the woman is lactating,  
and according to the rabbis, should avoid another pregnancy. In order  
to comply with onah, the husband had to either abstain from intercourse  
which the rabbis frowned on, use pre-coital contraception which is ques-  
tionable, or coitus interruptus.
44. Feldman, p. 152
45. Part I, 16b.
46. TB Yebamot 12b, also TB Yebamot 100b  
Ketubot 39a  
Nedarim 35b  
Niddah 45a  
  
Tosefta ch. II.

47. TB Niddah 12a.
48. Yad Ishut 15:7.
49. Feldman, p. 194.
50. *ibid.*, p. 195.
51. *loc. cit.*
52. Immanuel Jakobovits, Jewish Medical Ethics, p. 169.
53. Feldman, p. 199.
54. Teshuvot HaGeonim, Yebamot, p. 169, #388.
55. Resp. Hemdat Shlomo, #46.
56. Feldman, p. 199 f.
57. Resp. Radbaz, Vol. III, 596.
58. Feldman, p. 199.
59. P'nei Yehoshua, Ketubot, 39a.
60. Rabbi Shimon Eger-Sofer, Hit'or'rut Teshuvah, #3.
61. Feldman, p. 211.
62. Lauterbach, p. 375.
63. Feldman, p. 211.
64. Resp. Ezrat Kohen, Mosad Rav Kuk, 1969, #34, p. 135.
65. Feldman, p. 226.
66. Rosner, p. 96 f.
67. CCARY, 1926, p. 40
68. *ibid.*, p. 102 f.
69. *loc. cit.*
70. CCARY 1929, p. 85 f.
71. *loc. cit.*
72. CCARY 1960, p. 71.
73. Lauterbach, p. 383.

Responsum 61

1. Moshe Isserles in Even Ha-Ezer states that one woman may be alone with two men during the day in the city, but in the fields or at night in the city a woman must be accompanied by three men.
2. v. Glossary.
3. In interpreting a rabbinical law the interpreter must be lenient.
4. TB Avodah Zara 36b. Also see TB Kiddushin 80b f.
5. See, e.g., Ganzfried-Goldin, Code of Jewish Law, chapters 152 and 153.
6. *ibid.*

Responsum 62

1. v. Glossary.
2. v. Glossary.
3. TB Yebamot 61b, beginning with the Mishnah.
4. v. Glossary.
5. TB Sanhedrin 110b s.v. אֶתְּחַד קֶטֶן מְאִינְתִּי (bottom of page).
6. TB Yebamot 62a s.v. אֶתְּחַד חֻלָּא אֶתְּחַד (bottom of page).
7. v. Glossary.
8. TB Yebamot 62a, s.v. אֶתְּחַד חֻלָּא אֶתְּחַד
9. Neshamot Ba-Guf, see note 7.
10. TB Niddah 13a.
11. Chelkat Mechokek, Even Ha-Ezer, chapter 5, note 6, s.v.
12. v. Glossary.
13. Ecclesiastes 11:6.

Responsum 63

1. v. Glossary.
2. The destruction of God's name is permissible only under the condition of sotah. cf. TB Sotah 2a f. v. glossary.
3. Feinstein pays great honor to the integrity and merit of his predecessors in making law, but he notes that even these sages can be wrong or misguided or unaware of new advances in the knowledge and practice of birth control.

