

Use of Disposable Diapers on Shabbat

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In recent years a practical problem has arisen regarding Shabbat regulations which impinges upon the lives of virtually every young family. Involved are seemingly simple acts but ones whose permissibility or non-permissibility can be determined only upon careful analysis of several of the fundamental forms of labor proscribed on the Sabbath. Attesting to the significance of the problem are the numerous responsa addressing this matter which have been authored by rabbinic decisors in the United States, Israel and Great Britain.

The disposable diaper is a welcome time and labor-saving convenience of contemporary society. Since the relatively inexpensive paper substitute is discarded immediately after it has served its purpose, a mother need no longer either herself engage in the tedious task of diaper washing or subscribe to a diaper service. Moreover, the disposable diaper eliminates the need for the use of safety pins and the accompanying danger of piercing either the baby or the diaperer's own finger. The diaper itself is made of paper which is shielded by a soft plastic cover designed to limit leakage and the attendant soiling of clothing and crib sheets. Affixed to each of two corners of the paper diaper is a thin strip of gummed plastic tape. Once the diaper is in place, it is secured

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simply by pressing each tab firmly against the corresponding corner of the diaper.

Originally, the adhesive agent applied to the plastic tape was of a nature that made it virtually impossible to remove the diaper with the gummed strip yet intact. When pressed against the corresponding side of the diaper the adhesive agents bonded the gummed tape to the plastic cover of the diaper. As a result, the diaper could be removed only by tearing the plastic tab or by ripping the diaper itself. Recently, some manufacturers have substituted an adhesive agent which permits repeated fastening and unfastening without damage either to the diaper or to the gummed tape. Use of either type of disposable diaper on Shabbat presents halachic problems both with regard to attachment of the gummed tape and with regard to removing the soiled diaper either by tearing the tab or the diaper itself or by unfastening the gummed tab.

I. Affixing the Gummed Tab

Sewing is one of the thirty-nine categories of labor forbidden on the Sabbath. The end result and the purpose for which sewing is undertaken is the fusion of two previously distinct components into a single entity. Other procedures designed to achieve the same effect, when produced by a process other than sewing, are also forbidden as a derivative (*toladah*) of sewing. Thus, Rambam, *Hilchot Shabbat* 10:11, followed by *Shulchan Aruch, Orach Chayyim* 340:14, rules, "If a person fastens together papers of skins with scribes' paste, this is a derivative of 'sewing' and he is culpable. Similarly, if a person separates papers previously fastened together or skins previously fastened together and does not intend simply to destroy, this is a derivative of 'tearing' and he is culpable."

The principal form (*av melachah*) of sewing involves the durable fusion of two pieces of cloth by means of a thread. In this ruling, Rambam posits causing permanent adhesion of any two objects through the intermediacy of another substance as a

derivative form of "sewing."¹ As a source for Rambam's ruling *Markevet ha-Mishneh* points to a statement of the Palestintian Talmud, *Shabbat* 16:2, indicating that two objects pasted together are regarded as fused into a single entity. Similarly, the Gemara, *Menachot* 34b, records the view of R. Judah who declared that attaching the various sections of a phylactery scroll by means of paste is tantamount to sewing them together. *Magen Avraham, Orach Chayyim* 440:18, rules that joining pieces of paper or the like even by means of wax constitutes a form of "sewing" despite the fact that objects joined by wax are much more readily separable than are those attached with glue or paste.

Ostensibly, then, securing a diaper on Shabbat by means of pressing upon the gummed tape would constitute a forbidden act of "sewing." This would certainly appear to be so when the adhesion is permanent, as is the case with regard to disposable diapers whose tabs cannot be removed from the protective plastic cover to which they are attached but must be ripped from the diaper. This is indeed the position of a number of scholars who have addressed this issue. The most detailed exposition of that view is presented by R. Pesach Eliyahu Falk, a member of the Gateshead *kollel*.² Rabbi Falk reports that the noted Israeli authority, R. Yosef Eliashiv, fully concurs in the opinion that use

1. See *Markevet ha-Mishneh, Hilchot Shabbat* 10:11; and R. Menashe Klein, *Mishneh Halachot*, VIII, no. 60, s.v. *ve-zeh yatza*. Cf., however, R. Pesach Eliyahu Falk, *Teshuvot Machazeh Eliyahu* (Bnei Brak, 5739), no. 70, sec. 3, who maintains that adhesion even in the absence of a "thread" or intermediary substance constitutes "sewing." Thus, for example, whether or not fusion of two pieces of plastic by means of heat would constitute an act of "sewing" appears to be contingent upon this dispute. *Machazeh Eliyahu's* position appears to be supported by the definition of sewing formulated by R. Moshe Feinstein, *Iggerot Mosheh, Orach Chayyim*, II no. 84, and by the comments of *Aruch ha-Shulchan* 317:18. *Aruch ha-Shulchan* declares that the sole difference between "tying" and "sewing" is that objects tied together may be separated and restored to their original state whereas objects sewn together cannot be separated without being torn apart by means of a destructive act. See also R. Samuel David Munk, *Teshuvot Pe'at Sadecha* (Jerusalem, 5735), no. 5, and no. 45.

