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Hello

Intro

Q&A



ARE THERE ANY YUCHSIN-RELATED ISSUES THAT A SHLIACH MAY CLARIFY ON HIS OWN?

When a couple approaches a shliach and asks him to officiate at their wedding, there are two groups of issues that must be dealt with. The first is *birur yahadus*—to determine that they both are indeed Jewish. Additionally, there are many other possible issues that may obstruct their ability to marry (see p. 28 for some examples).

We will now address these two areas individually, and discuss the importance of working together with a Beis Din in both fields.

BIRUR YAHADUS

There were times in history when clarifying one's professed Jewishness may not have been necessary. Indeed, many Rishonim state that if an individual comes and says that he or she is Jewish, he is believed. One of the reasons given is that most people who claim to be Jewish are indeed Jewish.¹

However, contemporary poskim state that this is not the case today.² Today, there are many reasons why someone would incorrectly believe he is Jewish (for example, because he or a parent underwent a Reform or Conservative conversion, or because his father is Jewish). Additionally, sometimes a non-Jew can benefit by claiming to be Jewish (for example, to enable immigration to Israel—a phenomenon that widely occurred with the fall of the Iron Curtain). Clearly, today stating that one is Jewish is not sufficient, and a further *birur* is required.

How is a *birur yahadus* performed?

Ascertaining a person's Jewish status is an intricate procedure. Various documentation must be presented, and various halachic considerations come to play; no two cases are alike. One must also be alert to recognize clues that indicate adoption.

Many things can be used as partial pieces of evidence. Examples include documents (e.g., a *kesubah* and/or birth certificate); a predominantly-Jewish name or surname; and knowledge of Yiddish. There is a well-known tradition from R' Moshe Feinstein that none of these factors may be used alone, and it is necessary to know how many of them are required in any given case and how they are to be combined.

Because of all this, a shliach should not attempt to perform a *birur yahadus* alone. In countries with centralized institutions (e.g., Eretz Yisrael, England, South Africa, Australia) this is anyways the case; a rabbi may not officiate at a wedding unless a *birur* is done under the auspices of the official Beis Din.

In the United States, however, there is no centralized institution that deals with Orthodox marriages, and any rabbi can technically do as he pleases. This free-for-all can lead—and unfortunately has often led—to great *michsholos*. Therefore, a shliach should not make such weighty decisions on his own. The importance of contacting a Beis Din proficient in *yuchsin* and working under its guidance cannot be underestimated.

FROM THE FOUR SECTIONS OF SHULCHAN ARUCH, *Even Ha'ezer* was always known as the most sensitive. Not every *rov* dealt with issues such as *yuchsin*, *agunos*, and *giyur*. These areas have serious, irreversible ramifications for all future generations of the individuals involved, and only certain *rabbonim* dealt (and deal) with them.

Despite this, many *shluchim* find themselves thrust into the position of playing a role in these matters (the other option being for disreputable individuals to handle them). At the same time, the shliach's expertise in this area is limited, and he will need to consult with a *rov*.

The style of this article is therefore (not to give practical tools how to deal with *yuchsin*-related issues, but rather) to give a clear perspective on the fundamentals involved, and to crystalize the areas where a *rov* or competent Beis Din must be consulted for guidance. An additional goal of the article is to increase awareness of future ramifications that may result from a shliach's actions, allowing the shliach to exercise the appropriate care when making decisions in these matters.

¹ See, for example, *Tosafos to Yevamos 47a s.v. bemuchzak*.

² See *Ba'er Heitev, Even Ha'ezer 2:4* citing the *Beis Hillel. Shu"t Kiryas Chana Dovid 2:63. Shu"t Chut Hameshulash* (from R' Chaim of Volozhin) §5. *Shu"t Sheima Shlomo* (from Rabbi Shlomo Amar) vol. 2, *Even Ha'ezer* §6.

If the individual in question is from the former U.S.S.R., a Beis Din that specializes in yuchsin for Russians should be contacted, as additional factors are involved. (For example, in the late 1980s and early 1990s, many non-Jews forged passports upon which was written “yevrei,” so they would be able to immigrate to Israel.)

The same applies when dealing with individuals from groups that consider themselves Jewish from places such as Ethiopia, India, and Pakistan, and individuals of Marrano descent. Each group has a unique status, with some more confirmed as Jews than others. A Beis Din specializing in that particular group must be contacted for guidance.

