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MATRILINEAGE AND PATRILINEAGE
IN THE TALMUDIC HALACHAH

by
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Thesis submitted in partial fulfillment
of the requirements for Ordination.

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DIGEST

This study deals with the nature of Jewish lineage systems. As a rule, societies have certain formulas and customs which determine issues of status and inheritance. Some cultures determine these issues according to the mother and some according to the father. Judaism derives status, depending on the varying situations of life, according to both the mother and the father. This thesis examines the methods of Jewish status derivation in detail.

Just as every society has rules and methodologies by which lineage is determined, so do these rules fluctuate throughout history. In this work, various primary sources are examined in an attempt to learn how each era of Jewish history dealt with these issues. The following sources are utilized: The Bible, the histories of Josephus, the Mishnah and Tosefta, the Talmud, and the codes of Maimonides and Caro.

In addition to the primary sources used, a particular text was utilized by which the chapters on the Mishnah and Tosefta, Talmud, and codes, are organized. This text, Mishnah Kiddushin 3:12, is the basic and unifying source on which any discussion of Jewish lineage systems must be based.

This thesis then, analyzes the sequential texts of Jewish learning era after era. It traces the evolution of the Biblical, Hellenistic, and Rabbinic concepts of

lineage. It shows both the differences and the similarities of Biblical and Talmudic concepts of lineage, and also analyzes the divergent attitudes existing within the talmudic tradition. Lastly, it illustrates the awesome overall unity of Rabbinic thought concerning this subject.

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INTRODUCTION

Many Jews are deeply aware of and concerned about the high level of intermarriage in America and throughout the world. There is a fear that such marriages (between a Jew and a non-Jew) will decimate our numbers, and turn many potential active Jews away from our communities. An additional problem caused by a high rate of intermarriage is the question of who is a Jew.

Concerns over this question have been raised ever more often during the past decade until they were voiced publicly by Alexander M. Schindler in his now famous "Houston Address" delivered on December 2, 1978. In this address, Rabbi Schindler called for a change in the traditional derivation of Jewish status. As long as either parent was Jewish, the child would be considered Jewish. Traditionally, only the child of a Jewish mother could be considered a Jew without undergoing a conversion. The future of this issue for Reform Judaism is now in the hands of an Ad Hoc committee of the Central Conference of American Rabbis, which is presently developing a resolution on patrilineal descent to be discussed at the upcoming CCAR annual convention.

An obvious impediment to the aforementioned discussions is the lack of a systematic study of how Jewish tradition has assigned status, both as a Jew and as part of the Jewish community, throughout history. This study is an attempt to examine, from primary sources, the nature of

inherited status in the Jewish tradition. Not only in terms of Jewish membership, but including all the various kinds of status which play a part in our tradition.

This thesis examines the Bible, the histories of Josephus, the Mishnah and Tosefta, the Talmud, and the Codes of Maimonides and Caro with the intent of learning how issues of status were dealt with in each of these sources. In addition, it begins with an examination of the concepts of matrilineage and matriarchy. The later term was applied to biblical society by many nineteenth and early twentieth century scholars, and the earlier term is used by some today to describe the Jewish lineage system.

As a rule, societies have systems of lineage by which status and inheritance is derived, some linked to the mother and others to the father. This work will examine the nature of lineage in Judaism.

This study is organized according to two systems. First, the material is arranged in chapters according to the various sources examined. Chapters are then arranged in chronological order according to the time periods represented by the sources. The second system of organization relates only to the chapters on the Mishnah and Tosefta, Talmud, and Codes. These chapters have been arranged according to a structure suggested by the four principles of Mishnah Kiddushin 3:12, which function as the basic and unifying concepts for this discussion of Jewish lineage systems.

CHAPTER I

MATRIARCHY AND EARLY ISRAELITE SOCIETY

In 1861, Johann Jakob Bachofen, a Swiss anthropologist and jurist, published the book Das Mutterrecht challenging the patriarchal theory of social evolution which dominated prior to this publication. Das Mutterrecht outlined a theory which, at its core, claimed that early society was matriarchal in character. As Bachofen explained, there were several stages of social evolution, beginning with promiscuity, leading to matriarchy after which men gained primary power in society establishing patriarchy as the norm ever since.¹

There are no known matriarchal societies in our world today and in fact, none are known to have ever existed.² There are, however, legends such as the Amazons which describe matriarchal society. Not only is there no historical evidence that matriarchal societies ever existed, but the primary supposition on which the theory stands, the promiscuous nature of early society, has been proved invalid.³ Despite these setbacks to the theory of which we are now aware, it should be noted that in the later part of the nineteenth century and the first half of the twentieth century the theory of matriarchal society was

very popular and was accepted fact by many anthropologists.⁴
In the Encyclopedia of Religion and Ethics published in 1931, W. H. Rivers offered the following definition of matriarchy:

"Mother-right (matriarchy) is a form of social organization in which the rights of a person in relation to other members of his community and to the community as a whole are determined by relationship traced through the mother. In this condition the duties which a person owes to society, the privileges which he enjoys, and the restrictions to which he is subject are regulated, and their scope is determined, by the relation in which the person stands to his mother's relatives and his mother's social group. Mother-right is a highly complex condition in which a large number of social processes are involved."⁵

To this definition Rivers added the following elements which were found in such societies:

1. descent, a person belongs to the social group of his mother;
2. kinship, traced through the mother and not recognized with the relatives of the father;
3. inheritance, from the mother. Although women sometimes may not hold property, they do form the channel by which it is transferred (e.g., property of man passes to his sister's son);
4. succession to office, e.g., by one's sister's child;
5. authority, usually not in mother but in father, oldest member of family or mother's brother;
6. "matrilocal" marriage in which the husband lives with his wife's people.⁶

When reading this definition closely, it becomes immediately clear that Rivers was describing not matriarchy, a society in which final authority resides in women, but matrilineage, the system of kin identification and descent group membership gained through the mother. As mentioned

above, there is no reliable evidence, either contemporary or historical to support the theory of matriarchy. There is, however, a large number of examples, both contemporary and historical to clearly prove the existence of matrilineal societies.⁷

In Malay, around the area known as Negri Sembilan, there is a system of matrilineal kinship. In this system, every individual is a member of a matrilineage which, grouped in relation to other matrilineages of both like and unlike political status, form the basis of the traditional political organization of the area. Rights of ancestral fields are transmitted within the matrilineal group, so that when a man goes to live in his wife's house after marriage he becomes concerned in day to day economic affairs with property over which he has no traditional right.⁸ In this system, men worked the fields and made the important economic decisions which affected the family and the fields, however, the fields were inherited according to a pattern which derived from the wife's family.

Within the Minangkabau village there are several matrilineages, each divided into a number of house groups. Those bearing the same name may be said to form a clan. In the traditional system a man continued to live in his own house after marriage, visiting his wife in her house at night. Succession to the headship of matrilineages and house groups passed from a man to his sister's son.⁹ In India we find a group called the Nayars, who are tradi-

tionally organized into localized matrilineages, each composed of residential property owning units.¹⁰

In addition to matrilineal societies in the Far East and India we find such groups in both Africa and America. A group called the Akan inhabit part of the Ivory Coast. While descent in this group is reckoned according to the father, inheritance and succession to authority is based on the mother's family.¹¹ The Bemba, commonly called the Central Bantu, are divided into forty matrilineal clans. Descent is traced matrilineally, and the husband lives with his wife's family. Bridegrooms of the Bemba used to do some kind of service for their fathers-in-law but now make a money payment.¹² In America a number of Indian tribes were noted to be matrilineal in nature. The Hopi, for example, are both matrilocal and matrilineal. Thus the husband lives with the wife's family, and the tribe membership of the children follows the mother.¹³

It is reported that although matrilineal societies are common, patriliney is twice as frequent. Indeed, while matriliney is common in Africa, the Americas, and Oceania, it is quite rare in Eurasian and Mediterranean areas. Also, matriliney is unusual in societies which make a living from herding large animals, depend heavily on hunting and food gathering, or cultivate with a plow. Thus it is usually found in societies which live by agriculture but do not use a plow.¹⁴

We have seen that matriliney is common in our modern world. W. Robertson Smith, a professor of Arabic at Cambridge University, published Kinship and Marriage in Early Arabia, in 1885. In this work the nature of early Arabian society is described along lines which follow the earlier work of Bachofen (see above). Smith identified numerous tribes which were polyandrous and in some ways seem to have been promiscuous.¹⁵ Furthermore, it is shown that many tribes were both matrilocal and matrilineal. It should be added, however, that while matrilocal practice was very common, matrilineal descent was less common, and it is very possible that a man would attach himself to his mother's tribe because her family had a more noble status which the son could then inherit if he was attached to her side of the family.¹⁶

The road to this system, as described by Smith, is rather complicated. Smith asserts that early Arabian society was often polyandrous because of a lack of women.¹⁷ That there were polyandrous marriages does not, however, indicate that there was wholesale promiscuity for the social rules governing these marriages were very strict.¹⁸ In these kinds of marriages it was easier to trace the lineage of the child through the mother who might choose a particular man to serve as the father and guardian to the child even if he clearly was not the biological father.¹⁹ As more women became available through conquest and birth, (In very early times female infants were not always allowed

to live) it became a mark of status for a man to have his own wife. This wife was bought or stolen from another tribe. In many cases of purchase, the man would live with his wife's tribe and would agree to her tribe's ultimate ownership of the children.²⁰ While this is matrilineal marriage, as well as matrilineal, it was in now way matriarchal, and the husband had clearly defined and recognized authority over his wife. Later, by the time that Islam dominated the Arab tribes, women were plentiful and there were many systems of marriage and lineage although most marriages were patrilocal and patrilineal.²¹

In his work, Robertson Smith adopted several terms to describe the several types of marriages which he believed to have existed during a time which included matriarchies. To indicate the purest form of matriarchal marriage he employed the term, "Beena Marriage." In this kind of marriage, "...the woman remained with her kin and chose and dismissed her partner at will, the children belonging to the mother's kin, growing up under their protection."²² The term Smith applied to a temporary, unregulated union is Mot'a marriage. "The Mot'a marriage was a purely personal contract founded on the consent between a man and a woman, without any intervention on the part of the woman's kin...In Mot'a marriage the woman did not leave her home, her people gave up no rights which they had over her, and the children of the marriage did not belong to the husband." "For a type of connection, includ-

ing Mot'a and Beena arrangements, we ought to seek a name expressing the fact that the wife is not under her husband's authority but meets him on equal terms..the type of marriage which involves no subjugation may very appropriately be called Tzadica marriage, and the woman may be spoken of as a Tzadica wife while the husband is a Tzadica husband."²³ Marriage based on a system of male kinship is called Ba'al marriage by Smith, and the wife would be called a Be'ulah. This types of marriage includes male domination in which the wife has lost her freedom and is a subject of her husband.²⁴

These Arabic terms are used to describe the various kinds of marriage relationships thought by early anthropologists to have existed side by side with matriarchal societies. That such societies are no longer believed to have ever existed calls into serious doubt the historical existence of wife dominated marriages such as the "Beena marriage." The matrilineal and matrilineal aspects found in the above terms and definitions, however, can be supported (see above). It should also be noted that Smith stressed the existence of polyandry in ancient Arabia. While it may be logical to assume that such marriages would lead to a matrilineal reckoning of a child's kin, it is not in any way indicative of the woman's authority in the marriage. Indeed, Smith indicates that women involved in such marriages were completely subject to the leader among their husbands.²⁵

As was mentioned above, a fundamental of matriarchal society is the existence of promiscuity and polyandry in society. Several biblical verses are offered to prove that such conditions existed among Hebrews in biblical times. Such evidence includes: Genesis 35:22 in which Reuben has intercourse with Bilhah,²⁶ yet this is not effective evidence for societal promiscuity since he did eventually face censure for his action as found in Genesis 49:3 and 49:4. In II Samuel 16:22 it is noted that Absalom had intercourse with his father David's concubines,²⁷ yet this was more a political act than one of promiscuity. Lastly, I Chronicles 2:18-24 are offered with the claim that these verses show that Caleb and Hezron both had relations with Ephrath,²⁸ however, it is unclear from the text if this was really so. Hence, the evidence offered to show that promiscuity and polyandry existed in biblical society is inconclusive.

As mentioned above, there are several elements which are included in the definition originally offered for matriarchy, but which seem to define matrilineality instead. One of these elements is matrilocality, where the husband would live with his wife's family or in his wife's home. A number of biblical scholars offered the following verses in the Bible as evidence for matrilocality. It should be mentioned that these scholars saw matrilocality in the Bible reflected in the wife's ownership of her tent, or as will be seen, the indication that it was up to the

husband to go to his wife to carry on the relationship. In Genesis 38:8 Onan is told by Judah to, "Go in to your brother's wife..." to serve as the levirite husband to Tamar.²⁹ While this does indicate that Onan had to go to Tamar, there is no evidence that Tamar had any real control of the location of the relationship and instead seems to indicate the need for the simple act of entering the tent to join her. Yitzchak, we are told in Genesis 24:67, brought Rivkah, his wife, to his mother's tent.³⁰ This in no way indicates that Rivkah owned the tent and in fact indicates that Yitzchak owned the tent for he had the power to give the lodging to his wife who, incidentally, came to live with him. This seems a much stronger proof of patrilocality than matrilocality. In Genesis 2:24 we read, "... a man leaves his father and his mother, and cleaves to his wife..."³¹ While this does indicate that the man leaves his own family it in no way indicates that he must live with his wife's family. Furthermore, this verse seems to serve a metaphorical purpose more than as a statement of biblical marriage custom. Lastly, Judges 4:17 reads, "But Sisera fled away by foot to the tent of Ya'el, the wife of Hever..."³² The assumption made by the supporters of matrilocality is that Ya'el owned her tent. If, however, polygamy was common in biblical times, then it would be logical that each wife had her own tent for herself and her children. That each wife had her own tent does not, in any way, indicate that she owned that tent or had any

special rights or authority by virtue of her residence in it. It is more probable that the husband, who gave his wife a tent for her use, maintained ownership of the tent so that when he visited his wife in her tent, he would actually visit her in his own property and in a locality which he controlled. Thus there is insufficient evidence to support the matrilocal theory.

There is, however, one example that does seem to be evidence for matrilocality. Jacob, it will be remembered, went and lived with Laban who eventually became his father-in-law. It seems furthermore, that Jacob recognized some kind of responsibility to live with his father-in-law because when he finally did decide to leave Laban, he left in secret. This story seems to parallel the practices of the Bemba of the Ivory Coast (see above) in that not only did Jacob have to live with his wife's family, but he had to do a period of service in order to earn his wives from his father-in-law. Despite the strength of this one piece of evidence for matrilocality, it alone is not enough to indicate a general trend of society against the onslaught of so many opposite examples that could be offered.

It was mentioned above that Beena marriage is one of the prime examples of the function of matriarchal marriage. Such a marriage would include the right of the wife to choose and reject her husbands, as well as the requirement that the husband live with her kin and that the children belong to the wife's kin. Numerous examples of Beena

marriage have been offered from the Bible. It was believed that Beena marriage could be observed in several marriages or relationships which were between patrilineal siblings since such marriages would not have been accepted had the couple actually been considered brother and sister. Abraham and Sarah are offered as examples of this.³² We know from Genesis 20:12 that they shared a father but had different mothers. It is reasoned that they would never have been allowed to marry were they considered brother and sister. That they were allowed to marry, indicates that they were considered unrelated and their family membership was therefore derived from their mothers. Drawing one's family membership by way of the mother instead of the father was considered an aspect of matriarchal "Beena" marriage. The rape of Tamar by Amnon is another episode which was believed to indicate the existence of Beena marriage in the Bible.³³ As the story unfolds, Tamar said to Amnon, "...Now therefore, I pray thee, speak to the King; for he will not withhold me from thee." (II Samuel 13:13). Were Tamar and Amnon actually considered brother and sister, David would never have agreed to such an incestuous relationship. Tamar's statement that David would have agreed is taken as evidence that Tamar and Amnon, who shared a father but had different mothers, were not actually considered siblings.

Both of these examples are open to question. If Sarah and Abraham were indeed subjects of Beena marriage, how is it that Sarah followed Abraham in his wanderings

when we might instead expect him to live with Sarah's kin?³⁴ In the case of Tamar and Amnon there are more questions. Were all or some of David's marriages of the "Beena" form, would there not be some indication that he had to travel to visit his wives at the family residences? If Tamar and Amnon were not considered brother and sister, then why are they repeatedly referred to as such (see II Samuel 13:7, 8, 10, 11, 12, 20 et al)? In addition, it seems very possible that Tamar, in her attempt to put off Amnon, claimed that David would give her to him, hoping to avoid imminent rape.

A selection of examples of Beena marriage in which the wife had choice concerning her husband and location of residence include Isaac and Rebekkah.³⁵ When Abraham's servant approached Laban concerning a marriage between Isaac and Rebekkah, the final decision was left to her. Even though she left her family to go to Isaac, the fact that she was consulted concerning her willingness to travel to Isaac and marry him, is seen as evidence that Beena marriage existed.

In the case of Jacob, there seems to be more evidence.³⁶ Indeed, Jacob resided with the family of his wives, however, he had to work to earn Rachel and Leah who were then given to him by their father. There seems little evidence that they had any choice. Jacob took two wives, yet Beena marriage was considered closer to polyandry than polygamy. Also, Jacob eventually left Laban taking his wives with him. Morgenstern indicates that Jacob had to ask his wives'

permission before leaving Laban's house,³⁷ however, the text seems to indicate that Jacob was simply telling his wives what God had commanded him. (See Genesis 31:4-16.) Indeed Leah and Rachel actually responded saying, "...for hath he not sold us?" (Genesis 31:15) Were this an example of Beena marriage, Laban would have had no control over the marital decisions of his daughters.

Lastly, in the category of children, determination of Beena marriage was made in situations where the mother and father did not live together, and the children remained with the mother. The case of Moses and Zipporah is offered as an example.³⁸ She stayed with Jethro, her father, and kept the children with her. In the case of Gideon and the Shechemite woman³⁹ the same situation existed. In both these cases, however, there are no other aspects of Beena marriage in the relationships. In Exodus 2:21 it says that Jethro gave Zipporah to Moses. In the case of Gideon, even Morgenstern sees problems (see below) although he indicates that the case of Gideon and the Shechemite woman is, "The most unmistakeable biblical instance of Beena marriage..."⁴⁰ The problems Morgenstern notes in this as well as other examples of Beena marriage in the Bible are summed up in the following paragraph:

"Now it is significant that of the many biblical instances of Beena marriage not one, with the possible exception of that of David's two sisters, was of absolutely pure type. Abraham's marriage with Sarah was undoubtedly a Beena marriage, but none the less she had journeyed with him away from her original home in the midst of her clan, out

into a strange country, quite contrary to a fundamental principle of Beena marriage. Beena marriage, too, may have been dominant in Laban's clan; but Rebekkah consented to sacrifice her rights and privileges under Beena conditions and enter into a Ba'al marriage with his own clan, since he had his children with him, and they were regarded as members of his clan and not of that of their mother, or perhaps mothers. Gideon's marriage with the Shechemite woman was a typical Beena marriage; but on the other hand, he had children but otherwise dwelling with him and apparently regarded as belonging to his own clan. Saul's children likewise dwelt with him as members of his clan. And David too had all his wives with him, and his children were all members of his family, and not of the families where clans were the mothers'."41

It should be noted that despite the problems stated in the paragraph reproduced above, Morgenstern still saw these examples as indicating Beena marriages. That there are no examples of pure Beena marriage was assumed to be a function of the changing nature of society to Ba'al marriage with aspects of both being present in most marriages.⁴²

For the most part there seem to be considerable problems with the evidence offered for the existence of matriarchy in biblical society. Although the supporters of the theory were able to produce several verses which indicate promiscuity, it is hardly credible to consider these very few citations as evidence that even early biblical society was particularly promiscuous. Every society has in it a certain amount of promiscuity, but that fact in no way indicates that such behavior was generally accepted by society as a whole. Even if there were many more examples of promiscuity in the Bible it still would not show that

the society itself was sexually liberal, but instead would continue to show that there were at least a few cases where sexual morality broke down for certain individuals.