2. *Teshuvot Machazeh Eliyahu* (Bnei Brak, 5739), no. 70, sec. 4.

of such diapers on the Sabbath involves a biblical transgression. A similar view is advanced by R. Noson Gestetner, author of *Natan Piryó* on various tractates of the Talmud,³ as well as by R. Shraga F. Schneebalg.⁴ R. Isaac Liebes⁵ forbids the use even of refastenable tabs. R. Menashe Klein⁶ also opposes the use of disposable diapers on Shabbat on grounds which would apparently apply to the use of refastenable tabs as well. A similar opinion is expressed by the Sephardic Chief Rabbi of Israel, R. Mordecai Eliyahu.⁷

In terms of the halachic problems involving use of disposable diapers on the Sabbath, there is, to be sure, a marked difference between diapers secured by gummed tapes which cannot be unfastened and those which can be unfastened in order to remove the diaper. *Bet Yosef, Orach Chayyim* 317, and *Ramo, Orach Chayyim* 317:3, record two conflicting views with regard to whether or not the prohibition against sewing extends to sewing stitches which are not designed to be permanent in nature. Some authorities are of the opinion that the category of "sewing" includes only sewing stitches designed to effect a permanent bond between the articles so joined. According to those authorities, temporary stitches designed for subsequent removal do not create such a bond and hence are not encompassed by this prohibition. Other authorities are of the opinion that permanence is irrelevant and maintain that the act of stitching is forbidden under all circumstances. Since glueing or pasting is classified as an activity forbidden on Shabbat because it is a derivative of "sewing," it stands to reason that those authorities who view temporary stitching as permissible would deem pasting for purposes of forming only a temporary cohesion to be permissible as well. *Ramo* rules in accordance with the lenient opinion but admonishes that such actions should not be performed in the presence of the untutored who are likely to be unaware of the distinction between

3. *Or ha-Shabbat*, no. 1 (5744), pp. 23-27.

4. *Teshuvot Shraga ha-Meir*, III, no. 103, secs. 4 and 5.

5. *Teshuvot Bet Avi*, IV, no. 79.

6. *Sha'arei Halachot*, Iyar 5733, reprinted in his *Mishneh Halachot*, VIII, no. 60.

7. *Sefer Zikaron le-ha-Rav Yitzchak Nisim* (Jerusalem, 5745), I, 14.

permanent and temporary stitching. It would appear that the same restriction is also applicable with regard to non-durable forms of pasting.

However, *Shulchan Aruch, Orach Chayim* 440:7, fails to make any distinction between permanent and temporary stitching, thereby implying that even the sewing of temporary stitches is forbidden on Shabbat. Moreover, *Tehilah le-David*⁸ maintains that this distinction applies only to the biblical prohibition, but that all forms of temporary sewing (and pasting) are rabbinically proscribed.

Rabbi Falk suggests that all cohesion effected by means of diaper tabs may be regarded as non-permanent in nature. That contention is based upon the consideration that although, in reality, the tab cannot be unfastened, the mother who diapers the baby has no desire whatsoever to cause a permanent bonding of the tab to the diaper. The diaper is designed to be removed in a relatively short period of time and then, in light of the fact that it cannot yield any further benefit, to be cast aside as useless. Since permanent bonding yields no benefit there is no reason to assume that such bonding is intended by the person securing the tape and hence, it might be contended, no biblical transgression is incurred. Rabbi Falk, however, dismisses this argument in asserting that "permanence" versus "non-permanence" is determined by empirical reality rather than by subjective intent. A similar position is espoused by Rabbi Menashe Klein.

In support of the position that "permanence" is determined by the factual nature of the situation rather than by subjective intent, Rabbi Falk cites an inference from the comments of Rashi, *Sukkah* 33b, attributed to R. Shlomo Zalman Auerbach.⁹ A similar distinction between "permanence" versus "non-permanence" applies to the prohibition concerning tying knots on Shabbat and Yom Tov, i.e., the tying of any "permanent" knot is forbidden. Rashi declares that the four species may not be bound together

8. 440:6.

9. Cf., the comment of Rabbi Auerbach published in Dr. Abraham S. Abraham's *Lev Avraham*, II (Jerusalem, 5738), 20.

with a proper knot because tying a knot on Yom Tov constitutes a biblical transgression and the person binding the four species with a knot "has no intention of ever unloosing [the knot]." It is quite clear that the individual binding the four species in order to fulfill the mitzvah properly has no need for the species to remain permanently bound as a unitary entity and hence has no intent to tie them together permanently. Indeed, it is precisely because he has no further need for the species themselves that he makes no attempt to untie the knot subsequently. Nevertheless, since, in point of fact, the knot is destined to remain tied permanently, tying the knot on Yom Tov constitutes a biblical transgression. Hence, it may be deduced, argues Rabbi Auerbach, that the halachic category of "permanence" is determined by empirical reality rather than by subjective intent.¹⁰ Similarly, points out Rabbi Falk, even though the mother has no particular need for the tape to adhere to the diaper permanently and hence has no intent to effect a permanent cohesion, nevertheless in point of fact, the attachment is permanent in nature.

Moreover, contends Rabbi Falk, even if the mother, by painstaking effort, were somehow able to unfasten the gummed tape, use of such diapers on Shabbat would be forbidden nonetheless. *Bi'ur Halachah, Orach Chayyim* 317:1, rules, contrary to the position of *Taz*, that a knot of a nature which is ordinarily permanent may not be tied on Shabbat even with the intention of untying it immediately. Applying the same principle to fastening the diaper tab, Rabbi Falk concludes that, since the tape is not ordinarily unfastened, the prohibition would be equally applicable even were the mother to resolve to unfasten the tape in removing the diaper.¹¹

Accordingly, Rabbi Falk advises that, if disposable diapers are used on Shabbat, they be used in the same manner that cloth diapers have been used heretofore, i.e., the diaper should be

10. Cf., however, R. Eliezer Waldenberg, *Tzitz Eli'ezer*, XV, no. 17, sec. 3, s.v. *nosaf la-zeh*, and sec. 4.

11. See also the comments of *Mishneh Halachot*, VIII, no. 60, s.v. *ve-od bo*.

fastened by means of a safety pin and the gummed tape disregarded and left unused.