4. This baraita of the three women is translated in full on page 11 and discussed in depth there.
5. *ibid.*
6. TB Yebamot 12b. God will protect humankind; the plan of the world is his design.
7. Exodus 21:9-10, "And if he designated her for his son, he shall deal with her as is the practice with free maidens. If he marries another, he must not withhold from this one her food, her clothing, or *3/8'* (her conjugal rights).
8. The question raised by this baraita is that when doubt exists concerning whether a woman is pregnant or not, a man should not have intercourse with a woman until he is certain, as it says also in Niddah 31a that intercourse in the first trimester is injurious to both mother and fetus. Abaye says that a man can have intercourse at any time as who could possibly know which is day 90 or day 91. "God guards the simple ones," (Psalm 117:5-6) these are those who do not have the ability to know when the time is right.
9. Proverbs 22:5, "Hooks and snares are in the way of the perverse, he who guards his soul will keep far from them."
10. Ketubot 61b.
11. Radbaz, Responsum 1022.
12. TB Ketubot 39a, s.v. *קין כיון דאין פיל ער*.
13. TB Yebamot 64a, "Others say, (he who has no children) causes the Divine Presence to depart from Israel; for it is, 'To be a God unto thee and to thy seed after thee,' where there exists 'seed after thee' the Divine Presence dwells (among them); but where no 'seed after thee' exists, among whom should it dwell! Among the trees or among the stones?"
14. TB Yebamot 12b, s.v. *קין כיון דאין פיל ער*.
15. In TB Yebamot 34b, it says following this passage, "The others said to him, such actions are only like the practice of Er and Onan, yet not exactly like the practice of Er and Onan. 'Like the practice of Er and Onan', for it is written in scripture, 'And it came to pass, when he went in to his brother's wife, that he spilt it (the semen) on the ground': and 'not (exactly) like the practice of Er and Onan', for whereas there it was an unnatural act, here it is done in the natural way."
16. Turei Even, Hashmatot, p. 130b, s.v. *אין כיון דאין פיל ער*.
17. v. Glossary.
18. TB Ketubot 37a, s.v. *קין כיון דאין פיל ער*.
19. TB Ketubot 37a.
20. *ibid.*

21. TB Ketubot 37a, it states there that a prostitute twists herself around after intercourse in order not to become pregnant.
22. Tosaphot, Ketubot 37a, s.v. *זריכות למחמתין*.
23. Tosaphot, Rosh Hashanah 3b, s.v. *לשם עשרים*.
24. Aggadot Meharshah 3, s.v. *ה' י"ד, ע"ה, ה"ה ואלו*.
25. Deuteronomy 7:3, "You shall not intermarry with them: do not give your daughters to their sons or take their daughters for your sons."
26. The passage found in TB Kiddushin 68b and Yebamot 23a describes various marriage prohibitions and restrictions and the status of the child regarding being a Jew and their own marriage restrictions. A child from the relationship of a Jewish woman and a non-Jewish man is considered unfit: barred from a priestly marriage.
27. Nisan - the month in which Pesach falls occurring in the spring.
28. Tevet - a mid-winter month.
29. Rashi Rosh Hashanah 3b, s.v. *החמין*.
30. Ecclesiastes 10:5, "Here is an evil I have seen under the sun as great as an error committed by a ruler."
31. Seder Hadorot, p. 132, s.v. *זכרון ואלו*.
32. v. glossary.
33. Teshuvot Rabbi Akiba Eger, Responsum 62, s.v. *ע"ה אלא דא"ה*.

#### Responsum 64

1. TB Hagiga 11b, beginning with the mishnah, states, "The (subject of) forbidden relations (v. Lev. 18:6f.) may not be expounded in the presence of three."
2. TB Erubin 13b.
3. Igrot Moshe, Responsum 63.

#### Responsum 65

1. v. Glossary.
2. TB Yebamot 26a and 64b; TB Baba Metzia 106b; TB Erubin 97a; TB Ketubot 43b.
3. v. Glossary.
4. One of the concepts of birth control in Jewish law is that the semen of the man must flow or move into the uterus of the woman. Such devices like a condom or a diaphragm prevent this, but drugs like spermicidal jelly or foam render the semen ineffective, yet allow it to run its course.

These jellies or foams are not very effective though rendering semen ineffective. Therefore, in cases of danger, a more effective contraceptive is necessary and a diaphragm is allowed; it is highly effective.

5. v. Glossary.
6. v. Glossary.
7. v. Glossary.