Indeed it can be clearly seen that biblical society did not approve of promiscuity. Reuben, who was cited in a case of promiscuous behavior, was censured by his father for his behavior (see above). When Dina was raped, her brothers wreaked vengeance on her rapist. When Judah had relations with Tamar, his son's wife, he clearly recognized his improper behavior.⁴³ When the tribe of Benjamin tolerated promiscuity in its territory, the other tribes gathered to punish the Benjamites for their laxity.⁴⁴ When Amnon raped his sister, Tamar, he was killed by Absalom in revenge.⁴⁵ These are only a selection of examples which clearly indicate that biblical society did not tolerate promiscuity.

In the cases detailing the wife's ownership of her tent and the matrilocal nature of some biblical marriages, an analysis based on the prevailing institutions is lacking. In a polygamous society, where a man might have several wives, it is reasonable to expect that women were assigned a tent for themselves and their children, but in no way does that mean that they owned the tent. It is more likely that the tent was issued to them as part of the equipment of the harem and belonged to their husbands. In any event, that the tent might be theirs, or that the husband might go to his wife's tent for marital relations

in no way indicates that she dominated the relationship or controlled its parameters.

Indeed the evidence more indicates the dominant nature of the male in the marriage relationship. The Hebrew word for husband is Ba'al which indicates ownership or mastery. Furthermore, while there are no clear indications of polyandry, there are numerous explicit situations which show that bigamy and polygamy were a normal aspect of biblical society. As for the numerous cases which can be called "Beena marriage," in almost every society there are cases where children might live only with their mother, or take the name of their mother, or live with their parents-in-law.⁴⁶ It is clear, therefore, that the scriptural evidence for the matriarchal aspect of biblical society does not actually prove the theory. In fact, the evidence for the patriarchal aspect of biblical society is so strong, and so common, that the proof is overwhelming.

CHAPTER II

MARRIAGE AND LINEAGE IN THE BIBLE

Since it has been shown that marriage and lineage were not controlled by wives and mothers in the Bible, it becomes necessary to investigate the nature of marriage and lineage in biblical society. The first listing of genealogy in the Bible delineates descent from Cain. Except for the mention of the fact that Lemach had two wives, and the listing of Lemach's sons according to their mothers, all the listings are of men and their sons.¹ The only mention that girls were even born is an occasional statement that so and so begot sons and daughters.

Although it does not always seem so when reading lists of genealogy in the Torah, great stock is placed on who is chosen as a mate. Abraham made his servant swear not to take a wife for his son from the daughters of the Canaanites.² We read that it was a grief to Rivkah that her son Esau took wives from the daughters of the Hittites.³ When Yitzchak called Jacob over to bless him as Jacob was about to flee Esau, he warned him, "Thou shalt not take a wife from the daughters of Canaan."⁴ In Genesis 34:13 the sons of Jacob state that they could not give their sister in marriage to one who was not circumcised.

Indeed this last statement seems to set the scene for future concerns about who to marry. The essence of a concern for only marrying one who is circumcised is the desire to marry one who is at least somewhat similar in terms of culture. As the culture of Jacob's descendants became more rich, firm, and unique, the strictures on who it was appropriate to marry became more strictly defined. One is forbidden to marry with anyone from the nations of the: Hittites, Girgashites, Amorites, Canaanites, Perrizites, and Hivites.⁵ The warning is that they will lead the Israelites away from God. By the time the apochryphal book of Tobit was penned, the warning was against marrying anyone who was not a kinsman, and by logical extension, a Jew.⁶

The concern for who was an appropriate mate was not limited to various ideas and concepts of intermarriage, but also appeared as prohibitions against illicit sexual relations and incest. Much of the eighteenth, twentieth, and twenty-first chapters of Leviticus deal with these issues. We find a listing for incest: father and mother, father's wife, sister or half-sister, granddaughter, father's wife's daughter (step-sister), mother's sister, father's brother's wife, daughter-in-law, and brother's wife. There are numerous laws concerning illicit relations: Both mother and her daughter or granddaughter, sisters while both are alive, during menstruation, neighbor's wife, homosexuality or bestiality. In Leviticus 21:7

we learn that a priest may only marry a virgin of Israel. In Deuteronomy 24:1 it states that a divorced couple may not remarry if the wife had married someone else in the meantime. All these laws show a great concern for the importance of choosing the proper mate, from the proper background, and of enough distance in terms of blood relations. There is an explicit threat that were the Israelites to transgress any of these commandments they would lose the promised land. There was also the stated threat of kareth. (See Leviticus 18:27-29.) There is no stated indication as to the status of the offspring of these various categories of illicit sex and incest. As for the transgression of the warnings against intermarriage, although there are some indications of the unacceptance of these children, there are no stated status restrictions concerning them.

It should also be mentioned that there are numerous apparent, non-censured transgressions of these very commandments in the Torah. Abraham, for example, married his father's daughter (his half-sister).⁸ Jacob married two sisters at the same time, and Amram took Yochevet, his father's sister for his wife.⁹ While at first blush these transgressions of some of the Bible's most revered personalities seems shocking and contradictory, they can be more productively viewed as an earlier lack of concern over these relations, a view supported by later medieval commentators who explain that these laws of consanguinity

were not binding until the revelation at Sinai. Thus in the time that the apparent transgressions were taking place there were no actual transgressions occurring, because these were considered licit according to pre-Sinai ordinances. However, in the case of Reuben who had relations with his father's concubine,¹⁰ it was obviously considered inappropriate in society and Reuben did indeed face censure for his behavior.

As was mentioned above, the children of illicit relationships suffered no stated disability in terms of their status. In later times, however, such children would be called Mamzerim. Since the term Mamzer occurs and is taken from the Bible it is appropriate to discuss that concept at this point. The word Mamzer appears in the Bible only twice. In Deuteronomy 23:3 it states, "A Mamzer shall not enter into the congregation of the Lord; even to his tenth generation..." The context of the verse offers no help as to what is meant by the term Mamzer. The Septuagint identifies the Mamzer as a Pornes, the offspring of fornication or prostitution.¹¹ Louis Epstein explains that Philo indicates that a Mamzer is the child of a harlot.¹² Such a definition does not fit in with the later views of the Rabbis, nor with the sense of the biblical text itself. The actual meaning of the term Mamzer in Deuteronomy remains unclear.

The second usage of the word appears in Zechariah 9:6, where it says, "A Mamzer shall dwell in Ashdod." In his

analysis of the passage Stephen Passamanack explains that the Targum renders the verse, "The house of Israel shall dwell in Ashdod, they who were strangers therein (before)."¹³ The Septuagint and the Vulgate also render the word "Mamzer" as meaning stranger, foreigner, or one separated. Then again cognate words in Arabic and Syriac yield meanings of foulness and rottenness, as in rotten eggs.¹⁴ Thus in this case also, the original biblical meaning of the word is unclear.

By far, the major concern of the Bible seems to be to warn the people of Israel from intermarriage, yet for the most part, even when an intermarriage took place there seemed to be no negative reaction of biblical society to the children. While it is true that Abraham, Isaac, and Jacob all took wives from family relations, many of Jacob's sons were the product of his relationships with his wives' handmaidens. This would not, however, pose any problem since they were considered part of the clan and indeed Jacob and Abraham also took servants and others for wives. Since they were part of the clan this was not considered in any way illicit intermarriage. Joseph took Asenat, a daughter of an Egyptian priest as his wife, and it is this same woman who is the matriarch of Joseph's descendants, all of whom were considered to be Hebrews, clearly indicative of patrilineal descent.

There are, as was mentioned above, numerous examples of intermarriages between Israelite men and foreign women,

and in these cases the children were normally considered Israelite. The conflict between the warnings against intermarriage which occur again and again in the Bible and the desires of the people seem to come to an open conflict in the book of Ruth which actually shows an ancestor of King David was not an Israelite. It should be noted, however, that this ancestor was Ruth, a woman, and as we have seen, foreign women who had children of Israelite men had their children accepted as Israelites. Also, Ruth was accepted as a Jew in the text itself through her pronouncement of "Your God is My God", to Naomi, her mother-in-law. Again though, even had she not converted it was likely that her children would have been accepted as Israelites since they had a father who was of the people of Israel.

This trend seems to have only two possible exceptions in the whole corpus of the Bible. Hiram, who was sent to Solomon by Hiram, the King of Zor, and who served as an architect, a skilled worker, on the Temple, was the son of a daughter of Dan and a man of Zor. In Leviticus 24:10-12 we see the story of the son of an Israelite woman and Egyptian man who lived in the camp of the Israelites. It should be stressed that in the case of Hiram, even though he was involved in working on the Temple, he was none the less a subject of Hiram in Tyre who sent him to Jerusalem and it is unclear as to what his status was vis a vis the Israelites. In the case of the son of the Israelite woman discussed in Leviticus, he was living in the camp and he

was subject to Israelite laws in terms of profaning God's name. It is unclear whether he was actually considered to be an Israelite or whether there was a taint involved, or even whether he was not an Israelite. It is difficult, therefore, to draw any conclusions from either of these cases.

As was mentioned above, Joseph took Asenath, the daughter of an Egyptian priest as his wife. This Egyptian woman was the matriarch to the descendants of Joseph and the two tribes which grew from that marriage.

In Numbers 27 the issue is raised as to the ability of daughters to inherit from their father when there is no son. The fact that it was an issue at all and demanded discussion indicates that the ability to inherit was normally confined to sons. Furthermore, the daughters were allowed to inherit the land, but were obliged to marry only from their own tribe so that the land would not be inherited by another tribe. The implicit meaning of this is that, were the daughters to marry men from other tribes, their children would be counted in those other tribes. It is clear then, that tribal membership was patrilineally derived.

There is, however, one other case which seems to indicate a possible matrilineal link. In Nehemia 7:63 a certain priest took one of the daughters of Barzillay, the Gil'adite, as his wife, and his family was known after that as the Barzillay. When their pedigree was checked against the genealogical lists there was no listing for

their new family name and so they were excluded from the priesthood. Thus this possible case of matrilineal descent worked to the detriment of that priestly family.

The rules of lineage, status and proper marriage were applied on a stricter basis to priestly families than to lay families. The probable reason for this is that priestly families, by the fact that they served in the Temple and performed the sacrifices, had to be as pure as possible. Any blemish, or even reasonable fear of a blemish, would cause the priest to be unfit for the priesthood. A further case which shows the stringency applied to the priesthood is the case of a son of Yoyada, the son of Elyashiv the high priest, who married the daughter of Sanvallat the Horonite, and so was ejected from the priesthood.¹⁵ While this is totally consistent with the commandment in Leviticus 12:7, it also shows that the expectations of priests in law were carried out in practice.

It has been shown that the Bible is, with very few exceptions, patrilineal and patriarchal in nature. Virtually all issues of status or identity were traced through the father. At the time there was great concern over marrying the appropriate woman. Inter-marriage was consistently forbidden although it happened regularly with no apparent status problems being ascribed to the children as long as the father was an Israelite. It is only in Nehemia that authority was used to enforce anti-intermarriage ordinances.

Just as intermarriage was a major concern when choosing a wife there are specific kinds of contact that are forbidden in the Bible. These contacts include both incestual kinds of relationship and illicit relationships (see above). Although in later periods of Jewish history the children of many of these kinds of relationships would be considered Mamzerim, in biblical times the term was not applied to the offspring of such relationships, and while there are threats concerning improper sexual behavior in the Bible, there are no status regulations concerning the offspring of such behavior. The biblical books of Ezra and Nehemia give special stress to concerns of intermarriage and status. For this reason they need to be discussed on a separate basis from the rest of the Bible.

Marriage and Lineage in Ezra and Nehemia

Perhaps the strongest theme in the books of Ezra and Nehemia is the condemnation of, and refusal to accept, intermarriage. Both Ezra and Nehemia saw intermarriage as a great evil, a sin against God. They insisted that intermarriage not be accepted, and the wives and children resulting from such marriages be put away, and the Israelites agreed. We read in the book of Ezra 2:59:

"And these were they that went up from Tel-melah, Tel-harsha, Cherub, Addan, and Immer; but they could not tell their fathers' houses, and their seed, whether they were of Israel: the children of Delaiah, the children of Tobia, the children of Nekoda, six hundred fifty and two. And of the children of the priests: the children of Habaiah, the children of Hakkoz, the children of Barzillai, who took a wife of the daughters of Barzillai the Gileadite, and was called after their name. These sought their register, that is, the genealogy, but it was not found; therefore were they deemed polluted and put from the priesthood."

Thus we see that having the proper seed, the proper pedigree was a matter of great importance, whether to be considered part of Israel or to be part of the active priesthood. We read further in Chapter 9:1-2:

"Now when these things were done the princes drew near unto me saying: 'The people of Israel, and the priests and the Levites, have not separated themselves from the peoples of the lands, doing according to their abominations even

of the Canaanites, the Hittites, the Perizzites, the Jebusites, the Ammonites, the Moabites, the Egyptians, and the Ammorites. For they have taken of their daughters for themselves and for their sons; so that the holy seed have mingled themselves with the peoples of the lands; yea, the hand of the princes and rulers hath been first in this faithlessness.' And when I heard this thing, I rent my garment and my mantle, and plucked off the hair of my head and of my beard, and sat down appalled."

So we see that the people had mixed with non-Israelite seed, and in this Ezra saw a terrible sin. In Chapter 10:3 we read:

"Now therefore let us make a covenant with our God to put away all the wives, and such as are born of them, according to the counsel of the Lord, and of those that tremble at the commandment of our God; and let it be done according to the law."

So it can be seen that the people put away their foreign wives and also the children whom they had from these wives.

Nehemiah repeats the theme seen in Israel and perhaps adds more to our understanding of what happened. In Nehemiah 13:23 we read:

"In those days also saw I the Jews that had married women of Ashdod, of Ammon, and of Moab; and their children spoke half in the speech of Ashdod, and could not speak in the Jews' language, but according to the language of each people."

Hence, part of the problem that developed from the intermarriage that was taking place was that children were assimilating to the culture of their non-Jewish parent and were then not in a position or able to participate with the community of Israel. Intermarriage and the general lack of concern, in terms of who to marry, led to latent disregard

for the law. As can be seen in the same chapter but verse 28, where it says:

"And one of the sons of Joiada, the son of Eliashib the high priest, was son-in-law to Sanballat the Horonite; therefore I chased him from me."

As can be remembered, the law was that a priest was only to take a virgin of Israel for a wife. And here we see a priest who took a Horonite, and not only became ineligible for the priesthood but blatantly disregarded the law concerning priests.

There are several possible reasons for why the condemnation of marriage was so strong, and why those who intermarried had to put away not only their wives, but their children also. First is the concept of Zerah Kodesh, holy seed. In Ezra 9:2 which was quoted above, the concern for the holy seed being mingled was stated. There was clearly a concept functioning in that day but the people of Israel were tied into the covenant with God through their ancestry. They had a responsibility to keep this seed pure. Because of this concept it is doubtful that one could become a proselyte to Israel, since the ancestry that tied one to God would not be present. Since this concern was so strong it resulted in a massive condemnation of intermarriage which would obviously cause a mixing of the holy seed.

Soloman Ziethlin explained that the rejection of the child of an intermarriage being Jewish, stemmed from the historical and political events which occurred during the

early years of the return from exile. As was stated in the verses of Ezra and Nehemia, the children of a Jewish man and a non-Jewish woman were not considered Jewish. It was mentioned above that in biblical times the reverse was true and such a child would indeed have been considered an Israelite. There had to be a reason then for such a break with the past and the introduction of a new law.

Zietlin explained that this concept was the result of the conflict between the Jews and the Samaritans. The King of the Samaritans was interested in building his own Temple on Mount Gerazim to which there is reference in the Bible. The Judeans of course felt that the Temple could only be built in Jerusalem. The only historical support for this was the fact that Solomon built the original Temple there. Zietlin explained that because the Book of Kings says that Jerusalem was chosen as the official site of the Temple, the historical books of the Bible were canonized.²

The Judeans wanted to build the Temple in Jerusalem and the Samaritans wanted to build the Temple on Mount Gerazim. In order to stop the Judeans from building their Temple, the Samaritans complained that the Judeans were building a fortress. This resulted in a search in the archives in Babylon and indeed the Judeans had permission to build their Temple, and so the work was allowed to continue.

At that time, however, the governor of the north was Sanballat the Horonite, who wanted to complete the Temple at Samaria. He had a problem in that even if he did build the Temple in the north, he still needed a priest to serve there. It was well known that a priest had to be a Zadokite, a member of the family that descended from Phinneas. Sanballat, therefore, gave his daughter to Manassah, the grandson of Elyashiv, the high priest in Jerusalem. Then his son-in-law could become the high priest in Samaria, and if not his son-in-law, then certainly his grandchildren.

To stop this serious threat to the authority of the Temple in Jerusalem, the law was adopted forbidding intermarriage with a non-Jew, and pronouncing that children born to non-Jewish women were also non-Jews. Therefore, even if Sanballat would be successful in building his Temple, his grandchildren would not be recognized as Israelites and so certainly could not be considered priests, and therefore would be unfit to serve in a Temple in the north. This led to a great schism between the Samaritans and the Judeans which eventually caused the outbreak of violence. The North was eventually able to build a Temple with the permission of Alexander of Macedon, but the Temple was eventually destroyed by John Hyrcanus I in 128 B.C.E.

Thus, as Zietlin explained it, the decision to ban intermarriage and even send the children away was one of

a political nature, and not necessarily stemming from the concept of "Holy Seed."

Several questions need to be raised. Looking at the law of Ezra and Nehemia, the children of such marriages have an unclear status. Were they put away because they were not Jews and so were not part of the social system of the Jews, or were they Mamzerim? We see in the Tosephta 4:16 that if a Gentile or slave lies with the daughter of an Israelite the child is a Mamzer. We know, therefore, that a tradition did exist where such children were considered Mamzerim. There seems to be no evidence in Ezra and Nehemia, however, that such children were considered Mamzerim. The evidence is overwhelming, though, that such children were not considered Israelites, otherwise they would have been allowed to remain with their fathers as part of the congregation. Still, the evidence is only by implication (albeit very strong implication) for it is never explicitly stated that the children were not Israelites.

It should be mentioned that throughout Ezra and Nehemia the concern is with men who took foreign wives. There is no mention of Jewish women who were given in marriage to foreign men. We have no examples of men who had to leave their Jewish wives, although in a society as patriarchal

as that one was, it is unlikely that the women would have had the right to leave their husbands.

