

All agree with regard to a slave, etc. – הכל מודים – בעבד וכו': The early commentaries point out that the inclusive phrase: All agree, should not be understood as including Rabbi Yehoshua. This is because even if it could be proven that Rabbi Yehoshua holds that betrothal is ineffective when performed with relatives who are forbidden by a prohibition for which one is liable to *karet*, nevertheless, he would still hold that the offspring of such unions are not *mamzerim*. Accordingly, in the case of a union with a gentile or a slave, who are entirely excluded from the possibility of betrothal, he would certainly hold that the offspring would not be *mamzerim* (see *Tosafot, Tosafot Yeshanim*, and *Ramban*).

מקל וחומר מאלמנה. ומה אלמנה לכהן גדול, שאין איסורה שוה בכל – בנה פגום, זו שאיסורה שוה בכל – אינו דין שבנה פגום?

This is derived through an *a fortiori* inference from the *halakha* of a widow, as follows: Just as in the case of a widow who is married to High Priest, where the prohibition that pertains to her is not equally applicable to all, i.e., only a High Priest is prohibited from marrying a widow, and nevertheless her child from that union will have flawed lineage, then so too with regard to this woman, where the prohibition that pertains to her is equally applicable to all Jews, isn't it logical that her child from that union should have flawed lineage?

וכי תימא: מה לאלמנה שכן היא עצמה מתחללת – הכא נמי, בין שבעלה – עשאה זונה.

And if you would say that the logic of this *a fortiori* inference could be refuted in a manner similar to the suggestion above that what is true with regard to a widow, who is herself disqualified from marrying a priest, is not true with regard to a woman who is forbidden by a prohibition for which one is liable to *karet*, that is not correct because here, too, once he has engaged in intercourse with her he renders her a *zona*, and as such she is disqualified from marrying into the priesthood.

אמר רבה בר בר חנה אמר רבי יוחנן: הכל מודים בעבד וגוי הבא על בת ישראל שהולד ממזר.

§ The Gemara considers the status of other children born from forbidden unions: Rabba bar bar Ḥana said that Rabbi Yoḥanan said: All agree with regard to a slave^N or a gentile who engaged in intercourse with a Jewish woman that the offspring born from such a union is a *mamzer*.

מאן "הכל מודים" שמעון התימני. דאף על גב דאמר שמעון התימני אין ממזר מחייבי לאוין – הני מילי

The Gemara clarifies: Who is included by saying: All agree? It is Shimon HaTimni, as although Shimon HaTimni said that the offspring of relations for which one is liable for violating a prohibition is not a *mamzer*, this applies only

Perek IV

Daf 45 Amud a

מחייבי לאוין דתפסי בהו קדושין, אבל הכא – גוי ועבד, בין דלא תפסי בהו קדושין – כתיבי פרייתות דמי.

to forbidden relations for which one is liable for violation of a prohibition concerning which a betrothal between the couple would take effect. However, here, with regard to a gentile and a slave, since their betrothal of a Jewish woman would not take effect,^{NH} a union with them is comparable to forbidden relations for which one is liable to receive *karet*, and therefore the offspring of such a union will be a *mamzer*.

מיתבי: גוי ועבד הבא על בת ישראל – הולד ממזר, רבי שמעון בן יהודה אומר: אין ממזר אלא ממי שאיסורו איסור ערוה, ועגוש כרת.

The Gemara raises an objection from a *baraita*: In the case of a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring born from such a union is a *mamzer*. Rabbi Shimon ben Yehuda says: The offspring is a *mamzer* only if born from relations with one who is forbidden by a prohibition of forbidden relations that are punishable by *karet*. It is apparent from the *baraita* that one who holds, as does Shimon HaTimni, that only the offspring from forbidden relations for which one is liable to receive *karet* is a *mamzer*, nevertheless holds that the offspring of a slave or gentile and a Jewish woman is not a *mamzer*.

אלא אמר רב יוסף: מאן "הכל מודים" – רבי. אף על גב דרבי אומר: אין הדברים הללו אמורים אלא לדברי רבי עקיבא, שהיה עושה חלוצה בערוה, וליה לא סבירא ליה – בגוי ועבד מודה. דכי אתא רב דימי אמר רב יצחק בר אבדימי משום רבינו: גוי ועבד הבא על בת ישראל – הולד ממזר.

Rather, Rav Yosef said: Who is included by saying: All agree? It is Rabbi Yehuda HaNasi, as although Rabbi Yehuda HaNasi says in a *baraita* (52b) concerning the mishna (50a–51b) that states that a levirate betrothal between a *yavam* and a *yevama* with whom he had already performed *halitza* is ineffective: This statement was said only according to the statement of Rabbi Akiva, as he would consider a *halitza* like a forbidden relative such that if the *yavam* betrothed her it would not take effect. And although Rabbi Yehuda HaNasi himself does not hold accordingly with regard to that issue, with regard to the offspring of a union with a gentile or a slave he concedes that the offspring is a *mamzer*. As, when Rav Dimi came from Eretz Yisrael, he said that Rav Yitzhak bar Avudimi said in the name of our Master, i.e., Rabbi Yehuda HaNasi: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring is a *mamzer*.

NOTES

The betrothal of a gentile or a slave with a Jewish woman does not take effect – נכרי ועבד לא תפסי בהו – קדושין: The early commentaries offer various proofs that the betrothal of a gentile or a slave with a Jewish woman is ineffective. With regard to a slave, Rashi cites the homiletic derivation of the verse in which Abraham instructs his slave attendants to "remain here with [im] the ass" (Genesis 22:5), to indicate that slaves are considered to be a people [am] that is comparable to an ass in that their betrothal is entirely ineffective. With regard to a gentile, he cites the case of the gentile female prisoner of war (see Deuteronomy 21:10–14), from which it is clear that there is no possibility of betrothing her prior to her conversion. See Rashi for additional proofs that he cites in the name of the *She'iltot de Rav Aḥai Gaon*. The Ramban also cites an additional proof from the *Mekhilta*: A gentile maidservant may be given to a Hebrew slave in order for them to bear children for their master. When eventually the Hebrew slave goes free, he does not take the gentile maidservant with him; rather, she remains as a slave. The *Mekhilta* demonstrates from here that no marital bond could have existed between them. Through a verbal analogy, the *Mekhilta* derives that the same is true of a gentile.