Nevertheless, a permissive view with regard to the question of use of disposable diapers on Shabbat is adopted by many prominent rabbinic decisors.¹²

Although not addressed to him, the most compelling argument against Rabbi Falk's position is advanced by Rabbi Binyamin Silber.¹³ Rabbi Silber argues that the "sewing" involved in attaching the gummed tape to the diaper is "non-permanent" in nature despite the fact that it is designed to adhere permanently. "Sewing" involves the permanent cojoining of two separate articles. In the case of disposable diapers, the joining of the corresponding sides of the diaper is not at all permanent. To be sure the "thread," i.e., the adhesive strip or tape, is not removable but, nevertheless, the cojoining of the two sides of the diaper is entirely transitory as evidenced by the fact that the diaper itself is torn in the process of its removal.¹⁴ A similar principle is enunciated by *Mishnah Berurah* 317:23 with regard to untying knots. *Mishnah Berurah* rules that strings which become entangled and knotted may be torn on Shabbat since at no time is there any intention that the articles in question remain permanently tied. The knot is regarded as non-permanent in nature by virtue of the fact that the strings are separable by means of tearing them apart even though the knot itself cannot be untied. Similarly, argues Rabbi Silber, the intention to follow the common practice of tearing the diaper in the process of removal renders the cohesion non-

12. Among these authorities are R. Pinchas Scheinberg, *Moriah*, Kislev 5744; R. Ovadiah Yoseph, *Yechaveh Da'at*, IV, no. 24; R. Binyamin Silber, *Az Nidberu*, VI, no. 31; *idem*, VII, nos. 34 and 35; *idem*, XII, no. 11; and *idem*, XIII, no. 25; R. Issac Liebes, *Teshuvot Bet Avi*, IV, no. 79; R. Moshe Stern, *Teshuvot Be'er Mosheh*, VI, no. 14; R. Eliezer Waldenberg, *Moriah*, Kislev 5744, reprinted with additions in *Tzitz Elei'ezzer*, XVI, no. 6; and R. Ephraim Greenblatt, *Teshuvot Rivevot Efrayim*, IV, no. 96.

13. *Az Nidberu*, XII, no. 11.

14. Cf., R. Menashe Klein, *Mishneh Halachot*, VIII, no. 60, *s.v. u-le-fi zeh*, who advances a similar argument but does not regard it as compelling.

permanent in nature even though the adhesive itself is not disturbed.

Noteworthy is the fact that Rabbi Silber asserts that Rabbi Eliashiv is in full agreement with him on this crucial point. Rabbi Falk writes that when Rabbi Eliashiv "heard the facts, [viz.] that it is not the wont of women to open the adhesion when they remove [the diaper] from the baby, it was obvious in his eyes that this involves a biblical prohibition." Rabbi Silber asserts that Rabbi Eliashiv was led to believe that the diaper is customarily removed intact without being torn in any way. Under such circumstances the grounds for prohibiting the use of paper diapers are quite cogent. Nevertheless, Rabbi Silber declares that, if not for the opinion of Rabbi Eliashiv to the contrary, he would be prepared to permit use of disposable diapers even when they are secured with full intention to remove them intact. He argues that, since the diapers are thrown away and destroyed after a brief period of use, the "sewing" is designed to effect a transitory bond rather than a durable one. Rabbi Silber assumes that sewing with intent immediately to incinerate or otherwise to destroy the sewn object is regarded as a non-permanent form of sewing. Having made this assumption, Rabbi Silber argues that intent to dispose of the diaper as refuse reduces the "sewing" performed in fastening the adhesive strip to a state of non-permanence. Rabbi Scheinberg similarly contends that a mother diapering her baby with a disposable diaper intends no permanent adhesion "since she afterward throws it away."

Rabbi Silber's discussion focuses entirely upon the question of whether or not the "sewing" is to be deemed permanent in nature but does not address the fact that, as noted earlier, *Bet Yosef*, *Orach Chayyim* 317, and *Ramo*, *Orach Chayyim* 317:3, cite authorities who regard the prohibition as applicable even in cases in which the "sewing" is non-permanent in nature. Rather, Rabbi Silber relies upon his own earlier novel analysis of this issue¹⁵ in which he notes that the authorities cited by *Bet Yosef* and *Ramo*

15. See *Az Nidberu*, I, no. 57, sec. 5.

speak, not of sewing which is non-permanent in nature, but of *tearing* stitches that are not designed to remain in place permanently. Rabbi Silber maintains that even those authorities who express a stringent view do so only with the regard to tearing temporary stitches. Rabbi Silber reasons that since, when undertaken for a constructive purpose, tearing is a culpable act even when the tear is made in the garment proper rather than at a seam, therefore the ripping of non-durable stitches also constitutes a culpable act of tearing. But, argues Rabbi Silber, all authorities agree that there are no grounds for prohibiting non-permanent sewing since the only form of sewing that was undertaken in the construction of the Tabernacle (which serves as the paradigm for all forbidden forms of labor on Shabbat) was permanent in nature.¹⁶

R. Ovadiah Yosef similarly rules that attachment of the adhesive tab constitutes a non-permanent form of sewing but does not at all describe the method utilized in removing the diaper. Although he does not explicitly state this to be the case, he apparently maintains that all types of disposable diapers may be used including those that can be removed only by means of tearing the tape or the diaper.¹⁷ Rabbi Yosef, however, does not enlighten us with regard to why he regards such attachment to be non-

16. Rabbi Silber expresses a similar view in *Az Nidberu*, VI, no. 21.

For an opposing view see *Mishnah Berurah*, 440:27, and *Shulchan Aruch ha-Rav, Mahadura Batra, Orach Chayyim* 301. Rabbi Silber, *Az Nidberu*, VI, no. 21, *s.v. ve-ha-Ran*, concedes that Ritva, *Shabbat* 74b, maintains that non-permanent sewing is forbidden but asserts that this is an isolated opinion. A diametrically opposed position is espoused by *Tehillah le-David* 440:6 who maintains that even those who permit the ripping of non-permanent stitches concede that sewing such stitches is proscribed at least by virtue of rabbinic decree. This also appears to be the view of *Shulchan Aruch ha-Rav, Orach Chayyim* 317:7. See also, R. Mordecai Elyahu, *Sefer Zikaron le-ha-Rav Yitzchak Nisim* (Jerusalem, 5745), I, 13.