OTHER MARRIAGE-RELATED ISSUES

However important it is to work with a Beis Din to clarify a couple’s Jewish status, it is even more critical with regard to other potential issues that may be involved.

There are two reasons for this:

1. While there were times in history when professing one’s Jewishness may have been enough to establish a Jewish status (as explained above), there was never a time when clarifying the other marriage-related issues did not require consultation with an expert. This is clear from the Gemara’s statement, “Whoever is not proficient in gittin and kiddushin should not get involved with them.”³ Rashi⁴ explains that this refers to offering guidance; someone who is not an expert may not preside over these cases, lest he permit someone to marry an ervah. This restriction is cited in Shulchan Aruch.⁵

(All this is referring to making the necessary birurim to allow the marriage to take place. By contrast, it has become customary for pulpit rabbis to be mesader kiddushin even if they are not proficient in *Even Ha’ezer* as a whole [as long as they are well-versed in the relevant halachos].⁶)

³ Kiddushin 6a.

⁴ Kiddushin ad loc., s.v. lo.

⁵ Shulchan Aruch, *Even Ha’ezer* 49:3. See also *Shu”t HaRambam* §348: “In the year 4947 from Creation, we, the judges of Mitzrayim, removed a Sefer Torah and instituted a cherem on the inhabitants of the surrounding villages, that they may only marry or divorce under the auspices of the local rabbonim... We placed a cherem on anyone who permits an individual who is not proficient in gittin and kiddushin [to deal in these areas].”

⁶ See *Taz* and *Beis Shmuel* to Shulchan Aruch, *Even Ha’ezer* ad loc. *Shu”t Maharsham* 2:167. For dif-

2. While birur yahadus is a clear-cut issue, some of the other potential problems are not as well-known, and if one is not an expert in this field, it is inevitable that mistakes will occur.

Therefore, a shliach should not attempt to determine the status of a bride and groom on his own. Instead, he must be in touch with a Beis Din proficient in yuchsin, supply them with whatever information he knows, and work under their guidance.



It is important to emphasize that questions regarding the two topics mentioned above cannot simply be answered by a rov over the telephone. It takes time to investigate these matters, and no two cases are alike. There have been instances where weddings were pushed off because there was not enough time to complete a birur. When a shliach is asked by a couple to officiate at their wedding, the first step should be to gather as much information as possible and contact a Beis Din, to give them enough time to work on whatever issues may need to be clarified.⁷

(To illustrate the complexity involved:

fering opinions, see *Pischei Teshuvah*, *Even Ha’ezer* 49:2, quoting *Shu”t Shvus Yaakov* 3:121 and *Shu”t Knesses Yechezkel* §72.

⁷ After a birur is done, a shliach should obtain a note from the Beis Din, or at least mark it down in his own files (which must be kept), that a birur was done for so-and-so by Beis Din so-and-so. This way it can be referenced in the Beis Din’s case file, which will have all the details of the birur, if any questions arise in the future.



Q&A



WHAT ARE SOME EXAMPLES OF POTENTIAL MARRIAGE-RELATED ISSUES THAT MUST BE CLARIFIED?

Whenever our Beis Din here in Sydney is asked to deal with a serious problem related to one's status, I prepare a teshuvah to back up the psak and keep in our files, and I ask two other poskim to co-sign the psak.)

Additionally, the shliach should also ask the Beis Din for help in preparing the kesubah, as the way a kesubah is written depends on the status of the bride and groom.⁸

The Sydney Beth Din, of which I am a senior dayan, has assisted (and continues to assist) many shluchim in both of the above areas. When a shliach contacts us for assistance, he is told to visit our website (www.bethdin.org.au) and fill out the appropriate forms. This is followed by an interview with the relevant parties via Skype.

Additional Batei Dinim that offer these services include the Beth Din of America and Agudath Harabonim.

WHAT ARE SOME EXAMPLES OF POTENTIAL MARRIAGE-RELATED ISSUES THAT MUST BE CLARIFIED?