HALAKHA

אין – Betrothal does not apply to a gentile or a slave – קדושין בנכרי ועבד: If a gentile or a slave betroths a Jewish woman, the betrothal does not take effect at all. Similarly, if a Jew betroths a gentile woman or a maidservant, the betrothal does not take effect (Rambam *Sefer Nashim, Hilkhot Ishut* 4:15; *Shulḥan Arukh, Even HaEzer* 44:8).

PERSONALITIES

Rabbi Aḥa, lord of the capital – רבי אחא שר הביירה – This Rabbi Aḥa was a third-generation amora of Eretz Yisrael, and very little is known about his teachers. Apparently there was also a fifth-generation tanna in Eretz Yisrael of the same name; they may have been related.

Some explain that the title: Lord of the capital, was based on a family legacy, and that one of his ancestors had been the minister appointed over the capital, i.e., the Temple Mount in Jerusalem.

BACKGROUND

Armon – ארמון: Some say that Armon is the name of a place in Eretz Yisrael, possibly Kadesh Naftali. Others suggest that Armon is the Hebraic rendition of the country Armenia. It is reasonable to assume that these captives came from a distant place because it is known that captors would bring Jewish captives from remote locations to Tiberias, at that point the main city of Eretz Yisrael, since the Jewish community there would take great efforts to redeem them.

NOTES

The offspring has flawed lineage and is prohibited from marrying into the priesthood – הולד פגום לכהונה – The early commentaries debate whether this ruling is accepted as halakha. Most commentaries hold, based on the Gemara's a fortiori inference from the halakha of a widow, that a daughter of a gentile or slave with a Jewish woman would certainly be unfit to marry into the priesthood. This also appears to be the conclusion in the Jerusalem Talmud. However, a son from such a union would not be rendered unfit in any way, such that even if he were to father a daughter with a Jewish woman, that daughter would be fit to marry into the priesthood.

Other commentaries disagree and claim that even the daughter of the gentile or slave would be considered fit to marry into the priesthood. They bring support for their opinion from the conclusion of the Gemara's discussion, which states simply that the offspring of a gentile or slave and a Jewish woman is considered fit, without making any further distinctions. They reject the implication of the a fortiori inference because according to it, the woman should be rendered a ḥalala, who is unfit to marry a priest, and they hold that ultimately the halakha is that a woman can be rendered a ḥalala only in cases where there is a violation of one of the prohibitions that are unique to the priesthood (see Yam shel Shlomo). Some explain that even if the woman who engaged in intercourse with the gentile or slave is disqualified by doing so, the offspring will not be, because the offspring of a gentile with a Jewish woman is never halakhically recognized as relating to him. Since the offspring is not considered to be descended from him it cannot be disqualified on his account (Ritva).

Isn't it logical that her child [benah] from that union will have flawed lineage – אינו דין שפגמה פגום – Rashi and Rivan both note that although the Gemara says benah, which literally means: Her son, it should be taken as meaning her child, and the intention is actually a daughter who will be rendered unfit to marry into the priesthood. However, others suggest that the Gemara can be understood as referring to a son. Although normally the status of ḥalal, one whose flawed lineage disqualifies him from the priesthood, is applied only to a descendant of a priest, in this case the son would be rendered unfit to the same extent as a ḥalal such that if he were to father a daughter with another Jewish woman, that daughter would be unfit to marry into the priesthood.

רבי אחא שר הביירה ורבי תנחום בריה דרבי חייא איש כפר עבו פרוק הנהו שבוייתא דאתו מארמון לטבריא. הוה חדא דאעברא מגוי ואתו לקמיה דרבי אמאי. אמר להו: רבי יוחנן ורבי אלעזר ורבי חנינא דאמרי, גוי ועבד הבא על בת ישראל הולד ממור.

אמר רב יוסף: רבותא למחשב גברי? הא רב ושמואל בבבל, ורבי יהושע בן לוי ובר קפרא בארץ ישראל, ואמרי לה: חלופי בר קפרא ועיילי זקני דרום, דאמרי: גוי ועבד הבא על בת ישראל – הולד כשר.

אלא אמר רב יוסף: רבי היא. דכי אתא רב דימי אמר רבי יצחק בר אבדימי משום רבינו אמרו: גוי ועבד הבא על בת ישראל – הולד ממור.

רבי יהושע בן לוי אומר: הולד מקולקל. למאן? אילימא לקהל – הא אמר רבי יהושע הולד כשר, אלא לכהונה – דכיליהו אמוראי דמכשרי מודו שהולד פגום לכהונה.

מקל וחומר מאלמנה: מה אלמנה לכהן גדול, שאין איסורה שוה בכל – בנה פגום, זו שאיסורה שוה בכל – אינו דין שפגמה פגום.

מה לאלמנה לכהן גדול שכן היא עצמה מתחללת! הכא נמי, כיון שנבעלה פסקה.

The Gemara cites a related incident: Rabbi Aḥa, lord of the capital,^P and Rabbi Tanḥum, son of Rabbi Ḥiyya, the man of Akko village, redeemed those captives who came from Armon^B to Tiberias. One of them had been impregnated by a gentile, and they came before Rabbi Ami to ask what the offspring's status would be when born. He said to them that Rabbi Yoḥanan and Rabbi Elazar and Rabbi Ḥanina all say: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring is a mamzer.

Upon hearing this, Rav Yosef said: Is it so great to enumerate men? The fact that several great Sages held this opinion does not prove that their opinion is the accepted halakha. But there are Rav and Shmuel in Babylonia, and Rabbi Yehoshua ben Levi and bar Kappara in Eretz Yisrael, and some say to remove bar Kappara from this list and insert instead the Elders of the South, who all say: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the lineage of the offspring is unflawed, and he or she may marry into the congregation of Israel.