The fact that the society of Ezra and Nehemia was so patriarchal is indicative of something new. In patriarchal societies the women are generally absorbed into the culture of their husbands. In the society of Ezra and Nehemia, however, the women were not absorbed into society as usually happens. An example of women being absorbed into society can be seen in the royal families of Europe where the princess of one nation might marry the prince of another nation and so would give up her original nationality and become the princess, and eventually the Queen of her husband's realm. That the women were not absorbed by the Judean culture and nationality is seen not only by the fact that they were expelled, but also in the fact that their children were not being absorbed into the culture. (See above concerning Nehemia 13:23.)

An important possibility apparent in this material is that of Bi-lineal descent. To be a Jew, both parents had to be Jewish. If one parent was not Jewish, then the children would not be considered Jewish. In the time of Ezra and Nehemia, were the children considered Jewish, they would have been kept by their fathers. Thus it seems clear that both parents had to be Jewish for the children to be so considered.

The possibility is that throughout the Bible bi-lineality is the ideal. Deuteronomy 7:3 stresses that

neither Israelite men or women should marry outside the people. Thus even though it was not always practiced, it does seem that the ideal was for both parents to be of Israelite descent.

CHAPTER III

MARRIAGE AND LINEAGE IN THE HASMONEAN AND HERODIAN PERIODS

In his lengthy and detailed histories of the Hasmonean and Herodian periods of Jewish History, Josephus mentions many issues which are cogent to a study of matrilineage and patrilineage. In fact, careful scrutiny of his work reveals numerous examples of the attitudes of Jews in that period concerning appropriate marriages and Jewish marriage law in general. The following is a discussion of the treatment of marriage laws in the works of Josephus.

For the most part the marriage laws which Josephus describes as functioning for Jews in that period conform to the commandments described above in Leviticus 18. In Contra Apionus Book II Line 199, a lengthy description is offered:

"What are our marriage laws? The law recognizes no sexual connections, except the natural union of man and wife, and that only for the procreation of children. Sodomy it abhors, and punishes any guilty of such assault with death. It commands us, in taking a wife, not to be influenced by dowry, not to carry off a woman by force, nor to win her by guile and deceit, but to sue from him who is authorized to give her away the hand of one who is not ineligible on account of nearness of kin. The woman, says the law, is in all things inferior to the man. Let her accordingly

be submissive, not for her humiliation, but that she may be directed; for the authority has been given by God to man. The husband must have union with his wife alone; it is impious to assault the wife of another. For any guilty of this crime, the penalty is death, whether he violates a virgin betrothed to another, or seduces a married woman. The law orders all the offspring to be brought up, and forbids women either to cause abortion or to make away with the fetus; a woman convicted of this is regarded as an infanticide, because she destroys a soul and diminishes the race. For the same reason none who has intercourse with a woman who is with child can be considered pure."

While some of this material is clearly biblical in nature, a large part of it must reflect the traditions of Josephus' day also. The very first statement, restricting sexual connections to marriage is clearly not biblical. Sodomy is biblical in origin, as are the statements concerning adultery. The concept of the woman having to be submissive to the husband may stem from Genesis but surely reflects a cultural prejudice of his time. Also the concern about not taking a wife who is ineligible on account of nearness of kin is also biblically derived. The statements concerning how to choose a wife, on the other hand, are clearly cultural. Lastly, the statement against abortion is not in any way biblical and so again must reflect a tradition of his time.

Josephus offers another discourse on Jewish marriage laws in Antiquities Book III starting in Line 274:

"Adultery he (Moses) absolutely prohibited, deeming it blessed that men should be sane-minded concerning wedlock and that it was in the interest alike of the state and the family that the children should be legitimate. Again, to have intercourse with one's

mother is condemned by the law as grossest of sins; likewise union with a stepmother, an aunt, a sister, or the wife of one's child is viewed with abhorrence as an outrageous crime. He moreover forbade co-habitation with a menstruous woman, mating with a beast, or the toleration of the practice of sodomy in the pursuit of lawless pleasure. For those guilty of such outrages he decreed the penalty of death."

In this section again, there are concerns which are clearly biblical, and other which must reflect the traditions of his times. Certainly the Bible considers adultery an evil, however, Josephus seems to be expanding the concept of adultery to include not only intercourse between a man and a woman married to one another, but also sexual relations outside of marriage altogether. Josephus' concern for the legitimacy of children is simply not reflected in the Bible. The other laws cited, which are concerned with incestuous relationships are all reflected in the Bible, as is sodomy and bestiality.

The discourse on marriage which Josephus offers beginning in Book IV of Antiquities, starting in Section 244 is very long and detailed. It includes many laws which are found in the Bible. Those laws which he mentions which are not found in the Bible are: Men should marry virgins, one may not marry a prostitute, children should not be the issue of dishonorable marriages or a union resulting from ignoble passion. In the first statement concerning not marrying a prostitute, this

prohibition is given only to priests, however, Josephus extends it to everyone. In the second statement, the Bible shows no concern over the nature of the issue of men and women.

In addition to these discourses on marriage, Josephus offered special sections dealing with marriage laws which deal only with priests. In Contra Apionus Book I, starting in Section 31 we read:

"...the priest's lineage should be kept unadulterated and pure. A member of the priestly order must, to beget a family, marry a woman of his own race, without regard to her wealth or distinctions; but he must investigate her pedigree, obtaining the genealogy from the archives and producing a number of witnesses ... they disallow marriage with any who have been taken captive, suspecting them to have had frequent intercourse with foreigners (see below concerning John Hyrcanus). But the most convincing proof of our accuracy in this matter is that our records contain the names of our high priests, with the succession from father to son for the last two thousand years."

In Antiquities III, Line 276 Josephus adds:

"... not only did he bar them, in common with all others, from the aforesaid practices (see above from Antiquities III) but he further forbade them (priests) to wed a harlot, he forbids them to wed a slave or a prisoner of war, as gain their livelihood by hawking or inn-keeping or who have for whatsoever reasons been separated from their former husbands."

In Leviticus, the three classifications of women that are restricted to priests are: the harlot, one who is polluted and a divorcee. Josephus has replaced the second category with the slave, the prisoner of war, or the inn-keeper.

Thus we see from Josephus' historical work that the concerns over proper marriages continued in his day. Moreover, in those cases in which he describes sexual relationships which were against Jewish Law, Josephus would mention that fact. When Glyphra, the widow of Alexander, married Archeleas, her brother-in-law, Josephus writes concerning him, "And he transgressed ancestral law in marrying Glyphra, the daughter of Archelais, who had been the wife of his brother, Alexander, and had borne him children, for it is abhorrent to the Jews to marry the wife of a brother."¹

In the case of Herodias, the daughter of Aristobulos and Bernice, Josephus writes, "Their sister, Herodias, married Herod (Philip) the son of Herod the Great by Mariamme, daughter of Simon the high priest. They had a daughter, Salome, after whose birth Herodias, taking into her head to flout the way of our fathers, married Herod, her husband's brother by the same father, who was Tetrarch of Galilee."² In both these cases, Josephus was very aware of the flouting of the traditions of his people. In a case of adultery we learn that Drucilla, Agrippa's sister, left her husband and married Felix, the procurator of Judea. In this case not only did Drucilla commit adultery,

but she also married a non-Jew. About this Josephus wrote, "She... was persuaded to transgress the ancestral laws and marry Felix."³ It should be noted that Josephus wastes no time in telling us that Drucilla, and her child by Felix, died in the eruption of Mt. Vesuvius.

Far more common than actual cases of incest or adultery, Josephus presents cases of intermarriage. An important aspect of the intermarriages that happened in those days, according to the reports of Josephus, is that while it was acceptable for a man to marry a non-Jewish woman, Jewish women were not allowed to marry with Gentiles who refused to be circumcised and accept Jewish ways.

This trend can be seen in the several intermarriages which were mentioned by Josephus in his histories. Antipater, for example, married Cypros, the daughter of a distinguished Arab family, by whom he had four sons, including Herod, who was later known as Herod the Great.⁴ There is no mention of Cypros becoming in any way a Jew, or of her even accepting the Jewish ways for herself. Yet she bore a future King!

Alexander, one of Herod's two sons by Miriamme, the daughter of Hyrcanus, was married by Herod to a Gentile by the name of Glyphyra. This woman (see above concerning incest) was the daughter of Archeleaus, the King of Cappadocia, yet she bore children who were clearly included as part of the royal family, and there is no indication that she ever accepted the ways of the Jews.⁵ What is more,

after Herod executed her husband, Glyphyra was returned to her father, yet Herod kept her children and raised them as his own.⁶ When, later on, Glyphyra married the King of Libya, there was no mention of the King's need to be circumcised prior to the wedding which as we will see was a precondition of marriage with Jewish women.⁷ Still later, when Glyphyra returned and married Archeleaus, the half brother of her first husband, she is not cited for abandoning Jewish law, but instead her new husband is.⁸ On the other hand, when Drucilla decided to leave her husband and marry Felix, the procurator of Rome, she is condemned for her actions (see above).⁹ Hence, there seems to be viable evidence that Glyphyra, despite her marriage to two Jewish princes, was not herself a Jew.

Herod the Great had a total of nine wives. Among those nine was Malthace the Samaritan. This woman was the mother of Archelaus, who eventually married his brother's wife, Glyphyra.¹⁰ There is no detail in the narrative of Josephus to indicate that Malthace ever became a Jew.

In another case, Aristobulus married Jotape, the daughter of the King of Emesa.¹¹ Again, there is no indication that she became a Jew. Indeed, the offspring of Alexander, the great great grandson of Herod, and a different Jotape, (this one was the daughter of King Antiochus of Commagene) are reported to have left the ways of their ancestors.¹² Again, there is no indication that this Jotape became a Jew. Thus it can be seen that

Gentile women were not expected to live as Jew or in any way convert to Judaism prior to their marriage to Jews. On the other hand, there was such an expectation placed on Gentile men wishing to marry Jewish women. When Syllaeus, the King of the Arabs, and Salome, the sister of Herod, wished to marry, Herod refused the marriage until Syllaeus underwent circumcision and was initiated into the customs of the Jews.¹³ Syllaeus refused, however, and the marriage, despite the fact that Salome desired it, did not take place. Bernice, one of Herod's widows, in order to avoid rumors of promiscuity, married Palamo, the King of Celisia, but only after he was circumcised. However, she was restless and she left him shortly after the marriage. It turns out that he did not mind as much as he was relieved, since he was no longer obligated to adherence to the Jewish way of life.¹⁴

Concerning the original marriage of Drucilla (see above), who later married Felix, we read, "...Agrippa gave his sister, Drucilla, in marriage to Azizus, King of Emesa, who had consented to be circumcised. Epiphanes, son of King Antiochus, had rejected the marriage since he was not willing to convert to the Jewish religion..."¹⁵ Again, this is a case where a Jewish woman married a Gentile only after he converted. The text goes so far as to say that a marriage contracted earlier did not take place because the prospective husband refused to convert to Judaism.

These examples clearly show that while it was considered mandatory for a Jewess to marry a Jew or a convert to Judaism, at the same time it was more acceptable for a Jewish man to marry a Gentile woman. Were it considered of the same import, then the text would have in some way indicated that the Gentile women who were marrying Jews became converts, as it does when describing the potential marriage of a Jewess to a Gentile. There are two exceptions to this. First is the case of a certain Joseph, a Tobiat, who fell in love with a dancing girl who was not Jewish. Joseph revealed his passion to his brother, who at an arranged meeting between Joseph and the dancing girl, dressed his daughter up as an actress and sent her in to his brother, Joseph, instead. This resulted in a marriage between Joseph and his niece, preventing a possible intermarriage. This shows that intermarriage was not always considered so acceptable.

A case occurs with a certain Anilaeus and his brother, Asinaeus, who were sometimes military strong men and sometimes thieves and robbers. It turns out that Asinaeus met and married a particular Gentile woman and many of the Jewish followers of Anilaeus and Asinaeus were very angry and upset by this situation.^{16 & 17} Thus, it can be seen that intermarriage was not always as acceptable as seems to be the case from at least the royal family.

The reasons for the state of priorities which seem to have dominated those times in terms of intermarriage can only be described in terms of the status of the offspring. If status was derived matrilineally, then great concern would have been placed on the women being Jewish. If status was traced bi-lineally, then stress would have been placed on both parents being Jews. Yet, as we have seen, the stress was placed on the father's Jewishness, and so that period of history must have traced lineage, at least as it applies to membership in the Jewish people, through the father line.

There is an additional bit of evidence which seems to indicate that in general, the children belonged to the father more than to the mother. In the case of Glyphyra, who was returned to Archelaus her father, after the execution of her husband Alexander, Josephus clearly states that Herod took upon himself the responsibility of raising and educating his grandsons.¹⁸ Glyphyra returned to her father without her children. (Compare to time of Ezra and Nehemia.)

It was mentioned above that in addition to the general laws of marriage which were binding on all Jews, there were a number of special laws which were specific to priests. It happened that a Pharisee named Eliezer (known as Judah in the talmudic parallel to the story) accused John Hyrcanus of being ineligible for the high priesthood because of a false story that Hyrcanus's mother had been held as a captive in

the reign of Antiochus Epiphanes.¹⁹ Were the story true, it would have been a violation of the laws found in Leviticus 21, as well as the laws reviewed by Josephus himself, which were discussed above.

There is one exception to the examples stated above concerning a Jewess marrying a Gentile. We learn in Antiquities XIV, Line 126 that Alexandra, the daughter of Aristobulous, married Phillippion, the son of Ptolemy, the son of Mennaesus the Prince of Chalcis (at the foot of Mt. Lebanon).²⁰ There is no mention in this passage that Phillippion became a Jew or was even just circumcised. It should be mentioned, however, that the union came about as a result of the Roman's actions against the family of Alexandra, and the offer of Mennaesus to help the family after the death of Aristobulous. Hence, it is possible that without a father serving as both an authority and a source of security, Alexandra did not feel herself to be in a position to refuse the marriage. Later on we learn that Ptolemy killed his son and married Alexandra himself, but continued to look after her brother and sister.²¹

As we have seen, Josephus reports the care that was taken in choosing mates during the Hasmonean and Herodian dynasties. It seems clear from the evidence to be gleaned from the histories, that status as a Jew was traced through the father. Furthermore, it seems clear that the laws of marriage as stated in the Torah, were not only respected but were even expanded upon. Lastly, there

seems to be little evidence to indicate that the children of illicit sexual relationships suffered any status difficulties, excepting for priests. The only possible exception to this is the warning that only children of pure parentage would have, "...Spirits that are liberal and uprightly set towards virtue."²² That this statement indicates a reduced status for children born of illicit relationships is unclear. It may indicate, by the use of the term liberal, that such children would not be free to marry with the congregation. On the other hand, it might simply mean a mindset of liberality. Therefore, it is unclear as to exactly what this is referring to. Certainly, there is no use of either the term or concept of Mamzer throughout the history of Josephus.

CHAPTER IV

LINEAGE IN THE MISHNA AND TOSEFTA

Central to the issue of matrilineage and patrilineage in Tanaitic material is Mishna Kiddushin, Chapter III, Mishnah 12. This Mishnah delineates four rules which run as a central theme throughout all Mishnaic considerations of lineage. By correctly applying these rules, one should be able to determine only who is a Jew, a Mamzer, or a priest, but all the various pedigrees and classes recognized by the Rabbis. A discussion of this mishnah, and the Mishnah and Tosefta on this issue in general, cannot be clear without first identifying and discussing the various pedigrees affected by these rules.

The first mishnah of the fourth chapter of Kiddushin delineates the various pedigrees which were recognized by the Rabbis. The sources of these ten pedigrees were Ezra, Chapter 2, and Nehemia, Chapter 7. Each include a census of those who returned to Jerusalem from the exile according to several various pedigrees. In addition, the Rabbis recognized the additional classes of the proselyte, a class not recognized by Ezra and Nehemia (see above), the classification of the freedman, the pedigree of Mamzer, the pedigree of Shetuki, and the pedigree of the Asufi.

It should be noted that Gentiles were not included in these classes of status, and so a Gentile could not be a Mamzer or any of the other nine classes. In addition, there is no category for a slave and so it must be presumed that a slave was outside the pedigree system also, although as will be seen, a slave can play an important role in the lineage system. Thus there are twelve possibilities of pedigree. Ten for Jews, one for slaves, and one for Gentiles.

The purest pedigree was that of the priest (Cohan). To this day, it is a special status to be a priest. In the traditional synagogue there are several special obligations on a priest; such as being called to the first aliyah to the Torah, the recitation of the priestly blessing, which is done in Israel every Sabbath, and in the diaspora during Holy Days, and also special laws concerning approaching the dead. In addition, there are a number of obligations on a priest concerning marriage law. As was noted above, a priest cannot marry a divorcee, a proselyte, or a harlot.

The traditional view of the priesthood is that membership is comprised only from Levites who descended directly from Aaron, of the family of Phineas. There are several biblical verses which state that the priesthood is to be comprised of Aaron and his sons, and not taken from the whole tribe of Levi. This can be seen in Exodus 27:21, 28:43, Leviticus 6:11, and in a number of other places.

Later, especially in the inter-testamental period, the Aaronides put great stress in their genealogy and took great pride in the purity of their Jewish ancestry, and the lineage that went with being a priest.¹ To become a priest, one had to be born to a father who was a priest. This follows the tradition that was transmitted in Mishnah Kiddushin 3:12, which says that if the betrothal was valid and no transgression be found by any reason of the marriage, the status of the child follows that of the father. Thus if a priest married an Israelite woman, and there was no transgression by reason of the marriage, such as the woman having been a divorcee, then the offspring carried the status of a priest, and if that child was a male, then his sons, assuming there were no transgressions in the marriage they made, would have been eligible to be priests. Membership in the priesthood then was a function of patrilineal descent. Although the role of the priest no longer plays such a great part in the worship of the Jewish people, when the Temple was still standing they played the central role in the worship, and were of great importance both in the service and the administration of the people as a whole.

The second level of status was that of the Levite. There is little special about their role today; they are called to the Torah for the second aliyah when a Cohan was called for the first aliyah and they washed the hands of the priests for the priestly blessing. It can be seen

by these two roles that they were and are totally dependent on the priest for any special mitzvot. Indeed on Talmud Yerushalmi Nazir 7a, we learn that, "The Levite is equivalent to the Israelite." And this is in all things including ritual defilement from having contact with a corpse, which is only forbidden to a priest. Thus there is no special status assigned to the Levite today, although in Temple times they did play an extremely important role.

The determination of the status of the Levite is made in the same way as for a priest. The first clause in Mishnah Kiddushin 3:12 again applies. The only real difference is that there are fewer obligations on the Levite as to whom he can marry, and so there is no transgression if the Levite marries a divorcee as there would be in the case of a Cohan. Like the priest then, the status of the Levite is transmitted by the father.

The third status is that of the Israelite. This status, of course, is that of the average Jew today. Israelites made up the bulk of the population since there are only relatively few priests and Levites. The Israelites have no special status outside of being a Jew. During the second Temple period, when there were relatively few pure-blooded Jews, the status of the Israelite was a high one, and indicated in general someone of relatively pure lineage both from the father and the mother. As we will see, however, as a function of the laws enacted in the Mishnah, an Israelite is the average Jew. The status of Israelite is

one that any proselyte's child can achieve. The Israelite class is the lowest pedigree that can marry into the priesthood.