Among the issues the Beis Din may need to clarify and deal with are the following:

- ➔ *Ensuring a kosher get was received following any earlier marriage. (This requirement applies not only to a bride, where she may presently still be an *ishes ish*, but also to the groom, due to the *cherem of Rabbeinu Gershom that a man may not marry two women.*)*
- ➔ *Ensuring a *chalitzah* was done, if her first husband died without children and has a living brother.*
- ➔ *Ensuring the two may halachically marry. Potential issues include:*
 - *If either one is a *mamzer*.*
 - *If the bride engaged in intimate relations with the groom while married to another person. In such a case she may not marry him, due to the*

*principle that *keshem she'asurah l'baal, kach asurah l'boel*—she is forbidden not only to her previous husband, but also to her consort.¹⁰*

- *If the groom underwent a vasectomy, and did not have it reversed.¹¹*
- ➔ *If applicable, ensuring the bride may marry a kohen. Potential issues include:*
 - *If she is a divorcee.*
 - *If she is a convert.*
 - *If she once engaged in intimate relations—even against her will—with a non-Jew or a man she may not marry (e.g., a forbidden relative). This causes her to acquire the status of a *zonah*, who may not marry a kohen.¹²*
 - *If her father is non-Jewish.¹³*
 - *If both of her parents are converts.¹⁴*
- ➔ *Ensuring ninety-two days have passed since the divorce or death of the bride's previous husband (known as *sheloshes chodshei havchanah*).¹⁵*
- ➔ *Ensuring she is not pregnant (known as *me'uberes chaveiro*).¹⁶*
- ➔ *Ensuring that twenty-four months have passed since the birth of the bride's child from a previous marriage (known as *meinekes chaveiro*).¹⁷*

BIRUR YAHADUS

BESIDES FOR MARRIAGE, IS THERE ANY OTHER TIME WHEN A BIRUR YAHADUS SHOULD BE PERFORMED?

A shliach does not need to do a birur on anyone who wants to enter his Chabad House. If someone comes to your Chabad House and states that he is Jewish, halachah allows him to be counted as part of a minyan and receive an aliyah. No birur is required unless you have reason to be concerned he is not what he claims to be. Similarly, anyone claiming to be Jewish may attend your classes and functions.¹⁸

However, if someone requests a service pertaining to a life-cycle event, a birur yahadus should be done (under the guidance of a Beis Din, as explained above). This includes not only a wedding, but even such events as a bris, baby-naming, and bar or bas mitzvah. Additionally, a birur should be done before accepting someone as a member in your shul (if your shul requires membership).

This approach may be met by some with surprise. When it comes to arranging a wedding, it is understood why a full-fledged birur yahadus must be done, to ensure

¹⁰ *Shulchan Aruch, Even Ha'ezer 11:1.*

¹¹ See *Shulchan Aruch, Even Ha'ezer 5:2.*

¹² *Shulchan Aruch, Even Ha'ezer 6:8-9.*

¹³ The daughter is considered pagum, and lechat'chilah should not marry a kohen (*Shulchan Aruch, Even Ha'ezer 7:17*).

¹⁴ Lechat'chilah she should not marry a kohen (*Shulchan Aruch, Even Ha'ezer 7:21*).

¹⁵ See *Shulchan Aruch, Even Ha'ezer 13:1-10* and commentaries.

¹⁶ See *Shulchan Aruch, Even Ha'ezer 13:11-14* and commentaries.

¹⁷ See *Shulchan Aruch, Even Ha'ezer 13:11-14* and commentaries.

¹⁸ See sources referenced above (fn. 2).

⁸ For more on this topic, see *Compass Magazine* vol. 21, p. 33.

⁹ See *Shulchan Aruch, Even Ha'ezer 1:10* and commentaries.

both spouses are indeed Jewish. But why should a complete birur yahadus done for, say, a bar-mitzvah? If my initial research shows they are Jewish, shouldn't that be enough?

However, there are two reasons why a complete birur yahadus should be done not only for a wedding, but for any life-cycle event. First of all, no one appreciates having to go through a birur twice. If you will require a quasi-birur now, the individual in question may resent the fact that when it comes time to marry, you will require an additional, more comprehensive birur.

Furthermore, if the person in question approaches another rov when it comes time to marry, he may produce a picture of how an Orthodox rabbi officiated at his bris/bar mitzvah, and that may be incorrectly used as proof that he is Jewish. To avoid a serious error such as this, a full-fledged birur should be performed for any life-cycle event.

[This is not just a theoretical concern but a practical one. To give one example (from many): There was once a story here in Sydney where a mother requested that a bris be done for her child. Upon investigating her background, it was discovered that she was not Jewish, although her husband was. The marriage was arranged based on the premise she was Jewish, relying on the fact that she had attended a Jewish-children-only day school. The school, in turn, had relied on a certificate stating that an Orthodox rabbi had given her bat-mitzvah lessons. The rabbi had given her lessons under the notion that no full birur was necessary at that point.]