17. The permissive ruling of R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilchatah* (Jerusalem, 5739) 15:81, similarly fails to distinguish between different types of adhesive tabs and is cited by Rabbi Silber, *Az Nidberu*, XIII, no. 25, as in agreement with his own permissive view despite the reservation expressed by Rabbi Neuwirth as interlocutor in *Az Nidberu*, VII, no. 34.

permanent in nature. Rabbi Yosef permits what he regards as non-permanent attachment of the adhesive tab on the basis of a configuration of considerations none of which independently would constitute sufficient grounds for a permissive conclusion:

(1) Although, as noted earlier, even non-permanent sewing is prohibited by many authorities, there are some, primarily Raviyah, *Hilchot Shabbat*, no. 206, who permit sewing of such nature. Rabbi Yosef asserts that the opinion of those authorities should be given greater weight in situations involving "unusual" forms of "sewing" such as the fastening of garments by means of glue or paste.

(2) *Tal Orot*, p. 56b, advances the novel thesis that although joining by means of glue or paste constitutes "sewing" insofar as paper or leather is concerned, the sewing of cloth is forbidden only when the pieces of material are joined together by thread. He reasons that, although paste is a customary and usual form of cojoining for other substances (*darkan be-kach*), pieces of cloth are not usually joined together by means of substances other than thread and hence use of such substances for the cojoining of pieces of cloth is not forbidden.¹⁸

(3) At one time formal garb in Baghdad included an elaborate turban made of a length of cloth intricately wound around an item of headgear which in turn was placed upon a thick cotton skullcap. Once wound in this manner, the turban could be removed and replaced on the head repeatedly "for a month or two" without becoming unravelled. *Rav Pe'alim*, I, *Orach Chayyim*, no. 26, questions whether fashioning the turban in this manner on the Sabbath constitutes a forbidden form of "finishing a vessel" (*tikkun mana*).¹⁹ *Rav Pe'alim* rules that, although the turban cannot be removed and replaced unless it is wound in this manner and hence it becomes an article of clothing only upon performance of this operation, it is nevertheless permitted to fashion the turban

18. For a discussion of this thesis see *Ginat Veradim*, *Orach Chayyim*, klal 3, secs. 17 and 18.

19. Cf., R. Moshe Feinstein, *Iggerot Mosheh*, *Orach Chayyim*, I, no. 122, sec. 6, and R. Pinchas Scheinberg, *Moriah*, Kislev 5744, p. 204.

on Shabbat. *Rav Pe'alim* reasons that, since it is impossible to fashion the turban unless it is actually upon the head of the wearer, the procedure is permissible because it is performed *derech levishah*, i.e., incidental to donning the garment, rather than in the form of fashioning an article of clothing. Rabbi Yosef rather tenuously argues that, by the same token, "sewing" which takes place *derech levishah* is not prohibited.²⁰ Accordingly, since the fastening of the adhesive tab is undertaken in the course of "donning" the diaper, Rabbi Yosef opines that it is permissible according to the opinion of *Rav Pe'alim*.

The Debrecziner Rav, R. Moshe Stern,²¹ apparently relies upon the opinion cited by Ramo, *Orach Chayyim* 340:14, to the effect that ripping non-permanent stitches is not a forbidden form of "tearing." *Be'er Mosheh* apparently assumes that, although Ramo cites two conflicting opinions, he accepts the view that, as a matter of normative law, there is no prohibition even against sewing such stitches but that, nevertheless, they should not be sewn or torn in the presence of an ignorant person lest such an individual be misled and fail to distinguish between "permanent" and "non-permanent" types of sewing. Such confusion, argues *Be'er Mosheh*, is unlikely to result from permitting the fastening of disposable diapers. Since it is well known that the diaper rapidly becomes soiled, the non-permanent nature of the attachment of the tab to the diaper will be perceived by all and will not lead to confusion with other forms of cojoining.²²

Rabbi Waldenberg, on the other hand, maintains that Ramo himself forbids tearing even non-permanent stitches as a matter of normative law since he records the negative view without comment

20. R. Ovadiah Hadaya, *Teshuvot Yaskil Avdi*, IV, *She'ilat Shalom*, no. 7, sec. 5, cites the reasoning of *Rav Pe'alim* in arguing that fastening a garment by means of a pin does not constitute "sewing."

21. *Teshuvot Be'er Mosheh*, IV, no. 14.

22. *Chazon Ish*, *Mo'ed* (Bnei Brak, 5733), p. 257b, draws a similar distinction with regard to temporary attachment by means of a pin. See also *Teshuvot Machazeh Eliyahu*, no. 70, sec. 1.

but prefaces the permissive view with the phrase "but some permit." In this assessment of Ramo's position Rabbi Waldenberg follows the opinion of *Chazon Ish*,²³ who maintains that Ramo accepts the stringent view with regard to this matter.²⁴

Rabbi Waldenberg, however, argues that fastening the adhesive tab of a paper diaper is permissible according to all authorities, but for an entirely different reason. *Shulchan Aruch, Orach Chayyim* 314:10, permits the tying of a knot designed to be untied on the same day on the theory that such a knot is not even in the category of a "non-permanent" knot.²⁵ *Magen Avraham, Orach Chayyim* 440:18, followed by *Mishnah Berurah* 340:45, equates the categories of non-permanent sewing and the tying of a non-permanent knot. Accordingly, argues Rabbi Waldenberg, halachically, an adhesion not intended to survive for even a single day is not even a form of "non-permanent" cohesion and hence is entirely permissible.²⁶

R. Samuel Wosner²⁷ speaks of diapers which are "loose" and designed "to be sealed and opened constantly," from which it may

23. *Otzerot Yerushalayim*, no. 78 (5731), p. 1, 234, reprinted in the 5733 edition of *Chazon Ish, Mo'ed*. p. 257b.