The next pedigree is that of the Halal. The Halal is a tainted priest. This taint comes from the fault of the father being a priest and having a connection which led to transgression. These transgressions can be seen outlined in Leviticus 21:1, 7 and 14; and in Bauli Sanhedrin daf 51a. These illicit connections included the priest who married a divorcee or a proselyte, or a harlot, or anyone below the pedigree of Israelite and in the case of the high priest, a widow. The actual biblical command is that the priest must take a wife who is a virgin of Israel.

An illicit connection leads to a taint in both the mother and the child, which can be eliminated through a process of generations. For example, as we will see from Kiddushin Chapter Four, Mishnah Six, the daughter of a Halal may not marry priestly stock. If an Israelite marries that daughter, however, then her daughter is permitted to marry priestly stock. The taint, therefore, is eliminated. If a son of a Halal marries an Israelite woman, his daughter is still disqualified from marriage with priestly stock. It can be seen, therefore, that the elimination of the taint and the disqualification that goes with it, occurs through patrilineal descent. A non-tainted male is needed to eliminate the taint and a non-tainted female cannot

eliminate the taint. The fact that the taint is removed patrilineally refers us back to Mishnah Kiddushin 3:12, which says that if the betrothal was valid and there was no transgression, then the status of the child is that of the father. If a tainted male married a non-tainted Israelite the betrothal would be valid and there would be no transgression. The status of the child would then follow the father, in this case tainted. If the mother was tainted and the father was not, the child would still follow the father and so would not be tainted.

The class that follows the Halal is that of the proselyte. The term ger, which is used to mean proselyte in the Mishnah, is used throughout the Bible but its meaning is not totally clear. In the Mishnah, however, it is clear that the term refers to a proselyte. There were periods when proselytes were welcome, as well as periods when they were not welcome. We know, for instance, that in the period of Ezra and Nehemia when the concept of Zerah Kodesh (holy seed) was extremely important, proselytes were not able to become part of the congregation of Israel. We do have, however, the book of Ruth, which many feel was penned as a rejection of the thinking of Ezra and Nehemia. Instead, Ruth shows that Jews of the greatest importance could be the result of a proselyte and shows that King David was the great-grandson of Ruth, who was a proselyte.

The status of the proselyte is in general a temporary one. As we read in Mishnah Kiddushin 4:6, the daughter of

a male proselyte is regarded as the daughter of a male of impaired priestly stock. What this means is that the disability of the status of the proselyte can be removed, but again only patrilineally, and that the father must be an Israelite. As with Halal, the disability of the proselyte is that they cannot marry into the priestly class. There are no other disabilities faced by the proselyte who can marry any of the nine non-priestly pedigrees. The proselyte is eligible for marriage with the Israelite class and the above mentioned limitation on the proselyte class can be removed through the process of marriage, for although it says in Mishnah Kiddushin 4:6 that the daughter of a male proselyte of impaired priestly stock, and therefore is ineligible for marriage to the priestly class, Mishnah 7 says that if an Israelite married a proselyte his daughter is qualified for marriage with priestly stock, and if a proselyte married the daughter of an Israelite, his daughter is qualified for marriage with the priestly stock. The only case where the restrictions on the proselyte class remain is in the case of the proselyte who married a proselyte. Their daughter is not qualified to marry into the priestly class. It should be added that another ruling is made in Mishnah 7, stating that a proselyte is regarded as having like standing to freed slaves, even to ten generations. However, only until such time as the proselyte's mother was of Israelite stock. We see than that a proselyte can

gain Israelite status for his or her children simply by marrying an Israelite, for it only took fifty percent native Israelite blood to qualify as an Israelite.

This is carried one step further by Rabbi Josi, who said that even if a proselyte is married to another proselyte, his daughter is qualified for marriage with the priestly class. So in this last statement we see the opinion that the proselyte class only remains for the generation that converts. The children proselytes are automatically Israelites. This position, however, was not accepted.

The next class is that of the freed slave. This class responds basically the same way as does the proselyte. Indeed it even says in Mishnah Kiddushin 4:7 that a proselyte is regarded as of like standing to freed slaves even to the tenth generation. The freed slave, just in the case of a proselyte, can eliminate the disability of their status from their children to intermarriage with Israelites.

The above mentioned classes or statuses were all permitted to intermarry, with the exception of the priestly class intermarrying with the proselytes, the Halal, the tainted priests, or freed slaves. In general though, the above were all permitted to intermarry and certainly the second generation of the impaired priests, proselytes and freed slaves through various formulas of descent, were

permitted to intermarry with the priests. Therefore, in general, the above mentioned classes were permitted to intermarry.

The next series of classes which includes the Mamzerim, Nethimim, Shetuckim and Asufim, incorporated a lower class and they were not permitted to intermarry with the priestly class, Levites, or Israelites, or the impaired priests. However, the proselyte class and the freed men class were permitted to intermarry with most of the pedigrees of these lower classes.

The first pedigree of this group is that of the Mamzerim. As was mentioned earlier the term Mamzer can be found in the Tanach in two places but the meanings are unclear. Indeed Philo thought a Mamzer to be the product of relations with a prostitute.² In Tosefta Kiddushin 4:16, it states that the product of a Jew and a non-Jew was a Mamzer, however, Rabbi Simon b. Eleazar disputed that assertion and it was not accepted.

A Mamzer is defined by Mishnah Kiddushin 3:12 as follows: "In the case of any woman whose betrothal was such as not valid, but whose betrothal with others would be licit, the offspring is a Mamzer. And who is such? In the case of a man who has sexual intercourse with one of the prohibited degrees of marriage set out in the law." Yebamoth 4:13 simply states that a Mamzer is the product of any relationship for which the parents are liable for Karet, extirpation at the hands of heaven. Thus a Mamzer

is the product of an incestuous relationship or one that is forbidden by the Torah, and is punishable by extirpation or death. A Mamzer is not necessarily born out of wedlock, though it is assumed that all Mamzerim were actually born out of wedlock because only a forbidden marriage could result in a Mamzer. If the marriage was not licit, then technically there was no marriage. It should be stressed that most children born out of wedlock were - and are - not Mamzerim. The taint of Mamzerut is a product of the forbidden nature of the relationship between the parents and is in no way related to the marital status of the parents.

Mamzerim face several impediments in society: The issues of personal status and who they are eligible to marry. A Mamzer cannot marry an Israelite. Deuteronomy 23:3 says, "A Mamzer shall not enter into the congregation of the Lord." Therefore, the Mamzer is ineligible for marriage with the congregation, generally thought of as the priests, Levites, and Israelites. If such a marriage were to take place then divorce was mandatory. Furthermore, children of such marriages were Mamzerim as we learn in Mishnah Kiddushin 3:12 which was referred to above: the Mamzer is the product of an illicit relationship. There are two problems with this. First the marriage between a Mamzer and an Israelite cannot be licit. Secondly, the child resulting from such a relationship is automatically also a Mamzer.

We learn this again from Mishnah Kiddushin 3:12 where it says, "In a case where there is betrothal but transgression occurred, the standing of the child is that of the inferior party, and which is such, this refers to a widow wedded to a high priest, or a divorced woman or one who had performed Halitza wed to a common priest, or a Mamzerut or Nethinet married to an Israelite, or the daughter of an Israelite married to a Mamzer, or a Nethin." So in any of these cases the child takes the status of the lower degree. Mamzerut is, of course, the lower degree in the case of a marriage between a Mamzer and an Israelite. Therefore, the child takes the status of the Mamzer.

We also know that the offspring of Mamzerim are Mamzerim, as we read in Mishnah Yebamoth 8:3, "Mamzerim are forbidden for all time, whether they are males or females." Therefore, they are not eligible for marriage with Israelites. In Mishnah Kiddushin 3:13 Rabbi Tarfon explains that if a Mamzer marries a bondwoman, and has a child, that child, upon release becomes a freed man, and is thus able to avoid the status of Mamzerut, and is in fact eligible to marry an Israelite woman. This system works because of the last phrase of Mishnah Kiddushin 3:12 which says that in the case of any woman with whom betrothal is not licit, and whose betrothal with others would also not be licit, the offspring is of her own status. And which is such? In the case of the offspring of a Canaanite bondwoman or a non-Jewess. Thus since the child is the offspring of a

bondwoman and a Jew, even though the Jew is a Mamzer, the child takes the mother's status, and thus is a slave. Upon release from slavery the child becomes a freed man and is not in any way a Mamzer. This would also apply in the case of a Mamzer and a Gentile woman. In this case, however, the child would have to become a Ger and so would have the status of a proselyte, and would be eligible for marriage with all but the priestly class. There seems to be no way for a Mamzeret to rid her children of Mamzerut although her sons could cleanse their children.

It should also be mentioned that the Mamzer is eligible to marry with certain pedigrees. A Mamzer is eligible to marry with the proselyte class and the freedman class, and the Gibeonite class. In Mishnah Kiddushin 4:1 we learn that a Mamzer can also marry a Shetuki and an Asufi, but in Mishnah Kiddushin 4:3 it says that one of assured descent may not intermarry with one of doubtful descent. This refers to the problem of the assured Mamzer marrying with the Shetuki or Asufi, who are doubtful Mamzerim. If the doubtful Mamzer is indeed not a Mamzer, then marriage with a Mamzer is forbidden. Therefore, marriage must be forbidden to prevent the change that a transgression would take place. This second Mishnah became the Kalachah. Outside of restrictions on marriage there are no restrictions against a Mamzer's ability to inherit as we learn in Bavli Yebamoth 22b, and one could even hold the highest public office as we learn in Deuteronomy 17:15 where it says,

"From among the brethren will you set a King over thee."
 Since a Mamzer remains a part of the people, he is
 eligible to be the King.

At first blush, it seems that the next pedigree, that
 of the Gibeonite descendents, the Nethinin, should be
 listed before the Mamzer class instead of after. Yet this
 is explained as the proper order because Mamzerim are of
 Jewish descent, whereas the Gibeonites are not of Jewish
 descent. In fact, the Gibeonites are the product of the
 inhabitants of four cities, Gibeon, Shephira, Berot and
 Kiryat Yeron, which are referred to in the ninth chapter
 of Joshua. In this chapter we learn that the Gibeonite
 people, fearing for their lives because they saw what
 happened to Jericho and Ai at the hands of the Israelites,
 approached Joshua as if they came from a long journey,
 explaining that they were from a distant people who had
 heard of the greatness of the Israelites, they asked for
 a covenant whereby they could protect themselves from
 attack. Upon discovering their duplicity Joshua gave them
 over to forced labor as we read in Joshua 9:27, "On that
 day Joshua gave them over to be hewers of wood and drawers
 of water for the assembly and for the altar of the Lord."

The word used for the Gibeonites in the Mishnah,
Nethinin, is derived from the Hebrew meaning, "to give
 over" and refers to the act of Joshua giving them over to
 the cultic service. The Gibeonites are mentioned in the

Mishnah in terms of their status in two places. In Horayoth 4:8 we find the following: "A priest precedes a Levite, a Levite and Israelite, an Israelite a Mamzer, a Mamzer a Nethin a proselyte, and a proselyte a freed slave." We see from this that the status of the Nethin was set after the Mamzer but before the Proselyte and the freed man. In Mishnah Kiddushin 4:1, however, the order is changed so that the proselyte and the freed man are of higher status than either the Nethin or the Mamzer. This contradiction can easily be explained when looking at the purpose of the listing. In the Horayoth Mishnah, the purpose of the listing is to indicate precedence, while in the Kiddushin Mishnah the purpose is to indicate marriageability. Thus while the Nethin is of higher status in the actual cult, when it comes to marriage, the proselyte or freed man have greater liberality.

The social impediments faced by the Nethin are similar to those of the Mamzer in that they are forbidden to marry with the pure pedigree Israelites. In addition, they cannot marry with the doubtful Mamzerim, the Shetuki or the Asufi classes, in case a Shetuki or a Asufi was actually a pure pedigree Israelite.

The Shetuki, known as the "hush child," is one whose mother is known but whose father is unknown. This can occur only when the mother was not married, for if she were, the husband would be presumed to be the father. In addition to her unmarried state, the mother must be unwilling

or unable to reveal either the name or the status of the father. If the mother states that the father had the status of such and such, she would be believed and the status of the child would follow her pronouncement. Thus it was very easy for the mother to avoid the status of Shétuki for her child.

Were the mother unwilling or unable to reveal the child's father or status, then the child took the status of a doubtful Mamzer. This means that it is unknown whether the child was a Mamzer or not. The Rabbis tried to avoid having to declare a child of this pedigree so it was declared that if the child was born in a district where the majority of the inhabitants were of assured status, it would be assumed that the child was fathered by a man of unimpeachable status and so the child would be considered an Israelite.

The conditions of the Asufi, the foundling, are similar to those affecting the Shétuki. This child is one whose parentage is unknown. As such, it is unclear as to its status. If the child was clearly cared for prior to its being left, then the child was considered an Israelite.

An apparent contradiction which directly affects the marriageability of the Shétuki and Asufi, appears when reading Mishnah Kiddushin 4:1 and Mishnah Kiddushin 4:3. Mishnah Kiddushin 4:1 enumerates the ten pedigrees of the Jewish people and delineates the ability of the various pedigrees to intermarry. We find that the Shétuki and the

Asufi, the doubtful Mamzerim, were allowed to intermarry with all the non-pure blood Israelite classes. Thus the doubtful Mamzerim and the assured Mamzerim both can intermarry with the proselyte, freedman, and Nethinet. In Mishnah 3, however, we find under the ruling of Rabbi Eleazer, that one of doubtful class cannot intermarry with one of assured class. The Mamzer, who is of assured status, may not marry with the Shétukim or Asufim, who are of doubtful status. In fact, the Shétukim and Asufim could not even marry each other, or another in their own class. There is an apparent contradiction then, between Mishnah Kiddushin 4:1 and 4:3.

Maimonides explains that these two Mishnayot represent two traditions. Toraitically, the Shétuki may marry the various classes as described in chapter four, and could even marry an Israelite. We know this because of the verse in Deuteronomy 23:3, which says, "A Mamzer may not enter into the congregation." This means that the Mamzer could not intermarry with those who were considered part of the congregation such as the Israelites. It does not, however, limit the one who is in doubt of being a Mamzer, which is the status problem for the Shétuki and the Asufi. Neither are actually Mamzerim but merely may be Mamzerim. Since there is only doubt, there is no reason to exclude them according to the Torah. For the most part, Mishnah 4:1 agrees with the Torah, although it does go so far as to exclude the doubtful Mamzerim from intermarrying

with Israelites. Thus Mishnah 4:1 is closer to the toraitic tradition and allows the Shetuki and Asufi to marry with all those in the proselyte, freedman, Mamzer, and Nethinet classes.

Mishnah 4:3, however, follows a later tradition represented by Rabbi Eleazer and Rabbi Yehuda. The statements of Rabbi Eleazer in Mishnah 3 represent the rulings of the Rabbis, and are followed as such. Therefore, what we have is actually two strata of halacha. The earlier strata is represented by Mishnah 1 and is toraitically derived. The second strata is represented in Mishnah 3 by Rabbi Eleazer. These Mishnayot then are not actually contradictory but instead represent a different time period. Rabbi Yehuda can be seen taking other stringent views. In Mishnah 6 he holds that the daughter of a male proselyte is the same as a daughter of a Halal, which is more stringent than the accepted view. Thus these two Mishnayot represent two different strata. Eventually the views of Rabbi Yehuda and Rabbi Eleazer were accepted and became Halachah. As was mentioned above the twelfth Mishnah of the third chapter of Tosefta Kiddushin, is essential to the issue of lineage, both as it applies to who is a Jew and to one's status as a Jew. The ten classes of status described above include all Jews, however, the Halachah which determines one's status or pedigree within the system can be quite complicated.

There are four rules of pedigree. These correspond to the four sections of Mishnah twelve. Each of the four sections will be examined independently with supporting and opposing statements from both the Mishnah and the Tosefta. The first section reads:

"In every case where there is licit betrothal and there befell no transgression, the status of the offspring follows that of the male. And which is such? This refers to a priestess, Levitess or Israelite who is married to a priest or an Israelite."

For example, if an Israelite woman married a priest, the marriage would be licit and there would be no transgression. Thus the offspring would take the status of the father and they would be priests. This rule can be seen functioning in other mishnayot. In Kiddushin 4:6 we read:

"The daughter of a male, the impaired son of a priest, is disqualified forever to be wed to a priest. If an Israelite wedded the impaired daughter of a priest, his daughter is qualified to be wedded to a priest. If the impaired son of a priest married the daughter of an Israelite, his daughter is ineligible to be married to a priest."

Simply stated, this mishnah says that if a Halalah married an Israelite, a marriage which is licit and causes no transgression, the child follows the status of the father and is an Israelite. If the father was a Halal, however, and married an Israelitess, then the offspring of this marriage, which is again licit and non-transgressing, again follows the status of the father and so is impaired. Thus we see that this mishnah follows the Halachah established by Mishnah 12.

In Tosefta Kiddushin 4:15 we read:

"If a priestess, a Levitess, or an Israelitess is married to a convert, the child has the status of a convert. (If she was married to) a freed slave, the child has the status of a freed slave."

In this halachah we again have the situation where the various kinds of marriages mentioned are all licit and non-transgressing, and so the status of the child again follows that of the father. Thus if the father was a convert, the child would be a convert, and if the father was a freed man, the child would be of the freed man class.

In Tosefta Kiddushin 5:3 we read:

"...an Isah (mixed family line) is permanently disqualified from marrying a priest; but if she is married to an Israelite, her daughter is qualified to marry a priest. A Halalah is disqualified from marrying a priest, but if she marries an Israelite her daughter is qualified to marry a priest. A female proselyte is disqualified from marrying a priest, but if she married to an Israelite, her daughter is qualified to marry a priest. A woman taken captive is disqualified from marrying a priest, but if she is married to an Israelite, her daughter is qualified to marry a priest. A freed slave woman is disqualified from marrying a priest, but if she is married to an Israelite, her daughter is qualified to marry a priest..."

We see throughout this passage that the first rule delineated in Mishnah 12 is followed. In each case the betrothal is licit and non-transgressing, and so the offspring takes the status of the father. A woman who is not an Israelitess can have her daughter take the pedigree of an Israelite by marrying an Israelite.

Similarly, Tosefta Kiddushin 5:12 reads:

"If a bondmaid is freed and a slave comes upon her and begets a son, then this (son) is a slave. (If) both of them have been freed and they bear a son, then this (son) is a freed slave."

Thus we seen in this case again the first rule of Mishnah 12 is followed. The freed bondmaid is eligible to marry anyone but a priest and so her relationship with a slave is both licit and non-transgressing. The offspring, therefore, follow the status of the father. If the father was a slave then the offspring would be slaves. If the father was a freed man, then the offspring would take that status.

We see then that the Mishnah is consistent as to this law, although there is one case in which the law is not followed. Tosefta Kiddushin 5:2 includes the statement, "A proselyte or a freed slave is permitted to marry a Mamzeret, but the child is a Mamzer, according to the words of Rabbi Josi." When a proselyte or a freed slave marries a Mamzeret, the betrothal is licit and non-transgressing, and so it would be expected that the child would take the status of the father. In this case, however, the child takes the status of the mother who is a Mamzer. Indeed, it is not actually the mother's status that is being transmitted but the state of Mamzerut since we know that if a female proselyte or a freed bondwoman married a Mamzer the child would also be a Mamzer. This stricture is traced back to the biblical prohibition found in Deuteronomy 23:3, which states that a Mamzer shall not

enter the congregation of the Lord even to the tenth generation.. Thus we see that the taint of Mamzerut is passed on from generation to generation, and can only be abolished by marrying completely outside the community. Therefore, the rule as stated in the first section of Kiddushin 3:12 does not apply in this case since the law specifically dealing with Mamzerut is a product of the Torah itself.

