



## Converting a Mamzer

The *Mishnah* in the third *perek* of *Masechet Kiddushin* discusses the ability of a *Mamzer* to purify their children from the *pesul* of *mamzerut*. *Rabbi Tarfon* is of the opinion that a *Mamzer* is able to purify his offspring. This can be done through marriage to a *Shifcha*. The offspring of the *Mamzer* and *Shifcha* has the status of a slave (see 3:12), who can be freed by his master (in this case his father who is a *Mamzer*). In this way, this child who was born to a *Mamzer* is able to become a fully-fledged Jew.

*Rabbi Eliezer* disagrees with *R' Tarfon's* view. He states that the child of a *Mamzer* and a *Shifcha Canaanit* receives its status from both parents and therefore has the dual status as a *mamzer-servant*. The *Gemara* explains *R' Eliezer's* rationale. This is because the law is that a person's *yichus* follows the *pegum*. Since in this case there is a deficiency on both sides – the child receives its 'blemish' from both parents and becomes a *mamzer-slave*.

The *Tosafot* in *Yevamot* (23a) seem to take exception to *R' Elazar's* rationale. This is because *Tosafot* there states that a non-Jew cannot become a *mamzer*. This is a challenge to the opinion of *R' Eliezer* who states that this non-Jewish child is a servant as well as a *mamzer*.

The *Avnei Miluim* attempts to answer this question using the same law that was used by the *Gemara* as the rationale for *R' Eliezer's* opinion. The law has been established that we follow the *pegum* in all cases, and applies to this case as well. By this law, the child is deemed to be like the mother and the father when they are tainted on both sides. Therefore, just as the father who is a *Mamzer*, is a Jew – this same *yichus* will be passed on to the child. The child has the status, not of a non-Jewish slave who becomes a *mamzer*, but rather that of a Jewish *mamzer* (from his paternal side), who is also a slave (from his maternal side).<sup>1</sup>

The *Keren Orah* takes exception to the *Avnei Miluim's* interpretation for a number of reasons. Firstly, he states that

it is not practically possible for this child to be a half Jew / half *canaanit*. Additionally, he states, this opinion gives rise to a counter-intuitive law which is if a Jew has offspring with a *shifcha*, that child has the status of a *shifcha*, however if a *shifcha* and a *mamzer* reproduced, that child should be half-Jewish!

The *Imrei Moshe* also questions the *Avnei Miluim* by looking at this child's status vis-a-vis monetary matters. The *Imrei Moshe* states that the law of following after a parent's *pegum*, does not override the fact that for monetary matters this child is deemed a slave. Therefore it is impossible that this child could be half Jewish-half slave considering the child's status as a slave for monetary matters. Therefore both the *Keren Orah* and *Imrei Moshe* conclude that although a non-Jew cannot be made a *mamzer*, however a slave can become a *mamzer*. This slave obviously has some quasi-status between that of a non-Jew and a fully-fledged Jew.

There is also debate amongst the *achronim* regarding the *shita* of *R' Tarfon*, that the child becomes a slave who can become Jewish upon being released. The *Chazon Ish* and *Kovetz Ha'arot* explain that *R' Tarfon* was of the opinion that a slave cannot become a *mamzer*.

The *Avnei Miluim* states that there is a unique law in the case of the child of a slave that this child does not gain his *yichus* from his father, and therefore does not have the law of receiving the *mamzerut* blemish from his father's side. The *Gemara* in *Kiddushin* (68a) seems to support this theory by stating that deriving from a *limud* that slaves are an '*am hadomeh l'chamor*' in terms of their legal status. *Rashi* seems to imply that just as an animal clings to its mother and does not associate with its father at all, the offspring of a slave should have the status of a slave by virtue of its close association with its mother and have no legal association with its father..

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<sup>1</sup> Interestingly, according to this *Avnei Miluim*, this child would be a half slave/half free-man and therefore would be able to effect *kiddushin* due to his free half.

**Revision Questions**

קידושין ג' ד' ד' ד'

- According to *R' Meir*, what qualifies as a satisfactory condition? (ג' ד')
- What is the law regarding a case where a man says “when I married you I thought you were *bat Kohen*” and she is really a *bat Levi*? (ג' ה')
- Can a person *mekadesh* a married woman now, in case her current husband dies? (ג' ה')
- What is the law regarding the case where a person performs *kidushin* on the condition her father consents? (ג' ו')
- Regarding the previous case what if her father subsequently dies? Or what if instead the husband dies? (ג' ו')
- What is the law regarding the case where a man says that he married off is daughter but he does know to who, and then someone says it was him? (ג' ז')
- Regarding the previous case what if two people say it was them? (ג' ז')
- Is a person believed if he said regarding his daughter that he married her off and subsequently accepted her *get* when she was a *katan*? (ג' ח')
- Is a man on his death bed believed if he says he has children? Or if he says he has brothers? (Why is this important?) (ג' ח')
- What is the law regarding the case where a person who has two wives and two daughters from each of the wives says that he married off his “big” daughter? (ג' ט')
- What is the law regarding a case where a man say to a woman “I was *mekadesh* you!” and:
  - She denies it?
  - She say it was not her but her daughter that he was *mekadesh*? (ג' י')
- What is the law regarding a case where a man say to a woman “I was *mekadesh* your daughter” and she say it was not her daughter but herself that he was *mekadesh*? (ג' י"א)
- Complete the following rules and explain: (ג' י"ב)
  - \_\_\_\_\_ כל מקום שיש קידושין ואין עבירה
  - \_\_\_\_\_ כל מקום שיש קידושין ויש עבירה
  - \_\_\_\_\_ כל מקום שאין קידושין ויש עבירה
- According to *R' Tarfon*, how can one “*metaher*” a *mamzer*? (ג' י"ג)
- What were the ten categories of family that returned from *Bavel*? (ד' י"א)
- Who can *charurei* marry? (ד' י"א)
- What are *shtukei*? (ד' י"ב)
- What are *asufei*? (ד' י"ב)
- Regarding which relationship does the *Tana Kama* and *R' Yehuda* argue? (ד' י"ג)
- How many generation back does a *Kohen* need to check in his fiancé’s past when marrying a *Kohenet*? Or marrying an *Yisraelit*? (ד' י"ד)
- Regarding the previous question to which case is marrying a *Leviya* compared? (ד' י"ד)

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**Next Week's Mishnayot...**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
10 <sup>th</sup> January ל' שבט	11 <sup>th</sup> January א' אדר	12 <sup>th</sup> January ב' אדר	13 <sup>th</sup> January ג' אדר	14 <sup>th</sup> January ד' אדר	15 <sup>th</sup> February ה' אדר	16 <sup>th</sup> February ו' אדר
Kiddushin 4:5-6	Kiddushin 4:7-8	Kiddushin 4:9-10	Kiddushin 4:11-12	Kiddushin 4:13-14	<b>Bava Kama</b> 1:1-2	Bava Kama 1:3-4