24. See, however, *Shulchan Aruch ha-Rav, Orach Chayyim* 317:7, who maintains that Ramo accepts the lenient view. This is also the position of R. Samuel Wosner, *Teshuvot Shevet ha-Levi*, V, no. 31, sec. 2, and no. 78, sec. 4, as well as of R. Pinchas Scheinberg, *Moriah*, Kislev 5744. See also *Az Nidberu*, VI, no. 21.

25. Citing this ruling, *Magen Avraham* 340:18 permits the separation of pages accidentally fastened together by wax adding that, *a fortiori*, this is permissible since the attachment occurred "of its own accord." Even if one does not accept Rabbi Waldenberg's argument that it is permitted to cojoin objects if the cohesion is not designed to endure for at least one day, it nevertheless seems that *Magen Avraham* certainly regards the separation of an adhesion designed to endure for such a brief period as permissible even in the presence of an ignorant person. It should be noted that later authorities do not understand attachment "of its own accord" as a necessary condition of *Magen Avraham's* permissive view; see *Chayyei Adam, Hilchot Shabbat* 29:1, and *Shulchan Aruch ha-Rav, Orach Chayyim* 340:17. Cf., however, *Mishneh Halachot*, VIII, no. 60.

26. The same point is made in an analogous context by *Shemirat Shabbat ke-Hilchatah* 15:81, note 250; see below, note 57 and accompanying text.

27. *Teshuvot Shevet ha-Levi*, V, no. 31, sec. 2.

be inferred that he permits only the use of gummed tapes which are readily unfastened. Rabbi Vosner follows the view cited by Ramo which maintains that non-permanent sewing is normatively permitted but should not be performed in the presence of an ignorant person. The latter consideration, Rabbi Vosner rules, may be waived "for the benefit of an infant." Rabbi Vosner does, however, advise that the tape be fastened in an unusual manner (*shinuy*), i.e., that only the very tip of the tab should be secured.²⁸

II. Removal of Disposable Diapers

Rabbi Shrage F. Schneebalg²⁹ adopts a stringent view with regard to tearing the gummed tape of a disposable diaper in order to remove it from the baby. Rabbi Schneebalg rules that the diaper may be removed in this manner only if the child is in great discomfort and then only by a non-Jew. However if the child cries incessantly or is otherwise in danger of illness, Rabbi Schneebalg permits the tearing of the diaper even by a Jew.

Rabbi Schneebalg's opinion notwithstanding, it would appear that the question of removal of a disposable diaper poses an entirely different issue. The resolution of that question is not necessarily related to the permissibility or non-permissibility of securing such a diaper in the first instance. Thus, even though it may not be permissible to fasten the adhesive tab on Shabbat, if it transpires that a disposable diaper fastened with the accompanying gummed tape has been used on Shabbat, or if the baby is still attired in a diaper which has been secured in this manner before Shabbat, most authorities maintain that there is no problem with regard to tearing the tape, or the diaper itself, in order to remove the diaper on Shabbat. Rambam, *Hilchot Shabbat* 10:11, rules that only "if a person separates... and does not intend simply to destroy, this is a derivative of 'tearing.'" Tearing a diaper in order to remove it from the baby's body certainly renders the diaper unusable and constitutes a "destructive" act. Tearing the gummed

28. A similar ruling appears in his *Teshuvot Shevet ha-Levi*, V, no. 78 sec. 4.

29. *Teshuvot Shraga ha-Me'ir*, III, no. 103, sec. 5.

tape which secures the diaper similarly appears to be an act that is "destructive" in nature since at the minimum the tape is destroyed even though the diaper itself may remain usable if secured by a safety pin. Accordingly, although Rabbi Falk forbids fastening the diaper on Shabbat by means of securing the adhesive strip, he finds no difficulty in permitting its removal.

Nevertheless, according to the position of at least one authority, the concept of "destruction" (*kilkul*) as applied to the diaper and its gummed tab requires re-examination. In days gone by, it was the practice to leave food, particularly the Sabbath *cholent*, in a baker's oven to be kept warm for Shabbat. Heat was provided, not by an open flame, but by retention of heat within the brick oven. In order to assure that the oven would retain its heat the door of the oven was sealed by pasting a thick paper over it. The paper was then ripped off on Shabbat in order to remove the food from the oven. Despite the fact that the paper was attached to the oven with paste, that act was not regarded as a forbidden form of "tearing" since the paper was destroyed in the process. Nevertheless, *Pri Chadash*³⁰ forbade this practice. He argues that, although the paper is rendered unusable, the act cannot be deemed to be destructive in nature since it is designed to yield a desired constructive benefit, viz., access to the food within the oven. Rabbe Gestetner points out that, according to the line of reasoning espoused by *Pri Chadash*, ripping disposable diapers in removing them from a child on Shabbat would be forbidden since the intent is constructive in nature, i.e., the comfort and cleanliness of the child.³¹

The opinion of *Pri Chadash* is, however, sharply disputed by R. Zevi Ashkenazi³² and R. Abraham Danziger.³³ *Magen*

30. *Yorah De'ah* 118:18.

31. Rabbi Waldenberg suggests that tearing the diaper is not designed to yield even the constructive benefit of providing access to the child but merely to eliminate a source of discomfort. Removal of an object causing discomfort, he argues, is not "constructive" in the sense that it does not yield a positive benefit.

32. *Teshuvot Chacham Zevi*, no. 39.

33. *Nishmat Adam* 29:5.