The second section of the central Mishnah reads as follows:

"If the betrothal was valid but transgression befell, (by reason of the marriage) the standing of the offspring follows that of the blemished party. Such is the case when a widow is married to a high priest, or a divorced woman or one that had performed Halitzah is married to a common priest, or a Mamzer or a Nethinah to an Israelite, or the daughter of an Israelite to a Mamzer or a Nethin."

This section of the Mishnah explains that in the event that a couple married, whose betrothal was licit but who were transgressing the law by marrying, their child follows the pedigree of the blemished party. The examples listed in the Mishnah come from Mishnah Yebamoth 2:4 and are also listed in the Torah. These examples listed from the Torah are that a widow is forbidden to marry a high priest (Leviticus 21:19) and a Halitzah is forbidden to a common priest (Leviticus 21:7). Although these marriages were forbidden by the Torah, they are licit in that the marriages have legal standing and they do

not require a divorce. The children of such marriages, however, are tainted and so take the status of a Halal. This then, is the blemish passed on by the priest when he transgresses in marriage.

The other examples are more straightforward. Mishnah Kiddushin 4:1 delineates the rules for intermarriage among the ten pedigrees and lists both the Nethinim and the Mamzerim as not being allowed to intermarry with the Israelite class. Furthermore, the Torah in Deuteronomy 23:3 forbids marriage between an Israelite and a Mamzer. Thus is it clear that there is transgression when one of the marriages mentioned in this section of the Mishnah takes place. It is also true, however, that such marriages have legal standing and so are licit. The result, as the Mishnah teaches, is that the status of the offspring follow the taint. In the case of a divorcee and the high priest or a woman who underwent Halitza and a common priest, the taint is that of the Halal, and so that is the status taken by the offspring. In the case of a Mamzer or Nethin with an Israelite, the taint is Mamzerut or being a Nethin, and so that becomes the status of the offspring.

The next section of the Mishnah reads as follows:

"If her betrothal with a man was not valid, but her betrothal to others would be valid, the offspring is a Mamzer. Such is the case when a man has connection with any of the forbidden degrees prescribed in the Law."

This section directly refers to the laws of consanguinity discussed above. In addition to these laws as listed in

the Torah, Rabbinical extensions are listed in the first Mishnayot of Yebamoth. Any of these marriages are illicit and require that the couple divorce. Any offspring of such relationships are Mamzerim. This rule also applies to certain other relationships that produce Mamzerim, such as adultery, in which marriage between the man and the woman was not allowed, however, she was permitted to her husband. Mishnah Yebamoth 4:13 states:

"Who is considered a Mamzer? In every case of near kin which is prohibited. This is the opinion of Rabbi Akiba. Simeon of Teman says, 'Any such for which they are liable to extirpation at the hands of heaven.' And the law is according to his view. Rabbi Joshua says, 'Any such for which they are liable to punishment by death at the court.' Rabbi Simeon b. Azzai said, 'I found a genealogical scroll in Jerusalem and in it was inscribed so and so is a bastard through a man's wife,' confirming the statement of Rabbi Joshua."

Thus it can be seen that Yebamoth 4:13 and Kiddushin 3:12 are in total agreement. A Mamzer results from a relationship which a woman has with a man and with whom betrothal would not be valid. While there were others with whom betrothal would have been valid. The nature of this rule confines it to consanguinity, and other laws which restrict marriageability, not by class, but by nature of relationship or prior commitment.

The final section of this mishnah deals with relationships outside the Jewish community itself. The section reads:

"If her betrothal with this man was not valid, and her betrothal with others would also not be

valid, the offspring is of her own standing. This is the case when the offspring is by a bondwoman or a Gentile woman."

In this situation, the betrothal is legalistically impossible. There can be no Kiddushin with a slave or a Gentile woman, and moreover, there cannot even be transgression since there is no recognized betrothal. Since such betrothal is not recognized, the father's pedigree does not affect the child and the child inherits its status totally from the mother.

It is for this reason that the process described in Kiddushin 3:13 worked to eliminate Mamzerut from a Mamzer's children. The status of the children follow that of their mother even though the father was a Mamzer.

It is also for this reason that the offspring of a Gentile man and a Jewess is a Jew. Since there is not recognized betrothal, the child inherits its status from the mother. If the mother was Jewish, the child is Jewish. The father's status does not play a part in the status of the child as far as Judaism is concerned. An opposing view to this rule can be found in Tosefta Kiddushin 4:16 in which it says:

"(If) a Gentile or a slave lies with the daughter of an Israelite and begot a son, then (the son) is a Mamzer. Rabbi Simon, the son of Eleazar says: He is not a Mamzer, for a Mamzer only (comes) from a woman who is forbidden (with) the prohibition of incest, and for which (the transgressions) are guilty of the Kareth penalty." (See above concerning rule three.)

Thus the opposing view is held that the child of a Gentile man and an Israelitess is a Mamzer. This is opposed by Rabbi Simon b. Eleazer who refers back to the third section of Mishnah 12. The final Halachah remained that the child of an Israelitess and a Gentile man took its status from its mother since the Gentile man could not make a valid betrothal with any Israelite.

Several problems in the unity of the Mishnah and Tosefta that deal with this issue need to be explained. There was a steady desire by the Rabbis to reduce the obstacles to marriage with the priestly class and therefore the obstacles between the lower classes and the Israelites. This could be seen in a number of ways. For example, the Rabbis included a system by which a man could cleanse his children of Mamzerut. Another way we see this is in Mishnah Kiddushin 4:7 which reads:

"Rabbi Eliezer b. Yakov says: If an Israelite married a proselyte his daughter is eligible to be married to priestly stock; and if a proselyte married the daughter of an Israelite, his daughter is qualified for marriage with priestly stock. But if a proselyte married a proselyte his daughter is not so qualified. A proselyte is regarded as to like standing to freed slaves even to ten generations until such time as his mother is of Israelite stock. Rabbi Josi says: Even if a proselyte married a proselyte, his daughter is qualified for marriage with the priestly stock."

There are a number of problems with this mishnah. The first is in the beginning section where it says, "If an Israelite married a proselyte his daughter would be qualified for marriage with the priestly stock." This is

exactly as we should expect since the marriage is valid and there is no transgression. Therefore the child would take its status from the father. Since the father, in this case, is an Israelite, the daughter is an Israelite and so is qualified to marry a priest. The Mishnah, however, goes on to say: "If a proselyte married an Israelite woman, his daughter is qualified for marriage with priestly stock." This is a direct contradiction to other Mishnayot including Kiddushin 3:12, where it says that if the marriage is valid and non-transgressing the child takes the status of the father. Mishnah Kiddushin 4:6 says, "If an Israelite married a woman of impaired priestly stock, his daughter is qualified for marriage with priestly stock. However, if a male of impaired priestly stock marries an Israelite woman, his daughter is not qualified for marriage with priestly stock. The father, therefore, had to be an Israelite for the daughter to be considered a full Israelite and not a female of impaired priestly stock.

The immediate following Mishnah says that either parent could be the proselyte and still the child would be qualified for marriage with priestly stock and so would be considered an Israelite.

Pinchas Kahati, in his commentary on this Mishnah, explains that decisions offered in the Mishnah stem from a Midrash on Ezekiel 44:22, which says: "Neither shall they take for their wives a widow, nor her that is put away; but they shall take virgins of the seed of the house of

Israel, or a widow that is the widow of a priest." The important phrase in this verse as far as this Mishnah is concerned is, "From the seed of Israel." Rabbi Eliezer explained this phrase, saying that even if only a portion of the seed of Israel is present the daughter is fit to marry a priest. This then is the explanation offered and so it can be claimed that the Mishnah is toraitically derived. Thus, even though this particular section of the Mishnah disagrees with other statements of tanaaitic halachah, it none the less carries weight since it can be toraitically derived.

The very next statement reads, "But if a proselyte married a proselyte, his daughter is not so qualified (to marry a priest)." Kahati explains this by saying that the daughter who was born to proselytes does not have the required Israelite seed, and so cannot be called an Israelite. The child then would have to be considered a proselyte.

So as we now see, the child had to have at least fifty percent Israelite stock to be considered an Israelite. Less than fifty percent would mean that the child could not be considered an Israelite, at least when using ability to marry into the priesthood as the scale to determine Israelite status.

The next section of this Mishnah presents further problems: "A proselyte is regarded as of like standing to freed slaves, even unto the tenth generation until such

time as his mother is of Israelite stock." This is a very difficult statement. It is again in direct contradiction with other tanaaitic statements which indicate that it is normally the father's stock which determines the child's and not that of the mother. For example, in Mishnah 6, it says, "If an Israelite married a Halalah the daughter would be qualified for marriage with priestly stock; but if a man of impaired priestly stock married an Israelite woman, then the daughter would not be qualified for marriage with priestly stock." The mishnah goes on to say, "Rabbi Judah said, the daughter of a male proselyte is regarded as the daughter of a male of impaired priestly stock." What Rabbi Judah is saying is that the daughter of a Halal and the daughter of a proselyte have the same standing and are regarded the same in terms of ability to marry a priest. It would follow, therefore, that since the daughter of a Halal can only rid her children of taint by marrying an Israelite and insure by marrying an Israelite so also it should be the same with the proselyte woman who to rid her children of the status of proselyte would need to marry an Israelite, and by that act make her children Israelites.

Yet instead, Mishnah 7 clearly states that a proselyte remains a proselyte until such time that the mother is of Israelite stock. This is a contradiction to Mishnah 6 and other mishnayot dealing with this issue, and is a problem that is difficult to explain. We would expect that the Mishnah would read father for mother thus saying,

until such time as the father is of Israelite stock, or in keeping with the rest of this Mishnah it might have said, until such time that either parent is of Israelite stock. But to put the stress on the mother creates a contradiction whose explanation is unclear.

The next section of the Mishnah reads as follows: "Rabbi Josi says, even if a proselyte married a proselyte, his daughter is qualified to be married to priestly stock." This statement of the Mishnah is difficult to understand under either of the two functioning rules about which we have written above. The first rule being that when there is a valid marriage with no transgression the child takes the status of the father. In this case that would mean that the child would be a proselyte. The other rule is the toraitically derived rule that as long as the child has the seed of Israel, it is an Israelite so if only one parent was an Israelite, that would be enough to qualify the child to marry into the priestly class. Yet with the child who is the daughter of two proselytes, there is not seed of Israel so we would not accept the daughter to be able to marry into the priestly class. Furthermore, the immediately preceding statement to this Mishnah says, "The child is not qualified to marry for ten generations" which means forever, until such time as the mother is an Israelite. Yet in this case not even the mother is of Israelite stock and so it seems that there is no justification for

for the child of such a marriage as is being discussed here, to be allowed to marry priestly stock. Yet this is Rabbi Josi's statement.

Bartinora explains that the Halachah went against Rabbi Josi and in fact the priest was not permitted to marry the daughter of two proselytes. If, however, the case came to a rabbinical court after the marriage had already taken place, the couple would not be forced to divorce, and more, any daughters of the union would be fit to marry priests. So even if this takes place, the child is not a Halal. We can only assume, therefore, that there is no transgression in such a marriage, and so ultimately the halachah, as stated by Rabbi Josi, was allowed.

Another question relating to the tanaitic material concerning lineage and marriage concerns Mishnah Kiddushin 3:13, which reads:

"Rabbi Tarfon said, Mamzer stock can be rendered clean. Thus if a Mamzer married a bondwoman, the offspring is a bondman. If he is set free, the son becomes a freed man. Rabbi Eliezer says, such a one is a Mamzer slave."

This Mishnah, by the fact that it exists, shows that the Rabbis were interested in eliminating Mamzer status whenever possible. By following this mishnah a man could insure that his children would not be Mamzerim. The process involves marrying a bondwoman and having a child or having children with that bondwoman. Since there can be no valid Kiddushin with a bondwoman, the child would take the status of its mother. Two reasons are offered why there

can be no Kiddushin. The first is a Midrash drawn from Genesis 22. Abraham, when going up with Isaac for the akedah, said to his servants, "Remain here with the asses and I and the boy will go up." By saying that Abraham was comparing slaves with animals, and as a result of that, a slave was considered to have the basic status of an animal. Marriage cannot be contracted with an animal and likewise then, cannot be contracted with a slave. The second reason why Kiddushin cannot be contracted with a bondwoman is that we know when a man is given a bondwoman for his wife and has children with her, even when he goes free, she remains in slavery and her children with her. Therefore, there is no valid Kiddushin that can be contracted. Since there is no valid marriage, the children would take the status of the mother. Since the mother would be a slave the children would be slaves. If the children were then released from slavery, they would have the status of freed slaves and would be eligible to marry Israelites. Such children, however, could not marry with priestly stock, until such time that the father of the children in their line would be an Israelite. Mamzerut, therefore, could be cleansed from a male's line.

It should be stressed, however, that this process did not apply to a woman who wanted to rid her line of Mamzerut. A woman could not have a child by a slave and rid her children of Mamzerut, for if a woman and a slave had a child, the child would still take its status from the

mother and so would continue to be a Mamzer.

Another problem in the tanaitic material stems from Tosefta Kiddushin 5:4, the last section of which says:

"If an Egyptian man would marry an Egyptian woman, or an Ammonite man would marry an Ammonite woman, the first and second generations are forbidden (from marrying a priest, but) the third (generation) is permitted to do so. Rabbi Judah said: Minyamin, an Egyptian convert, was my companion from the student of Rabbi Akivah. He said: I am an Egyptian convert and I have married an Egyptian woman convert, and behold I am going to get an Egyptian woman convert for my son to marry, in order that my grandchild may be qualified to enter the congregation, in order to fulfill what is written in the scriptures, You shall not appoint a Moabite; for he is your brother: You shall not appoint an Egyptian; because you are a sojourner in his land. The children of the third generation that are born to them may enter the assembly of the Lord. Rabbi Akivah said to him: Minyamin, you have made a mistake. (This is the correct) law. Sennacharib, the King of Assyria, has already come up and mixed up all the nations. There are no Egyptians nor Ammonites in your (original) lands. But an Ammonite man marries an Egyptian woman and an Egyptian man marries the Ammonite woman. Anyone from among these (nationalities) marries anyone else from among all the nations of the earth marries anyone from among all these (i.e., Egyptians, Ammonites, Edomites, and Moabites)."

This raises a difficult problem. First, it should be noted that this Mishnah assumes that the Egyptians in question are proselytes. In the case of the seven nations that could not marry with the Israelites, we learn from Midrash that the male members of these nations were not eligible to marry with the Israelites, but the females were since it says Moabite men, but does not mention women. Thus a Moabite woman would be eligible to marry an Israelite. Another

issue that comes up is what happens if a Moabite would become a proselyte in so doing join the Jewish people. Then of course, the Moabite has the status of a proselyte. In the case of the Egyptians and Edomites, however, there is an additional difficulty, for they must wait three generations after they become proselytes, before they can intermarry with an Israelite.

Rabbi Judah relates the story of a certain Minyamin, who was an Egyptian convert and a student of Rabbi Akiba as well. It is related in the Tosefta that Minyamin told Akiba that he had married an Egyptian convert and that he was going to find an Egyptian convert for his son, so that his grandchildren would be qualified to intermarry with the priestly class. Akiba took exception to this and explained to Minyamin that he had made a mistake. Sennacharib, the King of Assyria, had mixed up all the nations, and it was no longer possible to determine if he was of the actual Egyptian status referred to in the Bible. It was no longer necessary, Akiba reasoned, to wait the three generations. His decision was not accepted.

This situation brings up several questions. What if an Egyptian convert of the second generation married an Egyptian woman convert of the first generation? Would the offspring be Egyptian converts of the second generation, or would they be of the third generation, and therefore Israelites? This depends upon which parent transmits their status to them. The answer is unclear on the tanaitic

level. It should be mentioned, however, that according to the first rule of Mishnah Kiddushin 3:12 the children should take their status from the father since the betrothal is valid and there is no transgression. If so, the children would be Egyptian converts of the third generation, or in practice, Israelites.

It is possible, however, that the child would take the taint so that instead of drawing status from a particular parent, the status would be inherited according to the greatest disability. In this case then, the child would draw its status from the mother and so would be an Egyptian convert of the second generation. While this issue is discussed at great length in the Gemara, it is left without resolution on a tanaïtic level.

CHAPTER V

MATRILINEAGE AND PATRILINEAGE IN THE TALMUD

The following presents significant Talmudic passages that relate to the problems of lineage. The material follows the same general outline of the preceding chapter, namely the four clauses of Mishnah Kiddushin 3:12.

Yebamoth 77 reads:

"Ulla said in the name of Rabbi Johanan: The daughter of an Ammonite proselyte is eligible to marry a priest. Said Raba b. 'Ulla to 'Ulla: In accordance with (whose view is your statement made)? If in accordance with that of Rabbi Judah, he surely had stated that the daughter of a male proselyte is like the daughter of a male Halal! And if in accordance with the view of R. Josi, your statement is self-evident, for surely he had stated: Even where a male proselyte had married a female proselyte his daughter is eligible to marry a priest! And were you to reply that this applies to such as are fit to enter the assembly but not to this man who is not fit to enter the assembly whence (it may be asked) is this distinction (inferred)!--It is inferred from the case of a high priest who married a widow. (But it may be objected) the marriage between a high priest and a widow is different, since his cohabitation constitutes a transgression!--(Then the case of the) Halal proves it? (But it may be objected that) a Halal is different since his formation was in sin!--Then the case of the) high priest proves it; and thus the argument will go round; though the aspect of the one is unlike that of the other and the aspect of the other is unlike that of the first, their common characteristic is that either of them is unlike the majority of the assembly and his daughter is ineligible, so here also since he is unlike the majority of

the assembly, his daughter should be ineligible.
(But it may again be objected) their common
characteristic is different, since it also
involves and aspect of sin!"

This passage includes a number of points which relate to the issue at hand. The passage begins: "Ulla said in the name of Rabbi Yohanan: The daughter of an Ammonite proselyte is eligible to marry a priest." There are three points to this statement which need explanation. The first is that the statement is referring to the daughter of an Ammonite proselyte and an Ammonite proselytess. Both parents then, were Ammonite proselytes. The second is in accordance with the prohibition in Deuteronomy 23:4, which reads: "An Ammonite or a Moabite shall not enter into the assembly of the Lord even to the tenth generation shall none of them enter into the assembly of the Lord forever, because they met you not with bread and with water on the way, when you came forth out of Egypt..." This prohibition is stressed in the Mishnah to this Gemara found on Yebamoth 76b, and begins: "An Ammonite and a Moabite is forbidden, and their prohibition is forever, their women, however, are permitted at once." Thus we see that normally marriage between an Israelitess and an Ammonite is illegal, but marriage between an Israelitess and an Ammonite proselyte is a matter of question. A marriage between a priest and the daughter of an Ammonite proselyte is also questionable.