Rather, Rav Yosef said the halakha is in fact that the offspring is a mamzer because this is Rabbi Yehuda HaNasi's opinion, as when Rav Dimi came from Eretz Yisrael he said that Rav Yitzḥak bar Avudimi said in the name of our Master, i.e., Rabbi Yehuda HaNasi, that they say: With regard to a gentile or a slave who engaged in intercourse with a Jewish woman, the offspring is a mamzer.

Rabbi Yehoshua ben Levi says: The lineage of the offspring is sullied, and if the child is a girl she is restricted in whom she may marry. The Gemara asks: To whom is she prohibited from marrying? If we say it is to the congregation of Israel, but didn't Rabbi Yehoshua himself say that the lineage of the offspring is unflawed and he or she may marry into the congregation of Israel? Rather, the offspring is prohibited to marry into the priesthood, as all of the amora'im who render the offspring fit to enter the congregation of Israel agree that the offspring has flawed lineage and is forbidden to marry into the priesthood.^{NH}

This is derived from an a fortiori inference from the halakha of a widow, as follows: Just as in the case of a widow who is married to a High Priest, where the prohibition that pertains to her is not equally applicable to all Jews, i.e., only a High Priest is prohibited from marrying a widow, and nevertheless her child from that union will have flawed lineage, then so too with regard to this woman who engaged in relations with a gentile or slave, where the prohibition that pertains to her is equally applicable to all Jews, isn't it logical that her child from that union will have flawed lineage?^N

And if one would say that the logic of this a fortiori inference could be refuted by claiming that what is true with regard to a widow who is married to a High Priest, where her union with him is what makes her herself disqualified from subsequently marrying any priest and, if she is the daughter of a priest, from eating teruma, is not true with regard to the prohibition against a Jewish woman engaging in relations with a gentile or a slave. This is not correct, because here, too, once he has engaged in intercourse with her,^H he thereby renders her unfit to marry into the priesthood.

HALAKHA

The offspring has flawed lineage and is prohibited from marrying into the priesthood – הולד פגום לכהונה – Although the offspring of a gentile or slave who engaged in intercourse with a Jewish woman is fit to marry into the congregation of Israel, if the offspring is a daughter then she is prohibited from marrying a priest. This is in accordance with the Gemara here and several other places where it is stated that this fact is unanimously accepted. Some (Rif; Ramban; Rambam, as explained by Maggid Mishne) rule that she is not unfit to marry into the priesthood. Therefore, later commentaries (Beit Shmuel; Helkat Meḥokek) rule

that if the daughter went and married a priest then this lenient opinion may be relied upon, and they need not divorce (Rambam Sefer Kedusha, Hilkhoh Issurei Bia 15:4; Shulḥan Arukh, Even HaEzer 4:4–5, 19; 7:17).

A gentile who engaged in intercourse with a Jewish woman – נכרי הבא על בת ישראל: If a gentile or slave engaged in intercourse with a Jewish woman, she becomes a zona and is therefore prohibited from marrying into the priesthood (Rambam Sefer Kedusha, Hilkhoh Issurei Bia 18:2; Shulḥan Arukh, Even HaEzer 6:8).

A gentile or slave who engaged in intercourse with a Jewish woman – גוי ועבד הבא על בת ישראל – With regard to a gentile or slave who engaged in intercourse with a Jewish woman, the offspring of such a union is fit to enter into the congregation of Israel, irrespective of whether the woman was married or unmarried and whether the intercourse was consensual or forced (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 15:3; *Shulhan Arukh, Even HaEzer* 4:5, 19).

NOTES

A camel in Medes, etc. – גמלא במדי וכו' – The Rivan interprets this to mean that the camels there are so well trained that they can stand with all four legs on a space that holds one kav. The Meiri explains that it means that the camels there are so small that they can stand inside of a space that holds one kav. See the *Arukh LaNer*, who explains how this imagery alludes to a deeper meaning.

הא קבא... ולא רקדא – This is a kav... and it is not dancing – One commentary explains that the man who asked the question was himself a Torah scholar and that is why Rav Shimi bar Hiyya wanted to intervene on his behalf. He brings support for his claim from the fact that Rav compared the man to the biblical Joshua, which, at the very least, suggests that he was an important figure in his own right (Ya'avetz).

I would not give him – לא יהיבנא ליה – Some explain that Rav's hesitance was because he did not want to introduce anyone with flawed lineage into his family. Possibly he believed that the son of a gentile is unfit for the priesthood; alternatively, Rav considered the very fact that one is descended from a gentile to be a flaw, even if there are no associated prohibitions with that flaw (see Rivan). Others explain that his concerns had nothing to do with the man's lineage but were due to an entirely unrelated issue.

BACKGROUND

A camel in Medes – גמלא במדי – In talmudic literature, Medes is often used as an example of a distant, unknown land. This example was first used in the period of the Mishna, when Medes was far from the Jewish center of life in Eretz Yisrael. Later, when the Jewish community was centered in Babylonia, the example continued to be used despite the fact that Medes is actually near Babylonia.

דאמר רבי יוחנן משום רבי שמעון: מנין לגוי ועבד הבא על הכהנת ועל הלוייה ועל הישראלית שפסלוה – שנאמר "ובת כהן כי תהיה אלמנה וגרושה", מי שיש לו אלמנות וגרושות בה, יצאו גוי ועבד שאין להם אלמנות וגרושות בה.

As Rabbi Yohanan said in the name of Rabbi Shimon: From where is it derived with regard to a gentile or a slave who engaged in intercourse with a daughter of a priest or with a female Levite or with a female Israelite that they thereby render her unfit to marry into the priesthood? As it is stated: "But a priest's daughter when she will become a widow, or a divorcée, and have no child, she returns to her father's house as in her youth" (Leviticus 22:13). The verse indicates that she returns to her father's house and enjoys the rights of the priesthood only in a case where she engaged in intercourse with one to whom widowhood and divorce can apply, i.e., one with whom her marriage would be valid and would be broken only through death or divorce. Excluded from this is a union with a gentile or a slave, to whom neither widowhood nor divorce can apply, as no marriage bond can be formed with them.