Responsum 66

1. Rashi, Yebamot 42b, s.v. *עקרה*.
2. v. Glossary.
3. ibid.
4. Nimukei Yosef, Ketubot, chapter five, s.v. *ת"ר חתונה שחת בעלה*.
5. Rashi Ketubot 60b, s.v. *שא"ה ראוייה לילד*.
6. Chelkat Mechokek, Turei Zahav, and Bet Shmuel all agree that it is better not to marry a minor girl, but if one does, intercourse with her is permitted.

Responsum 67

1. TB Yebamot 61b. A son and a daughter.
2. v. Glossary.
3. Sefer Ahiezer, Even HaEzer, responsum 23.
4. Igrot Moshe, Even HaEzer, responsum 63.
5. The duties of marriage are the mitzvah of onah and procreation.
6. Isserles, Even HaEzer, chapter one, paragraph three.
7. v. Glossary.

Responsum 21

1. Intra-uterine device.
2. Shulchan Arukh, Yoreh Deah, Pitchei Teshuvah 194:4 s.v. *לפני חת הקדר*.
3. v. T.B. Niddah 21a-22b where there is a discussion of blood flowing from a woman's uterus when it is opened and if there is bleeding does it make a woman pure or impure (clean or unclean). Also see Keritot 10a, Nidda 38a and 66a.

4. The movement of the I.U.D. against the inner wall of the uterus can produce an irritation which causes bleeding.
5. Shulchan Arukh, Yoreh Deah, Pischei Teshuvah, 198:16. s.v. ג'ית הסתג'יר.
6. v. Glossary.
7. He can see the thread from the outside.
8. The condom prohibits intercourse in the natural manner by preventing the free flow of semen into the woman's body.

#### Responsum 22

1. v. Shulchan Arukh, Yoreh Deah, 231.
2. Hash-hatat zera: a man is prohibited to consciously ejaculate except during normal intercourse and the ejaculation must take place in the woman's body.
3. Minors or barren women are permitted to have intercourse even though they are unable to procreate. Procreation is only one aspect of intercourse in marital relations.

#### Responsum 24

1. The "Pill" allows intercourse to proceed in a normal manner as the semen is allowed to run its natural course.
2. The TB Baba Kama 83bf., the Mishnah and Gemara discuss injury, liability, and other things related to this. Within this discussion, the concept of shevet is discussed stating, "Our rabbis taught: Whence can we learn that where ulcers have grown on account of the wound and the wound breaks open again, the offender would still be liable to heal it..." In relating this to our case, Feinstein sees the woman as having the wounds and by sexual intercourse with her husband the wounds might fester instead of heal. v. Glossary.
3. Meaning, seeing drops of blood which possibly came from her vagina which would make her niddah, placing her in a state of impurity; possibly without her knowledge.
4. She should check herself thoroughly inside and around the vaginal area to see if any blood exists.

#### Responsum 70

1. TB Ketubot 46a, "Whence is the warning against bringing up an evil name (upon one's wife) deduced?...R. Nathan replied, from, 'Then thou shalt keep thee from every evil thing?' (Deut. 23:10)...R. Phinchas b. Jair deduced that a man should not indulge in (morbid) thoughts by day that might lead him to uncleanness by night."



2. TB Niddah 13a, "Every hand that makes frequent examination is in the case of a woman praiseworthy, but in the case of men it ought to be cut off." (Because of masturbation.)

Responsum 71

1. Jerusalem Talmud 24b.
2. v. Glossary.
3. Law by Decree--a directive enacted by the halakhic scholars or other competent bodies, enjoying the force of law. It constitutes one of the legal sources of Jewish law.  
v. Encyclopedia Judaica 15:728f.
4. An incestuous relationship, Leviticus 18:9, "The nakedness of your sister--your father's daughter or your mother's, whether born into the household or outside--do not uncover their nakedness.
5. v. Glossary.
6. *ibid.*
7. TB Yebamot 42a.
8. v. Glossary.
9. Rashi, Yebamot 42a s.v. *ולא ידעך אחריו*.
10. Rashi, Nedarim 20b s.v. *בא ערוב*.
11. *ibid.*
12. Shulchan Arukh, Even HaEzer, Hilkhos Ishut 23:4.
13. II Samuel 17:27-29.

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