*Avraham*³⁴ cites the ruling of the Tosefta, *Shabbat* 17:9, permitting the tearing of a skin cover from a barrel of wine provided that there is no intention to fashion a spout. *Magen Avraham* cites the Tosefta as establishing the principle that tearing in a destructive manner is permissible even though, as in the case of the Tosefta, an attendant constructive benefit is derived, viz., access to the contents of the barrel. Such permissible tearing is readily distinguishable from forbidden forms of tearing such as tearing cloth in order to facilitate sewing a seam or tearing in anger as a means of venting frustration.³⁵ R. Zevi Ashkenazi reports that in a personal confrontation with the author of *Pri Chadash* regarding this issue the latter remained silent and that that silence should be construed as acquiescence with his view.

Rabbi Gestetner, however, cites a statement of *Shulchan Aruch ha-Rav, Orach Chayyim* 340:17, which appears to be in agreement with the basic principle formulated by *Pri Chadash*. *Shulchan Aruch ha-Rav* declares that "tearing" is forbidden only when it involves the separation of discrete objects or articles which have been cojoined, e.g., the tearing of cloth composed of multiple threads. However the tearing of a single, unitary sheet of paper, rules *Shulchan Aruch ha-Rav*, does not involve a forbidden form of "tearing" (unless the paper is being cut to a desired size, in which case the infraction is that of completing the fashioning of a utensil). Disregarding any consideration of the destructive nature of the tearing, *Shulchan Aruch ha-Rav* declares that it is for this reason that a skin may be torn from the mouth of the barrel, as explicitly sanctioned by the Tosefta.³⁶ Nevertheless, Rabbi

34. *Orach Chayyim* 314:14

35. Cf. Ritva cited by *Kesef Mishnah, Hilchot Shabbat* 10:10, and *Bi'ur Halachah* 340:14, s.v. *ve-lo nitkaven*. *Pe'at Sadecha* points out that, according to *Bi'ur Halachah's* analysis of Rashi, tearing is forbidden only if the benefit derived is contemporaneous with the tearing itself. In removing a diaper, the benefit to the child occurs only subsequent to the removal of the diaper and hence is not contemporaneous with the tearing.

36. See, however, *Chochmat Adam* 29:5, who contests the thesis of *Shulchan Aruch ha-Rav*.

Gestetner assumes that, even according to the thesis of *Shulchan Aruch ha-Rav*, tearing a disposable diaper is permitted since it is composed of single sheets of paper and plastic, which are torn without being separated from one another in the course of removing the diaper. Moreover, elsewhere, *Orach Chayyim* 314:12, *Shulchan Aruch ha-Rav* appears to contradict himself and to accept the position of *Magen Avraham*.

Be'er Mosheh does not cite the view of *Pri Chadash* but remarks that removing a soiled diaper does not involve "even a destructive form of tearing for [the diaper] is already destroyed at the time of tearing. Such tearing is not at all in the category of 'tearing.'" *Be'er Mosheh* is apparently of the opinion that there can be no prohibition of "tearing" in ripping an object which is of no utilitarian value even prior to being torn.

However these arguments are not accepted by all rabbinic decisors. R. Ovadiah Yosef apparently accepts the basic contention that tearing the diaper is constructive in nature but nevertheless finds grounds to permit tearing the gummed tape, although not for ripping the diaper itself.

Rabbi Yosef cites a number of authorities who maintain that Rambam and *Shulchan Aruch* forbid only the tearing of papers that are permanently glued together but do not forbid such tearing if the papers were originally joined with the intention of separating them at a later time. Thus, R. Joseph Kazis,³⁷ *Taz*,³⁸ and R. Jacob Emden³⁹ permit opening a sealed letter on Shabbat. Indeed, R. Jacob Emden assumes that it is for this reason that his father, *Chacham Zevi*, permitted ripping the paper covering of an oven door on Shabbat.⁴⁰ Be that as it may, Rabbi Yosef cites numerous authorities who maintain that such an act of tearing is at least

37. Quoted by *Pachad Yitzchak*, I, 79b.

38. *Orach Chayyim* 519:5.

39. *She'ilat Ya'avetz*, II no. 140.

40. *She'ilat Ya'avetz* apparently misunderstood his father's reason for permitting this practice since, as noted earlier, the matter is explained in an entirely different manner in *Teshuvot Chacham Zevi*, no. 39.

rabbinically forbidden.⁴¹ Hence this consideration cannot justify the tearing of a diaper in its removal.

Nevertheless, consistent with his permissive view regarding securing the diaper by means of the gummed tape, Rabbi Yosef rules that the gummed tape may be removed because, as has been shown earlier, he maintains that its attachment does not constitute a form of "sewing". Since the cohesion of the adhesive strip and the plastic shield covering the diaper is not a proper form of "sewing" they are not deemed to have been cojoined as a unitary object; hence destruction of the cohesion cannot constitute a form of "tearing" a unitary object into separate entities. However, since removal of the adhesive strip is permitted only because its original application is not deemed a form of attachment, Rabbi Yosef cautions that this consideration does not pertain to the tearing of the diaper and hence the diaper itself should not be torn in the process of removing it from the baby. Even though care is taken not to tear the diaper it is entirely possible that, in a significant number of instances, the diaper will nevertheless be torn. Such tearing of the diaper, Rabbi Yosef notes, presents no problem whatsoever since it is an unintended effect of an otherwise permitted act (*davar she-eino mitkhaven*). Moreover, Rabbi Yosef is prepared to permit removal of the tape even if it is certain that unintended ripping of the diaper must occur. Even though the unintended prohibited result is a necessary effect (*pesik reisha*) it is undesired. Rabbi Yosef rules that such an undesired necessary effect (*pesik reisha de-lo niha leih*) is permitted when the infraction involved is only rabbinic in nature.⁴²

41. See, however, *Chazon Ish, Orach Chayyim* 61:2, who maintains that it is now customary to open letters in a manner which is designed to preserve the envelope as a receptacle and hence such an act is forbidden as the fashioning of a utensil. Cf. also, the negative views of *Mishnah Berurah* 440:41 and *Iggerot Mosheh, Orach Chayyim*, I, no. 122, sec. 8.