אמר ליה אבוי: מאי תזית דסמכת אדרב דימי? סמוך אדרבין! דכי אתא רבין אמר: רבי נתן ורבי יהודה הנשיא מורים בה להיתירא, ומאן רבי יהודה הנשיא – רבי.

Abaye said to Rav Yosef: What did you see that you rely upon Rav Dimi and his tradition that Rabbi Yehuda HaNasi holds that the offspring of a gentile or a slave and a Jewish woman is a mamzer? Rely instead upon Ravin, as when Ravin came from Eretz Yisrael he said that Rabbi Natan and Rabbi Yehuda HaNasi both rule that the offspring is permitted to marry into the congregation of Israel. And who is the Rabbi Yehuda HaNasi referred to in Ravin's report? It is the one who is simply referred to as Rabbi, the redactor of the Mishna, whose opinion is accepted as the halakha.

ואף רב מורה בה היתירא, דההוא דאתא לקמיה דרב, אמר ליה: גוי ועבד הבא על בת ישראל מהו?

The Gemara notes: And even Rav rules that the offspring is permitted, as is evident from an incident involving a certain individual who came before Rav and said to him: With regard to the offspring of a gentile or a slave who engaged in intercourse with a Jewish woman,¹⁴ what is its halakhic status?

אמר לו: הולך כשר. אמר ליה: הב לי ברתך! לא יהיבנא לך.

Rav said to him: The lineage of the offspring is unflawed. The individual who asked the question was himself such a child, and he said to Rav: If so, give me your daughter in marriage. He said to him: I will not give her to you.

אמר שימי בר חייא לרב: אמרי אינשי: גמלא במדי אקבא רקדא, הא קבא והא גמלא והא מדי – ולא רקדא!

Shimi bar Hiyya,¹⁵ Rav's grandson, said to Rav: People often say that a camel in Medes¹⁶ can dance upon a small space that holds only a single kav of produce. However, clearly that is an exaggeration, since if one would go to Medes one could demonstrate that this is a space that holds a kav, and this is a camel, and this is Medes, and yet the camel is not dancing,¹⁷ i.e., the truth of a statement becomes apparent when it is put to the test. So too, it would appear that you do not truly believe in your ruling because when put to the test, you are unwilling to rely on it.

אמר ליה: אי נהוי ביהושע בן נון לא יהיבנא ליה ברתמי. אמר ליה: אי הוה ביהושע בן נון, אי מר לא קבא ליה – אחרני יהבי ליה. הא, אי מר לא יהבי ליה – אחרני לא יהבי ליה.

He said to him: Even if he were as great as Joshua, son of Nun, I would not give him¹⁸ my daughter in marriage. My refusal to give her to him in marriage is not that I do not stand by my ruling; it is for other reasons. He said to him: If he were as great as Joshua, son of Nun, then even if the Master would not give him his daughter, others would still give him their daughters. However, with regard to this man, if the Master does not give him his daughter, others will not give him their daughters either out of fear of damaging the family lineage. Nevertheless, Rav remained unwilling to give his daughter to that individual.

PERSONALITIES

Shimi bar Hiyya – שימי בר חייא – Rav Shimi bar Hiyya was among the second-generation *amora'im* of Babylonia. He was a grandson of Rav and apparently his preeminent disciple and much beloved by him. Even during his grandfather's lifetime, Rav Shimi was recognized as a significant Torah scholar. The Talmud records

numerous halakhic teachings of his, both those he transmitted in the name of his grandfather and those of his own. In certain cases he even disagreed with the rulings of his grandfather. Given their close familial relationship, it is clear why here he allowed himself to address Rav in such an informal manner.

BACKGROUND

He placed his eyes upon him and he died – יָהִיב בְּיָה עֵינָיָה – וְשָׁכַיב: This concept is mentioned in the Talmud on a number of occasions. The Or HaHayyim on Exodus 11:5 and 23:23 explains that when a righteous person looks at others he can draw out the sparks of holiness that each individual has, and if that individual does not have any other merits to stay alive, he might die as a result. This explanation might be challenged from the fact that the Talmud cites a similar event with Rav Sheshet (Berakhot 58b), despite the fact that he was blind. In the Iggeret HaKodesh (attributed to the Ramban) it is explained that the word eyes does not literally refer to eyes but rather to the thought process of a righteous person, which can affect other people for good or bad.

לֹא הָיָה קְאוּיִל מִקְמִיָּה, יָהִיב בְּיָה עֵינָיָה וְשָׁכַיב.

That individual would not go from standing before Rav and continued to plead with him. Rav placed his eyes upon him and he died.⁸

וְאִף רַב מַתְנָה מוֹרָה בָּהּ לְהִיטְיָרָא, וְאִף רַב יְהוּדָה מוֹרָה בָּהּ לְהִיטְיָרָא. דְּבִי אֲתָא לְקַמְיָה דְּרַב יְהוּדָה אָמַר לֵיהּ: זֵיל אִיטְמַר, אוֹ נְסִיב בֵּת מִיְנָךְ. וְכִי אֲתָא לְקַמְיָה דְּרַבָּא אָמַר לֵיהּ: אוֹ גִלִּי, אוֹ נְסִיב בֵּת מִיְנָךְ.

The Gemara adds: **And even Rav Mattana rules that the offspring is permitted, and even Rav Yehuda rules that the offspring is permitted, as is evident from the fact that when a child of a gentile or slave and a Jewish woman came before Rav Yehuda, he said to him: Go and conceal your paternal lineage^N so that people will not refrain from giving you their daughters in marriage, as it is permitted for you to marry into the congregation of Israel, or otherwise, marry a woman of your own kind, i.e., a woman of similar lineage. And similarly, when such a person came before Rava, he said to him: Either go into exile^N to a place where your lineage is unknown, so that others will give you their daughters in marriage, or marry a woman of your own kind.**

שְׁלַחוּ לֵיהּ בְּנֵי בֵי מִיכְסֵי לְרַבָּה: מִי שְׁחָצִיו עֶבֶד וְחָצִיו בֶּן חוֹרִין הֵבֵא עַל בֵּית יִשְׂרָאֵל מֵהוּ? אָמַר לָהּ: הִשְׁתָּא עֶבֶד כּוֹלֹ אֲמַרִינָן כְּשֶׁר – חָצִיו מִיבְעִיא?