It should be noted that a bris is somewhat different from a wedding. Nothing will happen if a wedding is canceled or delayed; with regard to brissim, however, if the child is indeed Jewish, he is subject to kores if he is not given a bris. Because of this, in a case where the child's Jewishness is rather clear (and all that is lacking is a birur yahadus as required for weddings), it may be appropriate for a mohel to give a clandestine bris, without pictures and certificates (so that no pitfall will result).¹⁹

Nonetheless, a mohel should not make such decisions on his own. He should be in contact with a Beis Din to establish protocol and guidelines as to when he can go ahead with a bris alone, and when he must bring the matter to the attention of the Beis Din.²⁰

HOW CAN I ENSURE THAT REQUIRING A BIRUR YAHADUS WON'T BE MERACHEK MY BAALEI BATIM?

Requesting a birur yahadus should be presented as standard protocol required of rabbis belonging to the Orthodox establishment. Do not be apologetic. In a professional, matter-of-fact way, explain that just as a doctor must follow certain standards to be able to be part of the medical establishment, we, too, cannot cut corners and must follow certain protocol. Add that this is actually to their own benefit: since we have high standards, they will have the advantage of being accepted with open arms wherever they go.

Instead of it appearing as if you suspect their Jewishness, explain that this is a standard procedure required from *everyone*, regardless of how "Jewish" they seem to be.

Obviously, this will only work if you indeed require a birur yahadus from everyone. If a couple approaches you to officiate at their wedding, and you do not require a birur from the girl since she belongs to a well-known and established family, the

¹⁹ These precautionary measures are dealing with families with a claim to Jewishness (e.g., if the parents underwent non-Orthodox conversions, or if only the father is Jewish). In such a case, they may use the fact that an Orthodox mohel circumcised their son as proof of their Jewishness.

However, if a definite non-Jew requests circumcision (e.g., a Muslim), there are many heterim to allow doing so (see *Shach*, *Yoreh Dei'ah* 263:8. *Shu"t Yabia Omer* vol. 2, *Yoreh Dei'ah* §19), as long as he has no claim of being Jewish.

²⁰ It should be noted that here in Sydney we have a psak (which received consent from Rabbi Shlomo Amar, former Sephardic chief rabbi of Israel) that a bris should be delayed if necessary to provide a proper birur yahadus.

boy will resent being told that he needs to prove his Jewishness. However, if this is the established protocol across the board, people will accept and respect it (and if they do not, that itself may indicate there is an issue).

DOES HALACHAH GIVE ANY WEIGHT TO DNA TESTING INDICATING A PERSON'S JEWISH ROOTS?

As a rule, DNA tests cannot be utilized to determine a person's Jewish status. The reason for this is because almost all of a person's DNA is inherited from both parents.

However, there is one type of DNA, known as mitochondrial DNA, that is passed exclusively from mother to offspring. It is unclear whether mitochondrial testing may play a role in birur yahadus. Extensive research is presently being done in this field, following the guidance of halachic experts.²¹

Even if it will be concluded that mitochondrial testing may be employed, it certainly cannot be relied upon alone. At most, a Beis Din can use this method to "tip the scale" in a case where a person's Jewish status is in doubt.

CONVERSION

IF SOMEONE PRESENTS A CERTIFICATE STATING THAT HE UNDERWENT AN ORTHODOX CONVERSION, MAY HE BE ACCEPTED AS JEWISH?

This depends on the specific Beis Din who arranged the conversion.

Around ten years ago, the Israeli Rabbinate created standards for conversion, and compiled a list of Batei Dinim whose conversions are accepted in Israel. By no means is this list perfect; there may be qualified individuals whose names do not (yet) appear on the list, and conversely, there may be unqualified individuals who

²¹ See *Birurei Yahadus Le'or Mechkarim Genetiyim* (2017, co-authored by Rabbi Yisroel Barenbaum, member of the Moscow Beis Din, and Rabbi Zeev Litka). *Orach Mishpat* vol. 1, pp. 171ff (a teshuvah from the author of this article).

somehow got inside. However, this list is certainly a step in the right direction, to ensure certain standards are met when it comes to conversion, instead of it being free-for-all.

Someone who presents a certificate from an accepted Beis Din can be accepted as Jewish without question. If the individual was converted through an unrecognized Beis Din, a Beis Din proficient in yuchsin should be contacted to pursue the matter further.