The passage continues, "Said Rabbi b. Ulla to Ulla: In accordance to whose view is your statement made. If in

accordance with that of Rabbi Judah, he surely had stated that the daughter of a male proselyte is like the daughter of a male Halal." This is exactly according to Mishnah Kiddushin 4:6, which reads, "Rabbi Judah says: the daughter of a male proselyte is as the daughter of a male, the impaired son of a priest." What this says is that the daughter of a male proselyte is exactly like the daughter of a Halal, and therefore the rules concerning them are the same. If the daughter of a Halal who is ineligible to marry a priest marries an Israelite, her daughter is eligible to marry a priest. The same would then be true of a proselyte who was the daughter of a proselyte. She would not be eligible to marry a priest. If she married an Israelite, however, then her daughter would be eligible to marry a priest.

This statement seems to prohibit the marriage of the daughter of an Ammonite proselyte to a priest, for, as we just read, the daughter of the Halal is ineligible to marry a priest. If the Halal and the proselyte are treated the same in the law, then the proselyte's daughter is also ineligible to marry a priest. The passage continues, "And if in accordance with the view of Rabbi Josi, your statement is self-evident, for surely he had stated, 'Even where a male proselyte married a female proselyte, his daughter is eligible to marry a priest.'" This is the last statement in Mishnah Kiddushin 4:7, which reads, "Rabbi Josi said, Even if a proselyte married a

proselytess his daughter is eligible to be married to a priest." Thus, according to this statement, the daughter of an Ammonite proselyte would indeed be eligible to marry a priest. This passage then, contains a conflict between the statement of Rabbi Josi and the statement of Rabbi Judah. The Halacha would then depend upon which authority is accepted.

The Gemara continues, "And were you to reply that this applies to such as are fit to enter the assembly but not to this man who is not fit to enter the assembly whence, it may be asked is this distinction?" The distinction referred to here is the problem raised by the fact that the Ammonite is forbidden to intermarry with Israelites. The Ammonite's daughter, however, is not forbidden to intermarry with Israelites. The question is then, how is the daughter of an Ammonite who is a convert different from other people who become proselytes and have daughters who are then eligible to intermarry with Israelites.

Since we know that if a member of another nation became a proselyte, his daughter, according to Rabbi Josi's statement, would indeed be eligible to marry a priest. The question then is, why wouldn't the daughter of the Ammonite proselyte be eligible to marry a priest. The arguments raised to show why she would not be eligible to marry a priest fail on the point that they both have their origins in sin. The daughter of the high priest is the

product of the transgression of a high priest marrying a widow, and the daughter of a Halal also had her status formed in sin, when her grandfather took a wife who was forbidden to him.

In the case of the daughter of the Ammonite proselyte, however, there is no sin involved in her birth. The intercourse of her parents did not involve a violation of any biblical injunction and so there was no transgression involved. Therefore there was no sin involved in her birth. If Rabbi Josi's ruling is followed, there is no reason why the daughter of an Ammonite proselyte couple, could not marry a priest. And indeed the Talmud accepts that.

It should be mentioned that this is actually a contradiction to the first rule of our Mishnah, for the rule states that when there is licit marriage and no transgression the child takes the status of the father. In this case then, we would expect the daughter to take the status of an Ammonite proselyte. However, because of the statement of Rabbi Josi, the first rule is not applied here.

On Yebamoth 78a, we have the following passage:

"Rabbah b. Bar Hana stated in the name of Rabbi Johanan: If an Egyptian of the second generation married an Egyptian woman of the first generation, her son is (regarded as belonging to the) third generation. From this it is obvious that he is of the opinion that the child is ascribed to him."

This says that if an Egyptian convert of the second generation married an Egyptian woman convert of the first generation, the son would take his status from the father, and

would be an Egyptian convert of the third generation. This is exactly according to the Mishnah in question since the marriage was valid and there was no transgression. Thus the child would take its status from the father, and indeed that is what happened here.

Rabbi Joseph raised an objection as follows:

"Rabbi Tarphon said, Mamzerim may attain to purity. How? If a Mamzer married a female slave, their child is a slave. When, however, he is emancipated he becomes a freed man.' This clearly proves that the child is ascribed to her!--There it is different, because scripture said, The wife and her children shall be her master's."

The objection raised here by Rabbi Joseph, is that according to Mishnah Kiddushin 3:13, a Mamzer can cleanse his children of Mamzerut by marrying a female slave. The children then take the female slave's status, as we know from the fourth section of the Mishnah in question, and therefore are slaves. When they are released they have the full status of the freed man and none of the taint of Mamzerut. This, however, is used here to show that in the prior situation, concerning an Egyptian convert of the second generation and an Egyptian woman convert of the first generation, the child should actually follow its mother since, if it follows the mother in this Mishnah of Rabbi Tarphon, shouldn't it also follow the mother in the case of the Egyptian proselyte?

This does not work, however, since Rabbi Tarphon's decision is based on the scriptural verse found in

Exodus 21:4 which says, "The wife and her children shall be her master's." This means that if an Israelite man had a child by a slave woman, that child belongs to the master of the woman. Therefore it is a totally different situation and cannot be used to derive the law concerning the Egyptian proselytes.

Both this mishnah and the objection follow rules delineated in Mishnah 3:12 in that the child of the Mamzer and a slave woman takes her status.

Further on in the passage, Rabbah raises an objection concerning a story that Rabbi Judah related. Minyamin, (see above) an Egyptian proselyte who was one of his colleagues among the students of Rabbi Akiva, was an Egyptian of the first generation of conversion. He married a woman of the same status and intended to find an Egyptian woman convert of the second generation for his son, so that his granddaughters would be eligible to marry a priest. (Tosefta Kiddushin 5:4)

The question is reised, "Now if it could be assumed that the child is ascribed to his father (he could have married a wife) even of the first generation. The fact is Rabbi Yochanan said to the tana: "Emend it to read (a woman of the) first generation." Thus the question of why would he need to marry his son, who was an Egyptian convert of the second generation, to a woman Egyptian convert of the second generation is raised. Since his son would take his status, even if the woman he married was a convert of

the first generation, the child would still be an Egyptian convert of the third generation, and therefore eligible to marry a priest.

The answer to this was that Rabbi Yahanan had the tana who was reciting the beraita emend it. "A woman of the first generation" instead of, "A woman of the second generation." This then is a clear example of patrilineal descent.

The passage continues, though, "When Rav Dimi came, he stated in the name of Rabbi Yohanana, "If an Egyptian of the second generation married an Egyptian wife of the first generation, her son is (regarded as belonging to the second generation.' From this it is obvious that a child is ascribed to his mother." This is in direct contradiction to the position taken by Rabbi Yohanana. The resulting answer to this problem comes from the biblical verse that mentions the Egyptians (Deuteronomy 23:8 & 9). The verses read, "Thou shalt not abhor an Edomite for he is thy brother. Thou shalt not abhor an Egyptian, because thou wast a stranger in his land. The children of the third generation that are born unto them may enter into the assembly of the Lord."

The crucial phrase of these verses is: "That are born." It is reasoned that children can only be born to a woman and therefore they would take their status from their mothers. This phrase, however, does not appear with other nations that are mentioned. It only applies, therefore,

in the case of an Edomite and an Egyptian, and not in cases of other nationalities.

This raises further problems since it is in contradiction to Rabbi Hohanán's other statements. When we read, however, on Yebamoth 78b, "When Rabina came, he stated in the name of Rabbi Johanan: Among the other nations follow the male. If they are converted follow the more tainted of the two." Thus when you have two non Israelites who have a child, you follow the father in assigning the nationality to the child. If an Egyptian man married a Moabite woman, the child would take the nationality of its Egyptian father.

It says, however, that if the parents are proselytes, you follow the greater taint between the two. This is not what would be expected since, the two proselytes have a valid non-transgressing marriage and so the children should take the status of the father, and not a taint. The clause of our mishnah which deals with taking taint, the second clause, says that if there was a valid Kiddushin but also a transgression, then the child would take the taint. Clearly the rule is not functioning properly in this case.

This raises, however, the possibility that the marriage, while being valid, did indeed cause transgression. The case involved an Egyptian male proselyte and a Moabite proselytess. Since the Moabite proselytess is eligible to intermarry with all Israelites and is limited only to priests, Rabbi Johanan may have considered her marriage to

an Egyptian convert of the first two generations to have caused transgression. The Ammonite proselytess, upon her conversion, became liable to all the commandments incumbent upon an Israelite. She would then be forbidden to marry an Egyptian until the third generation of proselytes. Were she to marry an Egyptian prior to the third generation it would case a transgression. This case then, may fit into the second clause of the mishnah since the child is the product of a licit marriage which caused transgression and so would the child would take the greater taint among the parents. Thus we see that Rabbi Johanan's ruling is indeed in harmony with Mishnah Kiddushin 3:12.

The practical aspects of this statement by Rabbi Johanan is that it is useful in deciding who can marry into the congregation. If an Ammonite man and an Egyptian woman marry and have a child before conversion, the child would take the nationality of its father, the Ammonite. If the child was a girl she would be eligible to marry with the congregation immediately after conversion since we know that the prohibition against the Ammonites only referred to the men. If she had taken her mother's status, however, she would have had to wait for the three generations required for an Egyptian proselyte before her descendants could marry into the congregation. At the same time, had the situation been reversed and the man was Egyptian and the woman an Ammonite, the child would automatically take the nationality of her Egyptian father and again, would have to wait the

three generations after conversion. On the other hand, if an Ammonite man and an Egyptian woman had a son, the son would take the father's status and be an Ammonite and would therefore not be permitted to marry with the congregation. If the roles were reversed and a mother was an Ammonite and the father an Egyptian, the son would again take the status of the father and so would be allowed to intermarry with Israelites starting with the third generation after conversion.

The second phase, though, says that if the parents were converted then the offspring follow the more tainted of the two. This means that the children resulting from the marriage, since, as was shown above there was a transgression in the marriage, always follow the most restrictive lineage. Thus if an Ammonite male convert marries an Egyptian female convert, and the child of the union is a male, then the child would take the status of the Ammonite who is forbidden to marry with the congregation. If, however, the child is a girl, it would not take the status of the father since an Ammonitess is eligible to marry with the congregation after conversion, but instead would take the status of an Egyptian convert and so would have to wait the three generations.

We see then, that these rules do cohere to the Mishnah in question but, in addition, are more practically concerned with particular cases.

The Gemara to the Mishnah actually begins by questioning the first clause functions in reality. The text reads as follows:

"Rabbi Simeon said to Rabbi Yohanan: Is it then a general principle that wherever there is Kiddushin and there is no transgression the issue follows the status of the male? But what of a proselyte who marries a Mamzeret, where the Kiddushin is valid and there is no sin, and yet the issue follows the status of the inferior? For it was taught: If a proselyte marries a Mamzereth, the issue is Mamzer: this is the view of Rabbi Josi! He replied, Do you think that our Mishnah agrees with Rabbi Josi? Our Mishnah is according to Rabbi Judah, who maintained: A proselyte may not marry a Mamzeret; hence there is no Kiddushin, but there is transgression, (and so) the issue follows the status of the inferior. Then let it be taught (in the Mishnah)? --'Wherever' of the second clause is taught as an extension. Alternatively, it is after all, according to Rabbi Josi, but 'This is the case' is taught as a limitation. Does then the 'This is the case' imply that there are others? But what of a Halal who marries the daughter of an Israelite, where there is Kiddushin and there is transgression, yet the issue follows the male? --That is no difficulty: he (the Tana of our Mishnah) holds with Rabbi Dosethai son of Rabbi Judah. But what of an Israelite who marries a Halalah, where there is Kiddushin and there is no transgression, and yet the issue follows the male? --'Wherever' is stated in the first clause as an extension. Then let it be explicitly taught?-- Because it cannot be (conveniently) taught. (For how shall it be stated: 'The daughter of a priest, a Levite, or an Israelite or a Halalah who married a priest, a Levite, or an Israelite? Is then a Halalah eligible to (marry) a priest?")

Actually this is not a problem at all since we know from Deuteronomy 23:3 that a Mamzer cannot enter the congregation to the tenth generation. The status of Mamzerut therefore is passed on indefinitely no matter what the nature of the parents' marriage is. If a proselyte

married a Mamzer the taint would automatically be passed on and this function according to the second rule of Yichusin established by the Mishnah.

The second situation discussed is concerned with what happens when a Halal marries the daughter of an Israelite. Since there is Kiddushin and there is no transgression the issue should follow the male, which is what actually happens. The situation, however, comes up in the reverse. We know that if a Halalah marries an Israelite, her daughter is eligible to marry into the priesthood. Again, the child takes the status of the father. The Mishnah adds as examples to this clause, "Such is the case when the daughter of a priest, a Levite or an Israelite is married to a priest, a Levite, or an Israelite.

The question arises in the Gemara, "But what of a Halalah?" A Halalah is eligible to marry a Levite or an Israelite in such a way that her child is eligible to marry a priest. Also, when a Halalah marries an Israelite, even though she is not eligible to marry a priest, there is no restriction to her marriage with a Levite or an Israelite. There is no transgression and so these rules are followed. The term "Halalah" is not entered into the examples offered in the first clause of the Mishnah because it might indicate that a Halalah could marry with priestly stock. This we know is not permissible. Therefore, the term "Wherever" is used as an extension to the clause in the mishnah to show that there are other cases, besides

those that are mentioned in the Mishnah itself, that are affected by this first clause.

"But there is the case of Rabbah b. Bar Hana. For Rabbah b. Bar Hana said in Rabbi Johanan's name: If an Egyptian of the second degree marries an Egyptian woman of the first degree, her son ranks as third degree! 'Wherever' of the first clause is stated as an extension;"

This means, according to the first clause, that if an Egyptian woman of the first generation of conversion marries an Egyptian man of the second generation of conversion, the child, since there is no transgression and the marriage is valid takes its status from the father, and so is an Egyptian convert of the third generation. This view is exactly according to the Mishnah and yet is not mentioned among the examples of the first clause. Thus we again see the term 'Wherever' being applied as an extension to other possible examples.

Rav Dimi, however, took exception to this ruling by Rabbi Johanan, and declared the child to be of the second degree of Egyptian proselytes. Indeed, a ruling by Rabbi Yahanan is introduced by Rabin whis support Rav Dimi as follows, "In the case of other nations, follow the male; If they become proselytes, follow the inferior status of the two." Thus this duplicates the decision introduced on Yebamoth 78b. Indeed we learn that the marriage between a first degree Egyptian and a second degree Egyptian does cause transgression and so this ruling by Rabbi Yahanan

is correct and does follow the Mishnah (see above concerning the marriage of an Egyptian and a Moabite).

The second section of Mishnah 12 reads as follows:

"That the betrothal was valid but the transgression befell (by reason of the marriage) the standing of the offspring follows that of the blemished party. Such is the case when a widow is married to a high priest, or a divorced woman or one that had performed Halitzah is married to a common priest, for a Mamzerut or a Nethinin to an Israelite, or the daughter of an Israelite to a Mamzer or a Nethin."

We have already seen the decision that in the case of converts to Judaism who are married to one another, the offspring takes the greater taint between them, assuming that there is a taint to be taken. This fully follows the Mishnah since there is transgression as we have seen, in the fully valid marriages which they make. There is a discussion found on Yebamoth 77a and b which touches upon this clause of the Mishnah, and further supports the supposition that there is transgression in certain marriages between proselytes. The case being discussed concerns the ability of the daughter of an Ammonite proselyte and an Israelitess to marry with a priest.

It is recognized that this cohabitation is an act of transgression, and so the question is raised concerning the ability of the daughter to marry a priest. Because the marriage is an act of transgression, the child should take the taint that exists in the relationship. In this case, the taint is the inability of the daughter to marry a priest.

We do find on Kiddushin 67a the statement, "If a proselyte marries a Mamzeret, the issue is a Mamzer. This is the view of Rabbi Josi. He replied, "Do you think that our Mishnah agrees with Rabbi Josi?" Our Mishnah is according to Rabbi Judah who maintained, "A proselyte may not marry a Mamzer. Hence there is Kiddushin but there is transgression (and so) the issue follows the status of the inferior." This is a case which shows the second clause of the Mishnah functioning. Rabbi Judah takes the position that a Mamzer could not marry a proselyte and therefore if they do marry there would be valid Kiddushin but there would also be transgression. The status then of the child would be determined by the taint involved. The taint being Mamzerut, the child would be a Mamzer.

Actually, we know from Kiddushin 4:1 which follows Rabbi Josi, that a proselyte and a Mamzer were permitted to marry and so there was no transgression and the reason that the children would be Mamzerim must be because of the verse in Deuteronomy 23:3 which says that a Mamzer is forbidden from entering the congregation until the tenth generation, which is to say indefinitely. Thus the status of Mamzerut was always passed along when there was Kiddushin. The position of Rabbi Judah concerning the marriage of a Mamzer and a proselyte, was not accepted and so his reasoning, even though it followed the Mishnah, did not hold up ultimately.

The second clause of this Mishnah does not come under detailed consideration in the Gemara, beyond what we have already seen above concerning marriages of certain proselytes. What we do see is certain situations where the taint is taken by the child. The taint being transmitted follows the rules of this clause of the Mishnah and so we see, except perhaps in the case of the transmittal of Mamzerut that this clause of the Mishnah also functions fully in the Gemara.

The third clause of Mishnah 12 reads:

"If her betrothal with this man was not valid, but her betrothal with others would be valid, the offspring is a Mamzer. Such is the case when a man has connections with any of the forbidden degrees prescribed in the law."

This clause is supported in the Gemara on Kiddushin 67b and 68a where a number of examples are offered as part of the reasoning for this clause of the Mishnah. Ultimately, the decision is reached that the statement that gives authority to this clause comes from Leviticus 18:29 which reads, "Whosoever shall do any of these abominations, even the soul that do them shall be cut off." Thus Karet ensures from any of these relationships, and the Rabbis decided that all consanguineas relationships are assimilated to a wife's sister. Just as Kiddushin with a wife's sister is invalid, so is Kiddushin with all other consanguineous relationships invalid.

What we learn from this is that the various relationships described in Leviticus 18 were forbidden, and they

could all be summed up by taking one example. The one chosen here in the Gemara is that of the man who marries the sister of his wife while the original wife is still living. This is a forbidden situation, and in fact, although the wife's sister is forbidden to marry her brother-in-law, she would be permitted to contract valid marriage with others. Therefore, the children of that relationship would be considered Mamzerim. Just as this is how the mishnah works in the case of two sisters, so also would it work in all other cases of consanguineous marriages.

A contradiction to this clause in the mishnah is offered on daf 68b where it says:

"Shall we say that Rabina holds that if a heathen or a (non-Jewish) slave cohabits with a Jewess the issue is a Mamzer? (Nö) Granted that he is not (regarded as) fit, he is not a Mamzer either, but merely stigmatised as unfit.

As can be seen, the possibility that such a child is a Mamzer did not hold and so does not offer a real challenge to this clause of the mishnah. It should be noted that although the child is not considered a Mamzer, neither is the child without a taint, the taint being that it would be unable to marry into the priestly class.

The same opinion on the issue of a slave or idolator and a Jewess, is offered by Rabbi Isaac b. Bar Abudimi in the name of Judah the Prince. On Yebamoth 45a the decision is offered that the child is tainted but cannot be called a Mamzer and so was indeed an Israelite but

with a taint. This does not toally follow this section of the mishnah and is actually more related to the fourth section of our mishnah and so will be more fully discussed below.

Another case that does relate to this clause of the mishnah occurs on Yebamoth 45b. where we read:

"Where one who is a half slave and half freedman cohabitated with the daughter of an Israelite the child born from such a union can have no redress!"