The residents of Bei Mikhsei sent the following question to Rabba: With regard to the offspring of one who is a half-slave half-freeman, who engaged in intercourse with a Jewish woman, what is its halakhic status? He said to them: Now that with regard to the offspring of a full slave we say that his lineage is unflawed, is it necessary to ask about a half-slave?

אָמַר רַב יוֹסֵף: מָרָא דְשִׁמְעֵתָא

Rav Yosef said: The Master who is responsible for dissemination of this halakha that the offspring of a slave and a Jewish woman is not a mamzer,

NOTES

Go and conceal your paternal lineage – וִיל אִיטְמַר: Evidently, Rav Yehuda maintains that the child of a gentile and a Jewish woman is fit to marry even a priest, as if this were not the case his advice might lead to a prohibited marriage, since the daughter of this man might mistakenly think that she is eligible to marry a priest as her father did not disclose his lineage (Rashba). However since the halakha is that such a child is considered to be of flawed lineage and may not marry a priest (see Even HaEzer 4:5 and 4:19), a father would not be allowed to conceal his lineage.

Another issue that arises from Rav Yehuda's advice is the propriety and ramifications of deceptive behavior between potential marriage partners, which Rav Yehuda appears to be encouraging. Apart from the ethical issues involved, doing so might render the betrothal as mistaken, thereby undermining its validity. The Tzitz Eliezer (17:48) suggests that Rav Yehuda's suggestion was permitted only at that time, as it was not universally accepted that the offspring of a gentile and a Jewish woman was of unflawed lineage, and there was a need to establish this halakha so that such people would be able to marry and would not be rejected even though

they are permitted. However, the Kehillot Ya'akov (Yevamot 44) maintains that not revealing one's flawed lineage is not considered deceptive whenever the marriage itself is permitted. He rationalizes that even if one would respond unfavorably to certain information concerning lineage before the couple is married, it is obvious that once they are happily married they would not divorce over such an issue. Therefore, it cannot be considered a mistaken betrothal, and so the deception should be permitted for the sake of the mitzva to marry. Alternatively, it is possible that Rav Yehuda was merely advising him to go to a place where people do not examine lineage so closely, where he would have a better chance of marrying (see Tosafot on 47a).

Go and conceal your lineage...go into exile – וִיל אִיטְמַר... גִּלִּי: The later commentaries attempted to explain why these Sages differed in their choice of language. One explains that the man who asked this question of Rava was famous in his locale and therefore could not conceal his lineage (Melo HaRo'im).

מנו – רב יהודה, והאמר רב יהודה:
מי שחציו עבד וחציו בן חורין הבא
על בית ישראל – אותו ולד אין לו
תקנה.

כי איתמר דרב יהודה כגון דקדיש
בית ישראל דנמצא עד עבודת שבו
משתמש באשת איש.

והאמרי נהרדעי משמיה דרבי יעקב:
לדברי הפוסל – פוסל אפילו בפנויה,
לדברי המכשיר – מכשיר אפילו
באשת איש.

ושניהם לא למדוה אלא מאשת
אב – מאן דפסיל סבר: מה אשת אב
דלא תפסי בה קדושין [הולד ממור] –
אף כל דלא תפסי בה קדושין הולד
ממור.

who is he? He is Rav Yehuda, as the Gemara cited above. **But didn't Rav Yehuda himself say:** With regard to **one who is a half-slave half-freeman^H who engaged in intercourse with a Jewish woman, that offspring of that union has no recourse^N to be able to marry?** It is apparent, then, that even one who permits the offspring of a slave to marry into the congregation of Israel does not permit the offspring of a half-slave to do so, contrary to Rava's assertion.

The Gemara resolves the difficulty: **When this ruling of Rav Yehuda was stated, it was referring to a case where the half-slave betrothed a Jewish woman.^N** Since a slave's betrothal does not take effect, the result of that betrothal is that the woman is married to only the free half of the half-slave half-freeman, such **that it emerges** that when he has relations with her, **the slave side of him is engaging in relations with a married woman** to whom that side of him is not married, and so the offspring of that union is a *mamzer*.

The Gemara raises an objection: **But didn't the Sages of Neharde'a say in the name of Rabbi Ya'akov: According to the statement of the one who renders the child of a gentile or slave and a Jewish woman unfit to marry into the congregation of Israel, he renders the child unfit even when the mother is an unmarried woman. And according to the statement of the one who renders the child fit, he renders the child fit even when the mother is a married woman.**

And both of them derived their opinions **only from the halakha of one's father's wife,^N** as follows: **The one who renders the child unfit holds that just as with regard to one's father's wife, one's betrothal of her does not take effect even after she is widowed or divorced, and so the offspring of such a union is a mamzer, so too, with regard to any one for whom betrothal of her does not take effect, including a gentile or a slave, the offspring is a mamzer.**

HALAKHA

A half-slave half-freeman – חֲצִי עֶבֶד וְחֲצִי בֶן חוֹרִין – If a half-slave half-freeman engaged in intercourse with a married woman, then the offspring is forbidden both to a Jewish woman and to a maidservant. If the offspring marries a convert, his children will share his status (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:5; *Shulḥan Arukh*, *Even HaEzer* 4:17).