At times, even such a conversion will be accepted, if it was performed by an upright Beis Din before these standards were created. In other cases, perhaps the conversion will not be accepted, either because it was done under the auspices of an unrecognized Beis Din, or—worse yet—if the Beis Din was actively blacklisted by the Israeli Rabbinate (due to its poor reputation).

In these latter cases, we will also not reject the conversion completely and consider the individual in question non-Jewish. Instead, we will attempt to convert him a second time, out of doubt or as a stringency.²²

It goes without saying that a shliach should only refer potential converts to a recognized Beis Din. Doing otherwise would actually be a disservice, and ultimately, if the converts go to a place where they will not be recognized as Jewish, they will return to the shliach with complaints.

It should be noted that the Rebbe's approach was that shluchim should not deal with conversions directly.²³

WHAT IS THE STATUS OF SOMEONE WHO WENT THROUGH AN ORTHODOX CONVERSION, BUT LATER DOES NOT KEEP TORAH AND MITZVOS?

The Shulchan Aruch clearly rules that a convert who returned to his previous ways does not lose his Jewish status, and he has the din of a yisrael mumar—a Jewish sinner.²⁴

However, this is only true if at the time of the conversion he committed to fulfill all of the mitzvos.²⁵ Therefore, even if the convert did verbally commit to be observant, if it is clear that he was insincere—for example, if he immediately disregarded his commitment—the conversion is problematic. (This is especially true with someone who was converted as a child, where kabalas hamitzvos is not a necessary requirement.)

To prevent such situations from occurring, many Batei Dinim for conversions will only give the convert a certificate once a year has passed from the conversion, to ensure the convert was truly sincere.

In all cases such as these, a Beis Din proficient in yuchsin should be consulted.

IS A REFORM OR CONSERVATIVE CONVERSION VALID IN ANY WAY?

There is never a case where someone may be accepted as a Jew following a Reform or Conservative conversion.

In the 1980s, there were instances when R' Moshe Feinstein gave a slight possibility of a safek status to Conservative conversions performed through certain rabbis thirty years prior. This was because in the 1950s, certain observant rabbis accepted posts at Conservative synagogues, as the extent of the kefirah inherent to Conservatism was still unclear. Therefore, R' Moshe held that their conversions had some measure of validity.

Even then, R' Moshe would never allow such a convert to marry a Jew as is. The convert would need to undergo a second conversion, and the quasi-validity of the earlier conversion only carried weight in one respect—that no berachah would be recited over the second conversion.²⁶

However, all of this is very far from the reality today. The concept of an observant Conservative rabbi is non-existent, certainly within the Rabbinical Assembly. Any conversion performed under their auspices is completely null and void.

²² See *Igros Kodesh* vol. 14, p. 314: "Even though the [Jewish] approach to conversion is well-known, this case is different, since they have already assimilated among Jews, and the people around them don't know or even suspect that there is something wrong and improper."

²³ See *Shlichus Kehilchasah* p. 148.

²⁴ *Shulchan Aruch, Yoreh Dei'ah* 268:2.

²⁵ *Bechoros* 30b.

²⁶ See *Masores Moshe* vol. 1, p. 327.





IS THERE ANY CASE WHERE I SHOULD AVOID OFFICIATING AT A MARRIAGE, DUE TO POSSIBLE FUTURE NEGATIVE OUTCOMES?

GITTIN AND KIDDUSHIN

ARE REFORM OR CONSERVATIVE GITTIN VALID IN ANY WAY?

There was a case in the 1950s where a couple underwent a Conservative divorce, and the woman remarried and had a child. To preclude the child from being considered a mamzer, R' Moshe Feinstein ruled that the get ma be relied upon.²⁷

However, this ruling was limited to that specific case. As mentioned above, in those days certain learned and observant rabbis accepted posts at Conservative synagogues. In that particular case, R' Moshe knew who the rabbi was and saw his gittin, and he relied on it bedieved (for the purpose of precluding mamzeirus).

Today, by contrast, the concept of such a Conservative rabbi is non-existent, and the gittin of the Rabbinical Assembly have no validity whatsoever.²⁸

ARE REFORM OR CONSERVATIVE KIDDUSHIN VALID IN ANY WAY?

As a rule, a Reform or Conservative marriage ceremony is similarly worthless.

In cases of couples who had undergone a Conservative marriage, R' Zalman Shimon Dworkin would bring them to another chupah to hear the berachos and have in mind to be yotzei. However, that was only the case in those years, when the possible concept of an observant Conservative rabbi still existed. Today, however, such a concept is practically non-existent, and a new, complete Orthodox marriage ceremony is required.