It would be considered a Mamzer. Rabbi Judah's ruling was made only in the case where he had betrothed the daughter of an Israelite in which case his half-slave side cohabits with a betrothed woman. The child would be a Mamzer. This is because the slave half would cohabit with the wife of the freed half of the man and an adulterous situation would occur.

Actually, however, this is disputed on daf 45b by the Nehardians who stated in the name of Rabbi Jacob that two ways of thinking are functioning here. The first is that of those who consider the offspring of a Jewess and an idolator or a slave illegitimate. This follows the reasoning that the child of a son and his father's wife is a Mamzer, since the father's wife is prohibited to the son and so the marriage would be invalid and the child then would be a Mamzer. Since the child would be a Mamzer in that illicit marriage, it is reasoned, the child of a marriage between a slave or a proselyte and a Jewess which is also illicit should be a Mamzer.

On the other hand, those who consider the child to be legitimate offer the opinion that in the case of a son and his father's wife, the woman had the ability to make a valid betrothal with others and so her inability to contract kiddushin with her son was a special case. Therefore, following the reasoning of the third clause of this mishnah, the child is a Mamzer because the mother contracted illicit Kiddushin while she could have contracted licit Kiddushin with others.

It could be argued, however, that the Jewess, the daughter of the Israelite who maintained this illicit betrothal with a slave or an idolator, was also eligible to contract licit betrothal with a Jew, and so the child should be considered a Mamzer, since she contracted illicit betrothal while licit betrothal was available to her elsewhere. There is a difference, however, which is offered and which concludes the argument. In the case of a son and his father's wife, the only one whom he was forbidden to marry was his father's wife. He was qualified to contract licit Kiddushin with other Israelites. In the case of the slave or idolator, however, they are not eligible to contract illicit Kiddushin with any Israelite and therefore these cases are different. The idolator and slave are excluded from the system as a whole. The child born from a union of a Jewess and either of these non-Israelites must be considered legitimate. The father is entirely eliminated from consideration of the child's status, and so the child takes its status only from the mother.

It should be mentioned that the discussion concerning the half slave, half freedman continues with a statement related by Rabbi Gaza who said:

"Rabbi Josi bar Abin happened to be at our place when an incident occurred with an unmarried woman and he declared the child to be illegitimate: (And when it occurred) with a married woman, he declared the child to be illegitimate."

Thus a distinction is also drawn with the betrothal. If a woman who had intercourse with a half slave and half freedman where this was no Kiddushin the child would be considered an Israelite; however, where there was Kiddushin with someone else, then the child would be considered a Mamzer because the Jewish half of the slave would cause adultery to take place. However, we read further:

"Rabbi Aha son of Raba said to Rabina: Amemar once happened to be in our place and he declared the child to be legitimate in the case of a married as well as that of an unmarried woman."

The gemara goes on to say:

"And the law is that if an idolator or a slave had cohabited with the daughter of an Israelite the child (born from such a union) is legitimate, both in the case of a married and that of an unmarried woman."

We see then that the gemara in this case agrees with the mishnah both in terms of the third clause, in that there was an attempt to declare a child to be a Mamzer when the requirements of the clause which determine Mamzer were not met, and in the case of the fourth clause which states that such a child is not a Mamzer, but instead takes the status of the mother.

Another example that illustrates this clause of Mishnah 3:12 is found on Yebamoth 49 a and b and reads:

"Abaye said: All agree that if one cohabited with a menstruant or with a Sotah, the child (born from either union) is no Mamzer. "A menstruant" since betrothal with her is valid because it is said, AND HER IMPURITY BE UPON HIM, even at the time of her menstruation betrothal with her is valid. A Sotah also, since her betrothal is valid. It has been taught likewise: All agree that if one cohabited with a menstruant or with a SOTAH or with a widow awaiting the decision of a levir, the child (born from any such union) is not a Mamzer."

What this says is that children born from women who were menstruants or a Sotah and even a widow awaiting the decision of the levir, are not Mamzerim because any marriage that they might contract would be valid, and as we know from the Mishnah in question, Mamzerut is the result of invalid marriages. Thus we see that this clause of the Mishnah was respected and functioned in the Talmud. In all cases, a Mamzer was determined to be the child of a woman who contracted invalid Kiddushin while she was eligible to contract valid Kiddushin. This always took the case of an incestuous relationship as detailed in Leviticus 18, or in the case of adultery. And this is in agreement with Yebamoth 4:12 which describes a Mamzer as the product of a relationship which makes the couple liable for Karet, since all of these relationships do just that. Also, in respect to cohabitation with a menstruant, certainly the rabbis would not have wanted such a situation to result in Mamzerut since it would have created so many Mamzerim.

The fourth section of this Mishnah reads as follows:

"Whatever woman could not contract Kiddushin with that particular person or with others, the issue follows her status. This is the case with the issue of a bondmaid or a Gentile woman."

So we again see that a bondmaid and a Gentile woman cannot contract valid Kiddushin with any Israelite (see above) and therefore the status of their children is derived from themselves. This also works in the reverse.

On Kiddushin 68a and 68b we have the following explanation:

"How do we know (it of) a Canaanitish bondmaid? Said Rabbi Huna, Scripture saith, ABIDE YE HERE WITH ('im) THE ASS--is a people ('am) like unto an ass. We have thus found that Kiddushin with her is invalid: How do we know that the issue takes her status?--Because Scripture saith, THE WIFE AND HER CHILDREN SHALL BE HER MASTER'S."

This uses two biblical verses. The first shows that a Canaanite bondmaid is ineligible for Kiddushin with an Israelite. The way it works is that it presents the verse from Genesis 22:13 concerning Abraham, who turned and told his servants to remain with an ass. What the Rabbis have done is to interpret this verse to mean that a slave is part of a people that is like an ass. So a slave is likened to an animal, just as you cannot contract Kiddushin with one.

The passage continues with the question of how we know that the children of such a relationship take the status of the mother. The scriptural verse offered for this problem comes from Exodus 21:4 and refers to the fact that the children of a Canaanite bondwoman belong to their mother's

master. Thus they are slaves also, and so took their mother's status.

The text continues:

"How do we know (it of a freeborn) Gentile woman?--Scripture saith, NEITHER SHALT THOU MAKE MARRIAGES WITH THEM. How do we know that her issue bears her status?--Rabbi Johanan said on the authority of Rabbi Simeon b. Yohai, because Scripture saith, FOR HE WILL TURN AWAY THY SON FROM FOLLOWING ME: thy son by an Israelite woman is called thy son but thy son by a heathen is not called thy son, Rabina said: This proves that thy daughter's son by a heathen is called thy son."

Two issues are being discussed here: There can be no valid Kiddushin with a Gentile woman, and how do we know that the issue bears her status? We know there can be no valid Kiddushin from Deuteronomy 7:3 which states that Israelites could not make marriages with them. "Them," here refers to all Gentiles. The explanation offered in terms of the status of the child is based on Deuteronomy 7:4. "Thy son" is shown midrashically to indicate only a grandson by way of a daughter. This is a standard rule throughout the Talmud which is derived through the reasoning that "he" refers to the Gentile father and "son" refers to a daughter's son. The logic of this is clear since the working would not fit the situation were it reversed. In addition, we know that the son is considered to be an Israelite from the use of the term "thy son." The use of "thy" indicates that the son is of the Israelite people.

The discussion in the Gemara continues with the possibility that the child of a heathen or (non-Jewish) slave is

a Mamzer. However, this does not fit the rules either of the third or the fourth clause of the Mishnah and so was not accepted. It must be stressed, however, that such a child considered tainted and as such was unfit to intermarry with the priesthood.

Another problem introduced by the Gemara concerns the proof text just discussed. Since that text comes from Deuteronomy 7:3 and 7:4 it refers to the seven forbidden nations discussed above. How do we know then, the discussion is raised on Kiddushin 68b, that all other Gentile nations are also forbidden. The answer is based on a proof text from Deuteronomy 21:13 and refers to a woman who is captured in war. First she is allowed a period of time to mourn for her lost ones, and then, AFTER THAT THEY SHALT GO IN UNTO HER, AND BE HER HUSBAND." The reason that this cannot refer to the seven nations which are mentioned in Deuteronomy 7:3 and 7:4 is that those nations were destroyed by the Israelites. Thus, this new verse can only refer to all other Gentile nations.

The use of the term "after that," indicates that prior to the time that she was captured and completed her mourning she was not eligible to contract valid Kiddushin with an Israelite. However, once she became a part of the Israelite community, even though it was only through capture, she became eligible for valid Kiddushin.

The last discussion in the Gemara to Mishnah 12, on Kiddushin 69a reads:

"How do we know that her child is as herself?--
Scripture saith, IF THERE BE TO A MAN (TWO WIVES)
...AND THEY BEAR TO HIM (CHILDREN): Where we read
'if there be,' we also read, 'and they bear to
him;' but where we do not read, 'if there be,' we
do not read, 'and they bear to him.' If so, is
not a (heathen) bondmaid likewise?--Yes, it is
even thus."

The problem here is, how do we know that the status of a child born to a heathen bondmaid is the same as that of the heathen bondmaid. The answer is derived from the verse found in Deuteronomy 21:14 which refers to a man who had children by two wives and loves one child more than the other. It is defined as follows: "if a man has," means that he has valid Kiddushin. "And they bore for him children," indicates that if he has valid Kiddushin, the children are presumed to be born from him, and so the children take his status. But where it does not say, "if a man has," concerning a woman, then it cannot also say, "and they bear from him children." Therefore, since there is no valid Kiddushin, the children born through the union are not considered to be his children and so they take their status from their mother. The same thing happens with a bondmaiden.

We see then that the last phrase of this mishnah is followed faithfully throughout the Gemara. Where the Gemara disagrees with the mishnah, as in the case of the ruling that children of slaves or heathens by Israelite women were declared Mamzerim, the final decision sides with the mishnah. In fact, this particular tradition that disagrees with the Mishnah must have been very strong since it is mentioned so

many times (see discussions of third and fourth clause of the mishnah in the Gemara), however, it is also problematic as to the source of the tradition since Judah the Prince is cited as the authority behind both the tradition declaring such children to be Mamzerim, and the tradition declaring them to take the status of the mother in agreement with the mishnah.

There are, in addition, a number of other examples that relate to this mishnah. The issue is also discussed on Yebamoth 44b and following:

"Rabbi b. Bar Hana said in the name of Rabbi Johanan: All agree that where a slave or an idolator had intercourse with a daughter of an Israelite the child is a Mamzer. Who is meant by 'All agree?'-- Simeon the Temanite. For although Simeon the Temanite stated that the offspring of a union forbidden under the penalty of flogging is not a Mamzer, his statement applies only to the offspring of a union forbidden under the penalty of flogging, since the betrothal in such a case is valid but here, in the case of an idolator and slave, since betrothal in their case is invalid, and they are like those whose union is subject to the penalty of kareth."

We have already seen that this is not the case and that this transgression does not carry the penalty of kareth. Therefore the child is not considered a Mamzer. The fact that their betrothal is invalid does not mean that their child is a Mamzer since we learn from the third clause of the mishnah in question that a child is a Mamzer if the mother's Kiddushin with the father is invalid when she had other Israelite men with whom Kiddushin would have been valid. In the case of the Israelite woman, it is true that her Kiddu-

shin is invalid, however, we know (see above) that it doesn't count at all with a Gentile or slave since they could not contract valid Kiddushin with any Israelite.

In this discussion a number of tanaim and amoraim are mentioned as holding that such a child is a Mamzer. They are eventually overruled from the fact that many rabbis could also be listed claiming that the child is not a Mamzer. The final decision is that the child is not a Mamzer and is eligible to marry with the congregation of Israelites without becoming a proselyte. The taint suffered by the child is stressed by Raba who recommended that such Jews as were fathered by a slave or an idolator go abroad where they could not be known and contract a marriage there, or marry another Jew who was also fathered by a non-Israelite.

We have seen then that all four clauses of this mishnah were followed in the Gemara. In addition, it can be seen that the discussions concerning lineage agree with the ultimate conditions for Mamzerut which comes from Yebamoth 49a, and which traces Mamzerut to a relationship that makes the parents liable for kareth. The last section of the mishnah also functions fully in the Gemara: The child of a Gentile or a slave and an Israelite takes its status from its mother whether she be an Israelite, a Gentile or a slave herself.

In summing up the relationship of the Mishnah to the Gemara in terms of this issue, the Mishnah can be said to

deal with this issue on a theoretical level, whereas the Gemara deals with it on a more practical case by case level. Yet the two strata of material were usually in agreement and the final decisions were always in harmony with each other.

The following example will show that the Jerusalem Talmud also conformed to the principles of the Mishnah. In Yerushalmi Kiddushin (daf 64a of the fifth order according to the Krotoshin edition) the following is related:

"Jacob of Kefar Nibburaya ruled in Tyre: It is permitted to circumsize the infant son of a Gentile woman on the Sabbath. When R. Haggai heard this he said to him, 'Come and be flagellated.' 'Shall he who states a Scriptural ruling be punished!' exclaimed he. 'And how is this Scriptural?' 'Because it is written, AND THEY DECLARED THEIR PEDIGREES AFTER THEIR FAMILIES, BY THEIR FATHERS' HOUSES' (Numbers 1:18), he answered. 'You have not ruled well,' said he to him. 'And whence can you prove this to me?' 'Lie down and I will prove it to you,' he retorted. 'It is written, NOW THEREFORE LET US MAKE A COVENANT WITH OUR GOD TO PUT AWAY ALL THE WIVES, AND SUCH AS ARE BORN OF THEM. (Ezra 10:3) 'And will you actually punish me on the strength of tradition!' he protested. 'AND LET IT BE DONE ACCORDING TO THE TORAH' (ib.), quoted he. Said he: 'Hammer away thy hammering (i.e., strike me), for it is well taught."

As we see, Jacob of Kefar Nibburaya ruled that the child of a Gentile woman could be circumcised on the Sabbath, thus ascribing Jewish status to the child. It is unstated-but clear-that the father of the child was a Jew. Jacob uses a biblical reference which indicates that lineage went according to the father. Rabbi Haggai, however, heard this ruling and took exception. He quoted a verse from Ezra which clearly indicates that a child from a non-Jewish

woman was not a Jew. To strengthen the argument, Haggai added that this verse was Toraitically related, for it was in response to the verse, "FOR HE WILL TURN AWAY THY SON FROM FOLLOWING ME." (Deuteronomy 7:4) The argument swayed Jacob who repented of his earlier ruling. Here too the child of a non-Jewish mother is not considered a Jew. This passage also conforms with the fourth principle of Mishnah Kiddushin 3:12.¹

CHAPTER VI

MATRILINEAGE AND PATRILINEAGE IN THE CODES OF MAIMONIDES AND CARO

In this chapter, I have identified and organized the relevant material to be found in the codes of Maimonides and Caro. The relevant passages are then organized according to the same structure used with the Tanaitic and Amoraic levels, namely, the four principles of lineage found in Mishnah Kiddushin 4:12. In addition, the source of the law offered in the code, and parallel or contradictions in the two codes are noted.

As we have learned, the first principle of the Mishnah is concerned with marriages where there was valid betrothal, and no transgression. In the codes, this rule is stated on a more practical, case oriented level. In Maimonides' Yad Hachazakah, 'Issure Bi'ah 19:15 we read:

"Priests, Levites, and Israelites are permitted to intermarry one another, and the child retains the status of the father. Levites, Israelites, and profaned persons are also permitted to intermarry with one another, with the child again retaining the status of the father, as it is said, "and they declared their pedigrees after their families, by their fathers' houses" (Numbers 1:18): his father's house is considered his family, and not his mother's house."

In addition, 19:16 reads:

"Levites, Israelites, unfit priests, proselytes, and manumitted slaves are permitted to intermarry

with one another. If a proselyte of a manumitted slave marries a Levite or Israelite woman, or a profaned woman, the son born of that union is deemed an Israelite. If an Israelite, a Levite, or an unfit priest marries a proselyte woman or a manumitted bondswoman, the child retains the status of the father."

These two laws are paralleled by the first three laws of the eighth chapter of Joseph Caro's, Shulchan Aruch, Even Haezer, which read:

8:1 "Priests, Levites, and Israelites are permitted to each other (for marriage) and the child follows (the status of) the male.

8:2 Levites and Israelites and Halalim are permitted to each other (for marriage), and the child follows (the status of) the male.

8:3 Levites, Israelites, Hallalim, Proselytes, and freed slaves are (all) permitted to each other (for marriage). The proselyte and the freed slave who marry a levitess or an Israelitess or a Hallalah: Behold the son is an Israelite. An Israelite or Levite or Halal that marries a proselyte or freed slave: the child follows (the status of) the male.

All five of these laws follow the first principle of Mishnah Kiddushin 3:12 fully, and demand little explanation. As the past two chapters have shown, when the betrothal is valid, and there is not transgression, the child takes its status from the father. We know that betrothal is valid in all the pedigrees mentioned in the laws stated above except for the priestly class marrying with proselytes and freed slaves (note the difference between Even Haezer 8:1 and 8:2). Thus, these laws show that, as the mishnah states, the offspring follow the status of the father.

'Issure Bi'ah 19:16, and Even Haezer 8:3 have added clauses which do not match the mishnah. In both of these

passages, we learn that if a proselyte or a freed slave marries an Israelite, Levite or Halal woman, the child is an Israelite. Since we know that these marriages are allowed, we would expect the status of the offspring to follow the father instead of the mother. The authority for this reversal comes from Mishnah Kiddushin 4:7 which was discussed above, and which says that if a proselyte, either male or female, marries an Israelite or a Levite, the child is an Israelite. We learn that this functions likewise for a freed slave from the statement in the same mishnah which says, "A proselyte is regarded as of like standing to freed slaves even to ten generations." Thus, since they are subject to the same laws, what applies to one must apply to the other. Since the mishnah teaches that the child of a proselyte and an Israelite is an Israelite, so must it be concerning a freed slave. The codes of Maimonides and Caro both reflect this reasoning. (Paralleled in 'Issure Bi'ah 15:1 and Even Haezer 4:23 and 7:21.)

As mentioned in 'Issure Bi'ah 8:2 and Even Haezer 19:16, a Halal is permitted to marry an Israelite, but is prohibited from marrying a priest. We learn more concerning the lineage of the halalim in 'Issure Bi'ah 19:14 which reads:

"If an unfit priest marries a valid woman, his children by her are regarded as profaned, and so are his subsequent male descendants even after a thousand generations, since the son of an unfit priest is himself unfit forever. In the case of a female child, she is forbidden to the priesthood, since she is deemed profaned. If, however, an

Israelite marries a profaned woman, the child is valid. If, therefore, the child is a girl, she is permitted to the priesthood."

In Even Haezer 7:16 we read:

"When a halal marries a kosher woman: the child that comes from her is a halal, and it is the same with his son and his grandson, all of them are hallalim forever. And if she bears a daughter, she is forbidden to the priesthood. But if she marries that same daughter to an Israelite and she bears a daughter, that daughter is fit to marry with the priesthood, for if an Israelite marries a halalah, the child (that results) is fit (to marry a priest)."

In both of these laws we see a virtual repetition of Mishnah Kiddushin 4:6. The daughter of a halal is forbidden to marry a priest. If, however, she marries an Israelite, then, since the marriage is valid and is non-transgressing, the child takes the status of the father and so is an Israelite. If, on the other hand, the child is a male, then even if he marries an Israelite, the child still takes his status. His daughter then, would not be fit to marry a priest. Again, these laws clearly follow the first clause of Mishnah Kiddushin 3:12.