NOTES

He has no recourse – אין לו תקנה: Most of the early commentaries explain that there is no one whom this offspring is permitted to marry because his status is half-*mamzer* and half-fit. He is therefore prohibited from marrying a Jewish woman on account of his *mamzer* status but he may also not marry a *mamzeret* due to his fit status. Furthermore, since he is not a gentile or a slave he is forbidden to a maidservant. However, Rashi appears to explain that the offspring will have full *mamzer* status, and therefore he would be permitted to marry a *mamzeret* or a maidservant. Some explain that Rashi's opinion is based on the *halakha* that the status of a *mamzer* status is transferred to his son, even when there is no transgression involved in his conception, e.g., where a *mamzer* married a female convert. It is apparent from that *halakha* that the *mamzer* status is considered dominant and therefore always defines the offspring. So too, in the case here, if the factors necessary to define the offspring as a *mamzer* exist, even if they exist only with regard to one side of his father, that is sufficient to render the offspring a full *mamzer* (*Mei Naftoah*).

A case where he betrothed a Jewish woman – כגון דקדיש בית ישראל: The Gemara in *Gittin* (43a) considers the status of a betrothal performed by a half-slave and remains in doubt as to

whether it is at all effective (see *Tosafot* here). From the fact that the Gemara here establishes the case as one where the half-slave betrothed a Jewish woman, apparently the Gemara here assumes that such a betrothal is effective. Nevertheless, it would appear that even if it is effective, the bond between the couple is still incomparable to the bond formed by a standard betrothal. Rather, the betrothal will be effective only to render the woman partially betrothed, a state that is similar to the marital status of a designated maidservant, i.e., a half-free half-slave maidservant who was betrothed to a Hebrew slave (see *Leviticus* 19:20–22; *Keren Ora*).

They derived their opinions... from a father's wife – ... למדיה: In the Torah, the prohibition against engaging in relations with one's father's wife is juxtaposed to the prohibition against allowing a *mamzer* to enter the congregation of God (*Deuteronomy* 23:1–3). Based on that juxtaposition, the Gemara derives that only unions that are similar to that of a man with his father's wife will result in the offspring having the status of a *mamzer*. The various opinions concerning who is a *mamzer* are all based on the issue of how to define whether a case is considered to be similar or dissimilar to the case of one's father's wife.

NOTES

To the exclusion of a gentile and a slave, for whom betrothal does not take effect – לאפוקי גוי ועבד – דלא תפסי בהו קדושין... The commentaries question the logic of this opinion that when the father of the offspring is a gentile or slave, the marital status of the woman is irrelevant. Ultimately the relations were adulterous and forbidden both for the Jewish woman herself and for the gentile, since adultery is included as one of the Noahide laws; why doesn't that automatically render the offspring a mamzer? Because of this difficulty, the Ramban and others prefer an alternative version of the text held by Rav Hai Gaon and the other ge'onim. According to that version, the reason that the offspring is not a mamzer is not solely dependent on the forbidden status of the union. Rather, it is based on the offspring being descended from a father and mother between whom betrothal is ineffective. The uniqueness of this case, then, is due to the fact that the offspring of a gentile father is never halakhically recognized as relating to him. Consequently, with regard to issues of lineage, the offspring is halakhically considered as having no father, and therefore it cannot be rendered a mamzer.

All positions...from among your brethren – כל משימות...מקרב אחיך: The Gemara states that for this halakha it is sufficient even if only one's mother is of Jewish lineage. However, Tosafot and the other early commentaries note that the Gemara in tractate Sota appears to contradict this when it states that although Agrippas's mother was Jewish, since his father was not, he was not halakhically qualified to be king. See Tosafot for one resolution of this question. The Ramban suggests that a distinction be made between appointing one to be the king and appointing him to other positions of authority. To be a king one must indeed have both a Jewish mother and father; however, for other positions of authority it is sufficient if only the mother is Jewish. Some suggest that this distinction can be identified in the verse that provides the source of this halakha, by splitting it up into two clauses, as follows: "From among your brethren shall you place a king over you" (Deuteronomy 17:15) refers specifically to a king, and the phrase "among your brethren" implies that both parents must be Jewish. However, the continuation of the verse: "You may not put a foreigner over you, who is not your brother," refers to any position of authority where one individual is placed in charge of others, and for that position only someone who is "not your brother" is excluded. One is defined as "not your brother" only if he does not have a Jewish mother (see Yam shel Shlomo).

LANGUAGE

Officials [pursei] – פורסי: From the Greek ἑφορος, eforos, meaning a governor or appointee. In certain locations this became the title of city governors or officials appointed over large populations.

HALAKHA

From among your brethren – מקרב אחיך: It is prohibited to appoint a king over the Jewish people if he descends from a line of converts. It is likewise prohibited to appoint such a man to any position of authority over the Jewish people. If, however, either his father or mother are not from a line of converts, he is eligible (Rambam Sefer Shofetim, Hilkhot Melakhim 1:4).

ומאן דמכשר סבר: מה אשת אב, דלדידיה לא תפסי בה קדושין לאחריני תפסי בה קדושין – לאפוקי גוי ועבד דלא תפסי בהו קדושין כלל.

אלא כי איתמר דרב יהודה – כגון שבא על אשת איש ונמצא צד חירות שבו משתמש באשת איש.

אמר רבינא אמר לי רב גזא: איקלע לא רבי יוסי בר אבין לאתריה, והוה עובדא בפגניה – ואכשר, באשת איש – ופסיל. אמר רב ששת: לדידי אמר לי רב גזא: לא רבי יוסי בר אבין הוה, אלא רבי יוסי ברבי ובידא הוה, ואכשר בין בפגניה בין באשת איש. אמר ליה רב אחא בריה דרבא לרבינא: איקלע אממר לאתריה, ואכשר בין בפגניה בין באשת איש.

והלכתא: גוי ועבד הפא על בת ישראל – הולד כשר, בין בפגניה בין באשת איש.

רבא אכשריה לרב מרי בר רחל ומנניה בפורסי דבבל. ואף על גב דאמר מר שום תשים עליך מלך, כל משימות שאתה משים אל יהו אלא מקרב אחיך. האי כיון דאמו מישראל – מקרב אחיך קרינן ביה.