(In cases where the previous kiddushin may have contained a trace of validity, although a new, complete marriage ceremony should be arranged, it may be better to omit the berachos. A rov should be consulted whenever in doubt.)

In a case where a spouse previously married through Conservative or Reform wishes to remarry, a get may be required due to other considerations. (For example, perhaps the marriage can be considered as having been consummated through kiddushei biah, and therefore requires a get.²⁹) This is something to be decided by the

²⁷ I once dealt with a case where a certain woman had been divorced through a certain rabbi. Upon investigating the matter, I was told by a rov who was very close to R' Moshe that in cases of bedieved, R' Moshe would rely on that particular rabbi's gittin.

²⁸ I.e., their gittin are not only pasul but batel (see *Rambam, Hilchos Geirushin* 10:1-2).

²⁹ This question was the subject of a *machlokes* between the Rambam and the Geonim (see *Rambam, Hilchos Geirushin* 10:19). In recent years this argument is most commonly quoted as being between R' Moshe Feinstein and R' Yosef Eliyahu Henkin (see *Shu"t Igros Moshe, Even Ha'ezzer* 1:74-77, *Pirushai Ivra* sec. 3-4, *Kisvei Hagri"v Henkin* vol. 2, pp. 123-125).

Most of the world of psak has accepted the opinion of R' Moshe, who brought many convincing reasons to prove that one may be lenient in this case when necessary, and allow such a woman to remarry without a get. However, one should always first consult with a rov or Beis Din specializing in this area, as there are many considerations to be made, and every case is unique. Some of these considerations include the following:

- ❶ R' Moshe himself still required a get in most cases, and was only lenient *b'makom igun*.
- ❷ There are some components of these marriages that, if done in certain ways, would deem them valid (e.g., if kosher witnesses were brought to the ceremony).
- ❸ The Tzemach Tzedek (*Even Ha'ezzer* §138) seems to be machmir and require a get in this case. Elsewhere I addressed this teshuvah and explained how, in my opinion, the Tzemach Tzedek can conform with the accepted ruling of most poskim. Nevertheless, we must still be machmir whenever possible.

Beis Din, keeping all the relevant factors into account.

Some possible factors that may result in a more lenient decision include:

- ❶ *If the previous "husband" refuses to give a get (known as makom igun).*
- ❷ *If the woman is engaged to a kohen, who may not marry a divorcee.*

In any case where you wish to marry off a couple without requiring a get first, a ruling in writing must be received from a competent rov.

IS THERE ANY CASE WHERE I SHOULD AVOID OFFICIATING AT A MARRIAGE, DUE TO POSSIBLE FUTURE NEGATIVE OUTCOMES?

Yes. Although ensuring a wedding is done *kedas moshe v'yisrael* carries tremendous value, if the shliach has reason to believe that doing so will result in a negative outcome, it may be prudent to refrain from officiating at that wedding.

One example is if the prospective husband may refuse to give his wife a proper get in case of divorce, causing her children from future unions to be mamzeirim. Typically, if the husband is a member of your community, you will be able to exert influence on him to do what is halachically correct. But let's take a case where the couple insists on implementing something into the wedding ceremony that is against halachah, and no amount of explanation on your part will make them sway. Instead of trying to accommodate them, the correct move may be to refuse to officiate. If this is their attitude, it is highly possible that if a divorce will ensue (which in today's age is quite likely), they will not agree to a halachic divorce.

In all cases such as these, due to the complex details involved, a competent rov should be consulted.

When officiating at a marriage of someone in your community, it is important to include in your pre-marriage discussion the concept of a Jewish divorce, as well as the immorality of withholding a get.

A shliach may be hesitant to inte-

grate this topic, as it may appear as if he is insinuating their marriage will fail. One idea is to mention the concept of gittin as part of a discussion on the sanctity of Jewish marriage. You can explain that the bond between husband and wife created through Jewish marriage is divine and sacred, and can therefore only be dissolved through death or Jewish divorce.

If someone in your community is having a Reform or Conservative marriage, do not attempt to “kasher” the marriage by covertly visiting the hall (a problematic issue in its own right³⁰) and making a quick chupah on the side. This may lead to tremendous pitfalls.

For example, a future rov may allow the woman to marry another man without first obtaining a get, based on the assumption that the previous marriage was invalid. Looking further ahead, a rov may allow the children from the second union to marry, not realizing they are mamzeirim.