42. See *Tosafot, Yoma* 34b; R. Yosef Sha'ul Nathanson, *Sho'el u-Meshiv, Mahadura Kamma*, I, no. 210; *idem, Mahadurah Telita'ah*, III, no. 3; R. Malki'el Zevi Tennenbaum, *Divrei Malki'el*, II, *Yoreh De'ah*, no. 42, sec. 31; R. Yitzchak Elchanan Spektor, *Teshuvot Be'er Yitzchak, Orach Chayyim*, no. 15, sec. 5; and *Teshuvot Maharam Brisk*, I, no. 59. See also, below, note 47.

Rabbi Liebes similarly permits the tearing of the gummed tape but apparently not of the diaper itself. In doing so he relies upon authorities who maintain that, although sewing non-permanent stitches is forbidden by virtue of rabbinic edict, tearing such stitches is not forbidden.

In the course of a lengthy and incisive analysis of a number of fundamental principles concerning Sabbath restrictions which appeared in the Kislev 5744 issue of *Moriah*, the use of disposable diapers on Shabbat is discussed in an almost tangential manner by R. Pinchas Scheinberg, Rosh Yeshivah of Yeshivah Torah Or in Jerusalem. Removal of the gummed tape without tearing the diaper poses no problem for Rabbi Scheinberg, just as it poses no problem for Rabbi Waldenberg,⁴³ since he does not regard its attachment as a form of "sewing". Tearing the diaper itself, however, is an entirely different matter. Although he agrees with the position of the earlier cited authorities that ripping the diaper in its removal is destructive in nature, Rabbi Scheinberg nevertheless advances a novel view which would militate against that practice.

*Chazon Ish*⁴⁴ certainly understands the Tosefta cited by *Magen Avraham* as permitting any type of tearing which is destructive in nature and it is this position which is assumed by Rabbi Gestetner and Rabbi Falk.⁴⁵ Although, in general, forbidden forms of labor may not be performed on Shabbat by virtue of rabbinic decree, *Chazon Ish* maintains that destructive forms of tearing, and destructive forms of undoing a knot, as well as destruction of a utensil are permitted when performed in order to make use of an otherwise inaccessible object. Rabbi Scheinberg, however, asserts that even destructive forms of tearing are forbidden by rabbinic edict. According to Rabbi Scheinberg, the element of destructiveness serves to negate only what would otherwise be deemed the "building" of a utensil but does not serve to render other forms of labor permissible. Accordingly, Rabbi Scheinberg understands the Tosefta as permitting only the ripping

43. See above, note 25 and accompanying text.

44. *Orach Chayyim* 51:13 and 61:2.

45. See also, *Iggerot Mosheh*, *Orach Chayyim*, I, no. 122.

of the skin cover in its entirety from the barrel but not the perforation of the skin. Citing *Bi'ur Halachah* 314:8, and *Pri Megadim, Eshel Avraham* 317:9, he asserts that there is no prohibition against tearing when subsequent sewing is impossible. Therefore, explains Rabbi Scheinberg, the skin may be ripped off since it cannot be sewn to the barrel, but the skin itself may not be torn since it can be mended by means of sewing.⁴⁶

Nevertheless, Rabbi Scheinberg does find other grounds upon which to permit the tearing of even the diaper itself in order to facilitate its removal. He assumes (as do *Shulchan Aruch Shulchan Aruch ha-Rav* and *Teshuvot Shevet ha-Levi* but, as noted earlier, contrary to the position of *Chazon Ish*) that *Ramo, Orach Chayyim* 317:3, accepts the opinion permitting the tearing of a non-permanent seam as normative and forbids such an act only in the presence of an uneducated person who may not perceive the distinction. However, in an argument similar to that advanced by Rabbi Stern, Rabbi Scheinberg contends that such a consideration pertains only in a situation in which the sewn object may appear to be permanent in nature and hence the untutored observer may be led into error. In the case of the gummed tape, argues Rabbi Scheinberg, even the uneducated will readily recognize that the adhesion is in no way durable in nature.⁴⁷ Moreover, asserts Rabbi Scheinberg, acts which are forbidden only in the presence of the uneducated are permitted for reasons of "great need" and may therefore be permitted for the benefit of an infant. As noted earlier, the identical consideration is also advanced by Rabbi Wosner. Rabbi Eliezer Waldenberg and Rabbi Mordecai Eliyahu both rule that the rabbinic edict prohibiting tearing non-permanent stitches does not apply "in situations of pain."

However, as emphasized by Rabbi Silber⁴⁸ and by Rabbi Waldenberg⁴⁹ care must be taken to tear the gummed tape rather

46. Cf. however, *Aruch ha-Shulchan, Orach Chayyim* 314:20.

47. Unintentional tearing of the diaper is permitted by Rabbi Scheinberg for the identical reason advanced by Rabbi Yosef; see above, note 42 and accompanying text.

48. *Az Nidberu*, XII, no. 11.

49. *Tzitz Eliezer* XVI, no. 6, sec. 9.

than simply to slip the diaper off the baby lest the adhesion be left as a permanent joining of the tape to the diaper.⁵⁰

III. Removal of Protective Plastic

The gummed tabs attached to disposable diapers are covered with protected strips of thin plastic at the time of manufacture. Those plastic strips are designed to be peeled off prior to use of the diaper. The plastic strips serve to protect the adhesive on the tape and to prevent the adhesive from sticking to other diapers in the box and thereby effectively ruining both the tab and the diaper to which it becomes attached.

At one time it was the practice for shoemakers to sew the right and the left shoes together as a pair. The customer would then tear or cut the threads which held the shoes together. Ramo, *Orach Chayyim* 317:3, records a controversy with regard to whether or not it is permissible to rip or cut these threads on the Sabbath in order to separate the shoes. All agree that it is forbidden to do so in the presence of an ignorant person.