And the one who renders the child fit holds that the derivation from the halakha of one's father's wife is more limited, and it is derived that the offspring is a mamzer only in a case just like one's father's wife, in that although his betrothal of her does not take effect, with someone else his betrothal of her does take effect. This is to the exclusion of a gentile and a slave, for whom betrothal of any Jewish woman does not take effectⁿ at all, and so the offspring of such a union will not be a mamzer. It is apparent from this statement of the Sages of Neharde'a that according to the lenient opinion, the offspring of a slave is never a mamzer, irrespective of the marital status of the Jewish woman. Therefore, the Gemara's resolution is undermined.

The Gemara offers a different resolution: Rather, when this statement of Rav Yehuda was stated, it was referring to a case where the half-slave half-freeman engaged in intercourse with a married woman who was married to someone else, and it therefore emerges that although the woman's union with the slave side of him will not render the offspring a mamzer, the free side of him is engaging in relations with a married woman to whom he is not married, and due to that side of him the offspring is a mamzer.

Ravina said: Rav Gazza said to me that Rabbi Yosei bar Avin^p once happened to come to our place, and there was an incident involving an unmarried woman who had engaged in intercourse with a slave, and Rabbi Yosei bar Avin rendered her offspring fit to marry into the congregation of Israel. And there was another incident involving a married woman who had engaged in intercourse with a slave, and he rendered her offspring unfit to marry into the congregation of Israel by ruling the offspring was a mamzeret. Rav Sheshet said: Rav Gazza told me that it was not Rabbi Yosei bar Avin; rather, it was Rabbi Yosei, son of Rabbi Zevida, and he rendered the offspring fit both in the case of an unmarried woman and in the case of a married woman. Rav Aha, son of Rabba, said to Ravina: Ameimar once happened to come to our place and rendered the offspring fit both in the case of an unmarried woman and in the case of a married woman.

The Gemara concludes: And the halakha is that with regard to a gentile or slave who engaged in intercourse with a Jewish woman, the lineage of the offspring is unflawed, whether she was an unmarried or a married woman.

The Gemara cites a related halakha: Rava ruled that Rav Mari bar Raḥel,^p who was the son of a gentile father and a Jewish mother, was fit to marry into the congregation of Israel, and furthermore he appointed him as one of the officials [pursei]^l of Babylonia. And although the Master said that from the verse, "You shall place a king over you whom the Lord your God shall chose; from among your brethren shall you place a king over you" (Deuteronomy 17:15) it is derived that not only with regard to the kingship but also with regard to all positions of authority that you appoint, the incumbents may be selected only from among your brethrenⁿ who share your Jewish lineage. Nevertheless, with regard to this one, i.e., Rav Mari bar Raḥel, since his mother is of Jewish lineage, we call him "from among your brethren,"^h and so he is eligible.

PERSONALITIES

Rabbi Yosei bar Avin – רבי יוסי בר אבין: An amora from Eretz Yisrael, Rabbi Yosei appears frequently in the Jerusalem Talmud as Rabbi Yosei bar Bun. In the Jerusalem Talmud he is usually the final amora mentioned on each topic, and some see his role as similar to that of Rav Ashi in the Babylonian Talmud, who edited and organized the subject matter. In a number of places his name appears with that of Rabbi Yosei bar Zevida, who was apparently his colleague but who does not appear in the Jerusalem Talmud, even though he, too, lived in Eretz Yisrael.

Rav Mari bar Raḥel – רב מרי בר רחל: It would seem that Rav Mari bar Raḥel is the same person referred to various times in the Gemara as Rav Mari, son of Issur the convert. During the wars that took place

in Neharde'a, the daughters of the great amora Shmuel, the leading Sage of that city, were captured. One of them, Raḥel, was taken by a gentile named Issur, who later became a righteous convert. Nevertheless, since Mari was conceived while his father was not yet Jewish, he was referred to by his matrilineal descent.

Rav Mari grew to become a Torah scholar and was considered one of the leading scholars in his generation. He even debated the great Sages Abaye and Rava, who also lived in his generation. The Gemara often refers to his virtues and to the fact that he was careful to act beyond the requirements of the halakha. He was also very wealthy and influential. Two of his sons, Mar Zutra and Rav Ada Saba, were also considered to be among the great scholars of their generation and were contemporaries of Rav Ashi.

He immersed her for the sake of intimate relations – אֶטְבְּלָהּ – לְשֵׁם אֲנִתָּתָא: *Tosefot Had Mikammaei* and many other early commentaries explain that the woman had already completed all of the various stages of conversion; however, her original immersion was invalid because it had not been done under the direction of a court, and therefore it was not clear that it had been done with the necessary intention. When she later immersed for the sake of purifying herself, in accordance with the *halakha*, that intention itself was sufficient to deem the later immersion as one for the sake of conversion. This is because she performed the immersion as an expression of her commitment to Judaism, and therefore that immersion completed her conversion process (see *Nimmukei Yosef*). However, many other commentaries explain that it was not the actual immersion for the sake of purifying herself that completed her conversion; rather, it merely served as proof that when she had originally immersed as part of her conversion, she had the necessary intentions.

Didn't she immerse for the sake of her menstruation – מִי לֹא טְבַלְהָ לְנִדְוֹתָהּ: *Tosafot* and the other early commentaries question how this immersion, which was presumably done in private, could possibly be valid, since the Gemara states later (46b) that the conversion process must be done in the presence of a court of three. Some suggest that in fact, a court of three is necessary only when the potential convert formally accepts upon himself to observe the mitzvot, since that is the primary act of conversion. However, the immersion itself may be performed in private. Others suggest that provided it is known to the court that she immersed, that is sufficient, even if they do not actually see the immersion. The Rif rules that a court of three is only ever necessary *ab initio*. Accordingly, the difficulty does not arise, since the Gemara's case here is clearly after the fact.

Whom people would call: Son of an Aramean man – קָרוֹ – לִיָּה בְּרֵי אֲרַמְאָה: Some commentaries ask: If his mother was Jewish, then he would be a full Jew. Furthermore, according to the Gemara's conclusion, with which Rabbi Yehoshua himself concurs, the offspring of a gentile and a Jewish woman is not a *mamzer*. If so, of what significance is it whether his father was a gentile? Some suggest that it is still significant according to the opinions that although he would not be a *mamzer*, he would be unfit for the priesthood (Maharsha). Others suggest that the case was not of the son of a questionable convert, but of a Jew who took a gentile woman in marriage, and it was the conversion of the son himself that was questionable. In support of this suggestion they cite an alternative version of the text that has: Son of an Aramean woman (*Arukh LaNer*; see Meiri).