Furthermore: Even if you arrange a separate ceremony for the couple and marry them off kedas moshe v'yisrael (to prevent them from living together without chupah and kiddushin), it must be ensured that this fact will be plainly obvious in the future. If possible, the non-kosher kesubah should be destroyed; if this is not possible, it must be clearly written in the non-kosher kesubah that an Orthodox ceremony had taken place. A rov should be consulted for guidance on how this should be done.

KEHUNAH

IF SOMEONE IN MY COMMUNITY TELLS ME HE IS A KOHEN, SHOULD I ACCEPT HIM AS SUCH?

A shliach should be prudent before accepting someone as a kohen. The reason is because once someone begins to act like a kohen (i.e., to receive the first aliyah, to duchen, and so on), a chazakah is created that he is a kohen. Later, if he wants to marry someone forbidden to a kohen, it will be much more difficult to “undo” his kohen status than if he would not have had this chazakah.³¹

³⁰ See *Shu"t Igros Moshe, Even Ha'ezer* 4:16.

³¹ See *Shu"t Maharit* 1:149.

Q&A



IF SOMEONE IN MY COMMUNITY TELLS ME HE IS A KOHEN, SHOULD I ACCEPT HIM AS SUCH?

(This concept works in both directions. If someone does not have a chezkas kehunah, the weight of evidence is on proving that he is indeed a kohen. Conversely, once a chazakah has been created, the weight of evidence is on proving that he is not a kohen.)

If someone who did not have the status of a kohen until now says that he just discovered he is a kohen (e.g., his grandmother told him they are kohanim), ask him to investigate the matter further. This will be to his benefit. In cases of doubt, contact a Beis Din proficient in yuchsin.

Of course, this does not apply to someone who already belongs to a family with a chazakah as being kohanim. Similarly, if a guest enters your Chabad house and says he is a kohen, you may give him the first aliyah and allow him to duchen, and there is no need to make an investigation first.

Even if someone has the surname “Cohen” or “Katz,” it may be possible that he does not have the status of a kohen. Maybe the name was adopted recently, or perhaps his mother has the status of a zonah (e.g., she had previous relations with a non-Jewish man), causing her children to be chalalim.

SPERM/EGG DONORS AND SURROGACY

WHAT IS THE STATUS OF A CHILD BORN VIA A SPERM DONOR (AFTER THE FACT, WITH REGARD TO YUCHSIN)?

A child born via a sperm donor is considered the biological child of the donor. Therefore, some—such as the Satmar Rov and R' Shlomo Zalman Auerbach—argue that the child is considered a mamzer, as receiving sperm from another man while married is tantamount to engaging in relations with him.³²

(It should be noted that this concern exists specifically if the donor is a Jewish man, and not if he is non-Jewish.³³)

However, many others—such as R' Moshe Feinstein—are of the opinion that the child is not considered a mamzer, since the conception did not occur in the context of marital relations.³⁴

When dealing with someone born via a sperm donor, a competent rov should be approached for guidance.

Obviously, all the above relates to cases of bedieved; to receive a sperm donation lechat'chilah is extremely problematic halachically for numerous reasons.

³² *Shu"t Divrei Yoel* §107-110. *Minchas Shlomo Tinyana* §124.

³³ See *Shulchan Aruch, Even Ha'ezer* 4:19.

³⁴ *Shu"t Tzemach Tzedek, Even Ha'ezer* §15. *Shu"t Avnei Neizer, Even Ha'ezer* §21. *Shu"t Igros Moshe, Even Ha'ezer* 1:10. *Ibid.* 1:71. *Ibid.* 2:11.

THE SEFER YUCHSIN IDEA

On Wednesday night, 13 Shevat 5743, Rabbi Menashe Klein, author of *Mishneh Halachos*, visited the Rebbe. During their conversation, the Rebbe brought up the idea of preparing a *Sefer Yuchsin*, including a list of families verified to be halachically Jewish, to somewhat mitigate the problems that surfaced as a result of the *Mihu Yehudi* law.

The next day, the Rebbe retracted the idea, sending Rabbi Klein the following *maaneh*.

While the Rebbe decided against actually preparing such a *sefer* due to the reasons enumerated in the *maaneh*, we see from this that the Rebbe was conceptually in favor of creating standards with regard to *yuchsin*, and doing whatever possible to uphold them.