R. Pesach Eliyahu Falk⁵¹ argues that the removal of the protective covering which adheres to the gummed tape is forbidden according to both authorities cited by Ramo. *Taz*⁵² declares that the parameters of "permanent" versus "non-permanent" forms of sewing parallel those which establish similar categories of "permanent" and "non-permanent" knots. All knots which are permanent in nature are forbidden to be tied on Shabbat by virtue of biblical law. Mordechai, cited by *Shulchan Aruch, Orach Chayyim* 317:1, maintains that it is forbidden to tie any knot designed to remain knotted for a minimum of seven days. The tying of such knots is prohibited by rabbinic decree. *Kol Bo*, similarly cited by *Orach Chayyim* 317:1, maintains that rabbinic law prohibits the tying of any knot designed to remain tied longer

50. As noted earlier, Rabbi Silber himself maintains that, even if the tab is not torn subsequently, the cohesion is not deemed to be "permanent" in nature.

51. *Teshuvot Machazeh Eliyahu*, no. 70, sec. 2.

52. *Orach Chayyim* 417:6.

than a single day. According to *Taz*, it is similarly forbidden, at least by virtue of rabbinic decree, to cut or tear stitches designed to remain in place for a period of longer than one day or one week.

Disposable diapers, manufactured and packaged in a factory, argues Rabbi Falk, are certainly not designed to be removed from their wrapping and used within a week of manufacture. A similar ruling in the name of R. Shlomo Zalman Auerbach is recorded by R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilchatah* (Jerusalem, 5739) 35: 26, note 66, with regard to use of band-aids on Shabbat. Rabbi Auerbach forbids removal of the inner protective covering of the adhesive strip of the band-aid as a proscribed form of tearing because the covering is intended to remain in place for an extended period of time. A similar view is expressed by R. Yitzchak Weisz.⁵³ Accordingly, maintains Rabbi Falk, it is similarly forbidden to remove the protective covering from the gummed tape attached to a disposable diaper. R. Samuel Wosner⁵⁴ similarly requires that the protective covering be removed before Shabbat. *Shemirat Shabbat ke-Hilchatah* 15:81, also stipulates that the protective covering must be removed before Shabbat but observes that, once removed, the protective covering may be replaced with the intention to remove it on Shabbat. Since the covering is designed to be removed within the period of a day, it is comparable to a knot which may be tied provided that it is designed to be untied the same day.⁵⁵ A similar view is quoted in the name of R. Yechezkel Abramsky by Dr. Abraham S. Abraham.⁵⁶

In challenging this analysis Rabbi Scheinberg points out that

53. *Teshuvot Minchat Yitzchak*, V, no. 39, sec. 2.

54. *Teshuvot Shevet ha-Levi*, V, no. 78, sec.4.

55. See *Shemirat Shabbat ke-Hilchatah* 15:81, note 250. *Teshuvot Be'er Mosheh*, VI, no. 14, refuses to permit reattachment of the protective covering on the tenuous ground that it is necessary "to make a sign and change that they may know that today is Shabbat and not be disdainful." His position is even more incongruous in light of the fact that in *Teshuvot Be'er Mosheh*, I, no. 36, he regards removal of the protective covering of band-aids as so obviously permissible that no explanation need be given. See below, note 58.

56. *Lev Avraham*, I, 6:117, note 223, and *Nishmat Avraham, Orach Chayyim* 328:28, note 545.

the shoes described by Ramo which, according to one view, may be cut or torn on Shabbat, were certainly not sold and separated on the very day they were sewn together.⁵⁷ Rabbi Scheinberg proceeds to argue that the crucial factor is the desire of the individual who ties the knot or who sews the items together. If, for some purpose, he desires that the knots or stitches remain in place for a day or for a week it is forbidden to untie the knot or to tear the stitches. If, on the other hand, he has no such purpose or desire, it is permitted to untie the knot or to cut the stitches even though, in reality, the knot or the stitches will remain intact for a longer period of time and it is known in advance that this will be the case. The fact that the knot or the stitches remain intact is a mere "technical" or accidental matter, argues Rabbi Scheinberg, rather than a factor intrinsic to the tying of the knot or the sewing of the stitches. The manufacturer of band-aids or of disposable diapers, argues Rabbi Scheinberg, certainly has no objection to their immediate sale and use. To be sure, he knows that they will not be sold to the consumer immediately. But since any delay in sale and use is not by design, Rabbi Scheinberg concludes that there is no impediment to removal of the protective covering from either band-aids or disposable diapers.

Yet another argument for permitting the removal of the protective plastic is advanced by Rabbi Waldenberg. Rabbi Waldenberg, who apparently is of the opinion that destructive forms of tearing are entirely permissible, suggests that the protective covering may be removed because it is ripped off in a destructive manner for purposes of being thrown away. Rabbi Waldenberg reasons that since the covering is peeled off and disposed of as a means of gaining access to the underlying adhesive, its removal is comparable to tearing the skin covering a barrel of wine which most authorities regard as expressly permitted

57. The identical point is made by R. Ovadiah Yosef in opposition to the view expressed by *Minchat Yitzchak* and R. Shlomo Zalman Auerbach. Rabbi Yosef, however, concludes that it is preferable to remove the protective covering before *Shabbat*.

by the Tosefta, *Shabbat* 17:9.⁵⁸ Nevertheless, Rabbi Waldenberg advises that, in light of conflicting opinions, the protective covering be removed before Shabbat. However, Rabbi Waldenberg agrees that, subsequent to its removal, the protective covering may be replaced before Shabbat.

58. This may also be the basis of the permissive view expressed by *Teshuvot Be'er Mosheh*, I, no. 36. See above, note 55.