One who purchased a slave... and the slave preempted him, etc. – הִלֻּקְחָ עֶבֶד... וְקָדַם וְכוּ': The commentaries explain the connection between this section of the Gemara and the previous one: From the previous Gemara it is apparent that even if a convert immersed in private, not in the presence of the court, the immersion can still be valid because his intention was clear. The main issue in the following section of the Gemara is the very issue of the significance of one's intentions at the time of immersion (*Yosef Lekah*).

§ A gentile slave purchased by a Jew must be circumcised and then immersed in a ritual bath. By being immersed for the sake of slavery, he takes on the status of a full slave, which, among other things, obligates him to keep certain mitzvot. However, if the slave, or any gentile, is immersed for the sake of conversion, he then becomes a full Jew and fully obligated in mitzvot like any other Jew.

The Gemara considers the result of different intentions accompanying an immersion: **Rabbi Ḥiyya bar Ami's slave immersed a certain gentile woman for the sake of having intimate relations**,^N i.e., to purify her from her menstrual impurity. **Rav Yosef said: I am able to render both her and her daughter fit to marry into the congregation of Israel.**

With regard to her, I can render her fit in accordance with the opinion of Rav Asi, as Rav Asi said concerning a woman whose status as a convert was unclear but who lived as a part of the Jewish people and acted like all other Jewish women: Didn't she immerse^H for the sake of purifying herself from her menstruation?^N Therefore, even if the original immersion was invalid, her intention in subsequent immersions was sufficient to be considered for the sake of conversion, since ultimately she immersed as an expression of her commitment to Judaism. She is therefore fully Jewish.

And with regard to her daughter, she is the daughter of a gentile or slave who engaged in intercourse with a Jewish woman, and the halakha is that the lineage of the offspring is unflawed.

The Gemara details the circumstances of Rav Asi's ruling: There was a certain man whom people would call: **Son of the Aramean woman**, as they cast aspersions on the validity of his mother's conversion. With regard to that case, **Rav Asi said: Didn't she immerse for the sake of purifying herself from her menstruation?** A similar incident is recounted: There was a certain man whom people would call: **Son of an Aramean man**,^N as they cast aspersions on the validity of his father's conversion. **Rabbi Yehoshua ben Levi said: Didn't he immerse for the sake of purifying himself from his seminal emission?** That intention is sufficient to consider the immersion an immersion for the sake of conversion.

Rav Hama bar Gurya said that Rav said: In the case of a Jew who purchased a slave from a gentile, and before he managed to immerse him for the sake of slavery the slave preempted him^N and immersed for the sake of conversion to render himself a freeman,^H he thereby acquired himself and becomes a freeman, i.e., his immersion effects a full conversion and he is no longer a slave. **What is the reason for this halakha?**

עֲבָדִיהָ דְרַבִּי חֵיָּיא בְּרֵי אֲמִי אֶטְבְּלָהּ לְהֵיָּיא גִּוְיָהּ לְשֵׁם אֲנִתָּתָא. אָמַר רַב יוֹסֵף: יְכִילְנָא לְאִכְשׁוּרֵי בֵּהּ וּבְבִרְתָּהּ.

בֵּהּ – כְּדָרְבֵּי אֲסִי, דְאָמַר רַב אֲסִי: מִי לֹא טְבַלְהָ לְנִדְוֹתָהּ?

בְּבִרְתָּהּ – גִּוְיָהּ וְעַד הֵבֵא עַל בֵּית יִשְׂרָאֵל הַיְלָד בְּשׂוֹר.

הֵיָּוֵא דְהוּוּ קָרוֹ לִיָּה בְּרֵי אֲרַמְיָתָא. אָמַר רַב אֲסִי: מִי לֹא טְבַלְהָ לְנִדְוֹתָהּ? הֵיָּוֵא דְהוּוּ קָרוֹ לִיָּה בְּרֵי אֲרַמְאָה, אָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי: מִי לֹא טְבַל לְקָרְיוֹ?

אָמַר רַב חָמָא בְּרֵי גִּוְרִיָּא אָמַר רַב: הִלֻּקְחָ עֶבֶד מִן גִּוְיָהּ, וְקָדַם וְטָבַל לְשֵׁם בֶּן חוּרִין – קָנָה עֲצָמוֹ בֶּן חוּרִין. מֵאֵי טַעְמָא?

HALAKHA

Didn't she immerse, etc. – מִי לֹא טְבַלְהָ וְכוּ': In order to become Jewish, a convert is required to declare that he accepts upon himself to observe the mitzvot, and he must then be circumcised and immersed, all in the presence of a court of three. If a convert did not declare his acceptance of the mitzvot or was not immersed in the presence of a court of three, then the conversion can still be valid if it is apparent that he had continued to observe the mitzvot and Jewish customs and had immersed for the sake of purifying himself from a discharge of semen, or, in the case of a female convert, that she had immersed to purify herself from menstruation. In any case, if the convert married a Jewish woman, a child born from that union is not

rendered unfit (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:9; *Shulhan Arukh*, *Yoreh De'a* 268:3).

One who purchased a slave... and he immersed for the sake of rendering him a freeman – הִלֻּקְחָ עֶבֶד... וְטָבַל לְשֵׁם בֶּן חוּרִין: If a Jew purchased a slave from a gentile, and the slave immersed for the sake of conversion, then that immersion effects a full conversion and he becomes a freeman. He must then compensate his previous master with the monetary value of himself when he was a slave (Rema, citing *Nimmukei Yosef*; Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 13:11 and *Sefer Kinyan*, *Hilkhot Avadim* 8:9; *Shulhan Arukh*, *Yoreh De'a* 267:9).