בהמשך להמדובר אמש בנוגע לספר יוחסין וגודל האחריות שבדבר, כיון שמעולם לא הייתה כזאת - התבוננתי עוד הפעם בזה ולפענ"ד:
(א) בנוגע לפועל - על פי מצב היחסים בין ארגוני הרבנים האורתודוקסים כאן (ובכמה מקומות) - לא יעשה הספר בפועל (מי הנאמן, האחראי, העומד בראש וכו'),
(ב) הדיבור יחריף היחסים ביניהם וכו'
(ג) הקונסרוואטיוויזם (וגם מהנ"ל) ירעישו שהקנאים רוצים לפלג עם ישראל בכל מקום, ואפילו באמצעים שהקנאים באונגארן מאז לא נקטו בזה
(ד) ירעישו בארץ הקודש נגד הכנס האחרון דמיהו יהודי, שנתגלתה כוונה האמתית וכו' וכו' - זאת אומרת כיון שברור שעתה ובעתיד הקרוב לא יבוא הספר בפועל, ומאידך - עלול אפילו רק הדיבור על דבר זה למחלוקת גדולה וביותר - לדעתי אין מתאים כלל וכלל להעלות השאלה אפילו בדיבור בעלמא - לעת עתה ובעתיד הקרוב כי המחלוקת וכו' בגדר ודאי והתורעלת גם בגדר שמא אינה (וחזורני ממה שאמרתי בזה אמש).
ואת כת"ר הסליחה "ודברים שאמרתי וכו'*

(מנחם משיב נפשי ח"ב ע' 793)

*זהו התחלת ציטוט מגמרא (שבת סג, ב ושי"ג), שסימו הוא "דברים שאמרתי" לכם טעות הם בידו".

Yesterday we discussed the idea of producing a *Sefer Yuchsin*. However, in light of the tremendous responsibility involved in doing so, since such a project has never been undertaken before, I reflected on the idea once again and came to the following conclusion:

- 1) Practically speaking, based on the interrelationships between the organizations of Orthodox rabbis in America (and in many other places), you should not actually produce the *sefer* (who is the one entrusted with the project, responsible for it, managing it, etc.)
- 2) Speaking about this idea will worsen these interrelationships, etc.
- 3) The Conservatives (as well as some of the above organizations) will make a tumult that the "zealots" want to split the Jewish nation wherever they are, using even such methods that the Hungarian zealots of years ago never employed.
- 4) A tumult will be made in Eretz Yisrael against the latest *Mihu Yehudi* conference, claiming that now its true intent was revealed, etc. etc.

In other words, it is certain that the *sefer* will not actually be published at the present time or in the near future, and conversely, even speaking about this idea has the potential to create an extremely large *machlokes*. Therefore, in my opinion, it is entirely incorrect to raise this question even verbally, both now and in the near future, because the *machlokes* etc. is in the realm of *vadai* [certain], while the gain is not even in the realm of *shema* [perhaps]. (I retract what I said yesterday regarding this matter.)

I apologize. "That which I stated etc."*

(*Menachem Meishiv Nafshi* vol. 2, p. 793)

* This is the beginning of a quote from Gemara (Shabbos 63b), which concludes "...is mistaken."

WHAT IS THE STATUS OF A CHILD BORN VIA AN EGG DONOR OR SURROGATE MOTHER (AFTER THE FACT, WITH REGARD TO YUCHSIN)?

In this case, the question is who is considered the true mother of the child: the woman whose egg produced the child, or the woman who carried the child and gave birth?

There are many opinions in this matter, ranging from R' Mordechai Eliyahu, who held that we only follow the birthing mother; R' Shlomo Amar, who holds that we only follow the genetic mother; and several opinions somewhere in between—for example, R' Shlomo Zalman Auerbach, who held it is a matter of doubt.³⁵

In light of the various opinions, in a case where the egg donor or surrogate mother is non-Jewish, it is recommended for the child to undergo conversion. Even if you were to argue that the child is halachically Jewish, the child may end up marrying someone who follows a different opinion, which would not be morally correct. However, many *Batei Dinim* agree that the conversion process in such a case is easier than in the case of a full-fledged non-Jew.

When dealing with someone born via an egg donor or surrogate mother, a competent *rov* should be approached for guidance. It should also be noted that as technology advances, the halachic *shaalos* involved are becoming more and more complex.

Here as well, all the above relates to cases of *bedi'aved*; to receive an egg donation or use a surrogate mother *lechat'chilah* is halachically problematic, and rabbinic consultation is required.

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35 Cited in *Nishmas Avraham* vol. 3, p. 34.