A particularly interesting ruling of the Talmud, attributed to Rabbi Eliezer, states that in the case of other nations, nationality always follows the male (Kiddushin 67a). While this ruling does not affect lineage in the case of Israelites or even proselytes, it does seem to reflect the overall orientation of semetic society in talmudic times. This ruling is reflected in 'Issure Bi'ah 12:21, and Even Haezer 4:7.

For the second clause of the Mishnah, which refers to marriages where the betrothal was valid but caused a transgression, we find a number of examples in the codes. As stated in the mishnah, a child born of this kind of union takes the taint which is caused by the transgression, or which caused the transgression. In 'Issure Bi'ah 15:1 we read:

"Who is accounted a bastard, as designated in the Torah? The offspring by any of the forbidden unions, except by a menstruant, whose child is considered impaired, but not a bastard. If, however, a man has intercourse with a woman of any of the forbidden unions, whether by force or by consent, whether willfully or by error, the child born of that union is regarded as a bastard, and both male and female are eternally forbidden to marry into Israel, as it is said, EVEN TO THE TENTH GENERATION (Deuteronomy 23:3), that is, forever."

While this passage does not explicitly state that the child of a Mamzer is also a Mamzer, it does imply the fact by stating that Mamzerim are eternally forbidden to marry into Israel. Caro in Even Haezer 4:18 is more explicit:

"(If) an Israelite marries a Mamzereth or a Mamzer marries an Israelite woman, the offspring (of the union) is always a Mamzer. (The blemish is not cured by the passing of successive generations.)

Thus we see that the Shulchan 'Aruch explicitly states the law and coheres exactly both to Mishnah Yebamoth 8:3, the last clause of which reads: "Mamzerim and Nethinim are forbidden and forbidden for all time, whether they are males or females," and Mishnah 3:12. The union of an Israelite and a Mamzer is forbidden. If such a union takes place,

then the offspring take the status which reflects the taint that is between the parents. In this case, the taint would be that of Mamzerut.

Maimonides states in 'Issure Bi'ah 15:7:

"A male bastard may marry a female proselyte, and a female bastard may marry a male proselyte. But the children of both these unions are deemed bastards, since the child retains the status of the impaired parent, as it is said, INTO THE CONGREGATION OF THE LORD (Deuteronomy 23:3), and a congregation of proselytes is not called "a congregation of the Lord."

This law is saying that a proselyte and a Mamzer may marry, but even though the marriage is permissible, the child still takes the status of Mamzerut. The reason is offered that proselytes were not thought to form a congregation. This still fails to explain why the children inherit the blemish since the marriage is licit and non-transgressing.

One possible explanation for the children inheriting the blemish in this case was offered above: the taint continues indefinitely. Since the taint continues, it cannot disappear in any case where there is licit betrothal. Another explanation is possible: there is transgression in the marriage. Even though the marriage is permitted and so causes no transgression, the transgression which originally established the strain of Mamzerut is still working in the marriage. When the mishnah says, "and there was no transgression," it may be referring to the possible strains extant in the marriage. Even though this particular marriage did not cause transgression, a prior marriage in

the family did. The history of that prior transgression might function to pass a shadow of transgression on this marriage. The result would be that this marriage did indeed include transgression, and so the offspring would take the taint as we would expect.

The above stated law from the Mishnah Torah is paralleled by Even Haezer 4:22 which states:

"A proselyte and a freedman are permitted (to marry) with a Mamzereth and similarly a Mamzer is permitted (to marry) with a female proselyte or a freed woman, because the "congregation" of proselytes is not called a "congregation" (i.e., a caste of kosher Jewish stock). The child of such a union is a Mamzer, even if his conception and birth were in "holiness" (the proselyte's parents were Jewish at both times, conception and birth: the reference is to the proselyte who married the Mamzereth); for example, his father was a proselyte and he married a female proselyte. Even in such a case (the offspring) is permitted (to marry) with a Mamzereth (permission for such a marriage extends) precisely to the tenth generation, but thereafter he is prohibited (for such a marriage) because the reputation of proselytism has disappeared from him (a descendant of the original proselyte couple). And (people) would come to say "a Jew is marrying a Mamzereth."

According to Maimonides (the proselyte) is permitted (to marry) with a Mamzereth, and similarly his great-grandchild (enjoys such permission) until the reputation of proselytism disappears from him, and it is not known that he is a proselyte. Afterwards, he is prohibited (from marrying) with a Mamzereth. Both proselytes and freedmen (are covered) by one regulation."

The law is a detailed description of the nature of the proselyte's and freedman's ability to marry a Mamzer. As with the passage from 'Issure Bi'ah, the marriage is allowed but the offspring are considered Mamzerim. In addition, the child of two proselytes is allowed to marry a Mamzer, and so

must also be considered a proselyte. This is permissible until the reputation that an individual is from proselyte stock, is forgotten. At that point the descendant of proselytes is forbidden to marry Mamzerim. The second half of this law is paralleled by 'Issure Bi'ah 15:8.

Another example of the taint being passed to the offspring is found in 'Issure Bi'ah 15:24 which states:

"How so? If a Shetuki or a foundling marries a female proselyte or manumitted bondswoman, or if a proselyte or a manumitted slave marries a female Shetuki or foundling, the child is considered a Shetuki or a foundling."

This law explains that if a proselyte or a freed slave marries a Shetuki or a foundling, the child takes the taint of the Shetuki or foundling. We know, however, that a Shetuki or a foundling is permitted to marry a proselyte or a freed slave, and so we would expect the offspring to follow the male. Instead, however, the offspring follows the taint. The answer to this is found in the discussion concerning the same problem regarding Mamzerim and proselytes or freedmen.

The parallel to this law in the Shulchan 'Aruch, Even Haezer reads:

"The doubtful (caste groups) e.g., Shetuki and foundlings (are) prohibited from coming into (marital) contact (consummating marriages) with each other; and if they marry, they may not continue the marriage, (undisturbed), but they (must) divorce (each other) with the bill of divorcement, and the child (of such a union) is a doubtful (caste member) as his ancestors are. These doubtful caste groups have no remedy except that they marry proselytes, and offspring follows (the caste

of the) blemished (parent). How is this so? If a Shetuki or a foundling married a female proselyte or a freedwoman, or (if) a proselyte (or) a freedman married a Shetukith or a female foundling, the offspring is Shetuki or foundling." (4:36)

This law is an exact parallel to that of Maimonides. The beginning sections of the law as stated by Caro actually replete the laws listed in 'Issure Bi'ah 15:23.

The second clause of the mishnah in question can also be found functioning in laws dealing with nations which are forbidden to Jews for marriage. 'Issure Bi'ah 12:21 states:

"If an Ammonite proselyte marries an Egyptian woman, the child is an Ammonite. If an Egyptian proselyte marries an Ammonite woman, the child is an Egyptian. The rule with regard to these nations is that the child has the status of the father. If, however, they become proselytes, the child has the status of the lesser parent."

The same law is found this way in Even Haezer 4:7:

"An Ammonite who marries an Egyptian woman: the child is an Ammonite. But when an Egyptian marries an Ammonite woman: the child is an Egyptian. For in the nations, (status) follows the male. But if they convert, it follows the taint that is between them. Therefore, an Ammonite proselyte who marries an Egyptian proselytess, the child, if it is male, is determined, like an Ammonite, to be prohibited forever (from marrying with Jews). If it is a female, she is determined like an Egyptian woman (convert).

Both these laws stress the same thing although the law, as it appears in the Shulchan 'Aruch gives more detail. The first point is that in the case of a marriage between a proselyte and a non-Jew, or between two non-Jews, the child takes its status from the father. If both the male and the female converted, then the child takes the taint that exists

between the couple, or the lesser status. In the case offered, that of an Ammonite proselyte and an Egyptian proselytess, a male child would take the status of the father since an Ammonite cannot marry with a Jew at all, and were the child to take the mother's Egyptian status he would be allowed to marry with the congregation after three generations. If the child is a girl, she takes the status of an Egyptian proselyte which means she must wait an additional generation before her children can marry a Jew. Were she to take the status of an Ammonite, she would be eligible to marry with the congregation immediately upon her conversion.

The question must be asked, what is the transgression in this marriage which makes it applicalbe to the second clause of Mishnah Kiddushin 3:12? We know that proselytes are eligible to marry each other. The problem comes from the nationalities of these particular proselytes. An Ammonite proselyte is forbidden to marry a Jew, but he is obligated by the law not to marry anyone forbidden to a Jew. An Egyptian proselytess of the first two generations is forbidden to a Jew, and so also to an Ammonite. Their marriage causes transgression. It should be mentioned that this works in reverse also. An Egyptian proselytess is obligated to the Law. Since an Ammonite is forbidden to marry with Jews, he is also forbidden to an Egyptian proselytess of the first two generations. A marriage between

them causes transgression, and so the offspring takes the greatest taint.

'Issure Bi'ah 12:20 states:

"If a pregnant Egyptian woman becomes a proselyte, the child is considered to be of the second generation. If an Egyptian proselyte of the second generation marries an Egyptian woman-proselyte of the first generation, or if an Egyptian proselyte of the first generation marries an Egyptian marries an Egyptian woman proselyte of the second generation, the child is regarded as of the second generation, since it is said, THE CHILDREN THAT ARE BORN UNTO THEM, that is, Scripture makes the status of the child dependent on birth."

Thus, if an Egyptian of the first generation marries an Egyptian of the second generation, the child takes the lesser status. Again it can be asked, what is the transgression that causes a taint to be passed on? The answer is the inability of an Egyptian of the first generation to marry anyone except another Egyptian of the first generation. The fact that two Egyptian converts prior to the third generation, but not of the same generation, married, creates a transgression. The child then takes the taint in the form of the lesser status between the parents.

The complementary law as stated in Even Haezer 4:6 contains more information:

"(If) one of these (a female Egyptian or Edomite) converted and married an Israelite, or one of these (male Egyptian or Edomite) converts and marries an Israelitess, the child follows the taint. Therefore a proselyte Ammonite or second generation Egyptian that marries a daughter of Israel: the daughter is kosher, even for the priesthood. For which ever of them that she follows she is Kosher. But a second generation Egyptian that marries a first generation Egyptian woman, the child is a second generation Egyptian. A first generation

(Egyptian) who marries a second generation Egyptian woman, some say the child is a third generation Egyptian, but according to the Rambam, the child is a second generation (Egyptian)."

This passage has a number of clauses which require explanation. The first clause explains that in the case the mentioned forbidden marriages take place, the child takes the taint that is between the parents. Such a child would be forbidden to marry a priest. The second clause, however, shows that if an Ammonite proselyte who is forbidden to marry a Jewess, converts and marries a Jewess, his daughter would be permitted to marry a priest despite the transgression.

This situation is derived from Yebamoth 77a and 77b. A disagreement is related, between Rabbi Johanan and Resh Lakish. Resh Lakish maintained that the daughter of an Ammonite proselyte and an Israelitess was not permitted to marry a priest whereas Rabbi Johanan maintained that such a daughter was permitted. The verse which serves as the proof text is Leviticus 21:14 which reads: "But a virgin of his own people shall he take to wife." Because of the unusual spelling of the word which means "of his people," it was reasoned that the term applies also to someone who is of two peoples. Those nations which are described as "two peoples" are the seven forbidden nations discussed above. Since the males of these nations are forbidden and the females are permitted, they were considered to be "two nations." Since this was the case, the child of an Israel-

itess and an Ammonite man was considered to be fit according to the proof text, and so was eligible to marry with the priestly class.

Of course the daughter of an Israelitess and an Egyptian of the second generation was permitted to marry a priest, for if she took her status from her father she would be an Egyptian proselytess of the third generation, and if she took her status from her mother she would be an Israelite. In either case she would be eligible to marry a priest.

In the third part of the passage, it is noted that some considered the child of a first generation Egyptian and a second generation Egyptian woman to be a third generation Egyptian. This could not be, however, for it would not then fit either the first or second clauses of the mishnah in question. Were the first clause to function, then the child would take its status from the father and so be considered a second generation Egyptian. Were the case to follow the second clause of the Mishnah, the child would also be considered a second generation Egyptian. Thus there is no support for considering the child a third generation Egyptian, and so the law would have to follow Maimonides who assumed the second clause of the Mishnah to be functioning. (See 'Issure Bi'ah 12:20) The source for this decision is Yebamoth 78a.

A final set of examples for the second clause of the mishnah in question are: 'Issure Bi'ah 12:21, and Even

Haezer 4:8. These read:

"An Egyptian proselyte that marries an Ammonite proselytess: the child is an Egyptian and is forbidden until the third generation. (Even Haezer 4:8). If an Ammonite proselyte marries an Egyptian woman, the child is an Ammonite. If an Egyptian proselyte marries an Ammonite woman, the child is Egyptian. The rule with regard to these nations is that the child has the status of the father. If, however, they become proselytes, the child has the status of the lesser parent." ('Issure Bi'ah 12:21)

As we see in both these rulings, the child of converts for those nations singled out in the Torah for special treatment concerning marriage, follows the lesser status of its parents. The child of an Egyptian and an Ammonitess is an Egyptian and is required to wait the three generations prior to his or her descendants' intermarriage with Israelites. If the child took the status of an Ammonitess, then it would be eligible to marry with Israelites immediately after conversion. Thus, the child takes the lesser status of its parents when a marriage of this type, which causes transgression (see above) takes place. This is in total harmony with the mishnah.

The third clause of the mishnah in question concerns the status of a child whose parents contracted illicit betrothal when the mother could have contracted licit betrothal with others. The child of such a marriage would be a Mamzer. As we know from the examples offered in the mishnah itself, as well as from Mishnah Yebamoth 4:12, this only happens in the case of incest or adultery. Both 'Issure Bi'ah 15:1 and Even Haezer 4:13 reproduce the

concepts and much of the wording of the mishnah from Yebamoth, and do not deal with Mamzerut from the point of view of the third clause of Mishnah Kiddushin 3:12. For that reason these laws will not be discussed here.

The fourth clause of the mishnah in question refers to a woman whose betrothal is invalid, and who would be unable to contract valid betrothal with any man of either membership viz a viz Judaism. This means that if she were a Gentile, she could not contract valid betrothal with any Jew, and if she was a Jewess, she could not contract valid betrothal with any Gentile man. The child in such a case takes the status of its mother. The following are examples of this clause as they function in these two codes. The examples will be offered without explanation except when their relationship to the mishnah in question is unclear. Those laws which follow this clause of the mishnah and are presented in Maimonides' Yad Hachazakah are:

'Issure Bi'ah 12:7

"Although this transgression does not carry the death penalty imposed by the court, let it not be considered lightly in your eyes, for it involves a detriment carried by no other kind of prohibited union. A child born out of forbidden union is regarded as one's own son in all respects and is considered a member of the Israelite community, even though he is a bastard, whereas a child by a heathen woman is not recognized as a son, as it is said, FOR HE WILL TURN AWAY THY SON FROM FOLLOWING ME (Deuteronomy 7:4), that is, the father will turn him away from being "after the Lord."

The use of this proof text was explained fully in chapter five:

'Issure Bi'ah 15:3

"If a heathen or slave has intercourse with a daughter of Israel, the child is considered legitimate, whether she is unmarried or married, whether the intercourse took place by force or by consent. If a heathen or slave has intercourse with a female bastard, the child is deemed a bastard; if a male bastard has intercourse with a heathen woman, the child is considered a heathen. If this child then becomes a proselyte, it is legitimate like any other proselyte. If a male bastard has intercourse with a bondswoman, the child is regarded as a slave. If this child is then manumitted, it is legitimate like any other manumitted slave and is permitted to a daughter of Israel."

While this passage follows the fourth clause of the mishnah in question closely, the second part, dealing with the mamzer and the bondswoman, is also drawn from Mishnah Kiddushin 3:13:

'Issure Bi'ah 15:4

"The general rule is that the child of a male slave, a male heathen, a bondswoman, or a heathen woman has the status of his mother, the father not being considered. In accordance with this rule, the Sages have permitted a male bastard to marry a bondswoman in order to rectify his offspring, since he can manumit them and make them freemen. That is indeed why the Sages did not forbid the marriage of a bondswoman to a bastard, namely, in the interests of the legitimization of the children.

This passage, like the one before it, is drawn from both Mishnah Kiddushin 3:12, and 3:13:

'Issure Bi'ah 15:6

"If a heathen has intercourse with a bondswoman who had immersed herself, the child is deemed a slave; if a slave who had immersed himself has intercourse with a heathen woman, the child is considered a heathen; in both cases the child assumes the status of the mother. If, however, a heathen has intercourse with a heathen bondswoman, or a heathen slave with a heathen freewoman, the child retains the status of the father.

The source of the first clause of this ruling is Kiddushin 3:12. The second clause, however, is drawn from Bavli Kiddushin 67a.

'Avadim 9:1

"If an Israelite cohabits with a heathen female slave, even if she is his own slave, the child born as a result has the status of a heathen in every respect and can be bought and sold and employed forever as other slaves are.

'Avadim 9:3

"If a heathen from any other nation cohabits with one of our heathen slaves the son born as a result is a heathen slave, as it is said: WHICH THEY BEGOT IN YOUR LAND.

However, if one of our slaves cohabits with a heathen woman their son born as a result is not a slave, as it is said: WHICH THEY BEGOT IN YOUR LAND; and a slave does not have legal relationship (hence the term THEY BEGOT cannot apply to him)."

In both clauses of this ruling we see that the child of a heathen and a slave who has undergone immersion takes the status of the mother.

The following are rulings found in the Shulchan Aruch which follow the fourth clause of the mishnah in question:

Even Haezer 4:4

"An Egyptian woman who is pregnant when she converts; her son is a second generation Egyptian."

The son, in this ruling, takes his status from his mother, no matter who his father was. Thus if she converts and so becomes a first generation Egyptian proselytess, the son becomes a second generation Egyptian.

Even Haezer 4:5

"An Israelite that has sexual intercourse with one of these (an Egyptian or Edomite woman); the child is like her. And when one of these (an Egyptian

or Edomite man) excepting a Mamzer, has intercourse with a daughter of Israel: the child is kosher (to intermarry) with the congregation, however (the child is) blemished for (marriage with) the priesthood."

The Mamzeret is excluded in this ruling since the child of an Egyptian or Edomite man and a Mamzeret would be a Mamzer and not an Israelite. The fact that the child is blemished and ineligible for marriage with the priesthood was not noted by Maimonides.

Even Haezer 4:19

"The non-Jew or the slave who has connection with a Mamzereth (fathers by the Mamzereth) a Mamzer child; if they have connection with a Jewish woman, whether unmarried or married, the child (of such a union) is kosher but blemished in respect of the priesthood (i.e., marriage into the priesthood or the performance of priestly functions).

There is a more generalized restatement of Even Haezer 4:5.

Even Haezer 4:20

"The Mamzer who has connection with a non-Jewish (woman fathers by her) a non-Jewish child; and if (the child) converts, he (assumes) the status of an Israelite. If (the Mamzer) had connection with a slave girl (he fathers by her) a slave child. If (the child) is manumitted (he assumes the status of) a freedman.

Therefore, a Mamzer may a priori marry a slave girl, who has accepted the Jewish religious regimen (and) has undergone immersion for the purpose of slave status, (in order) to render his children permitted, (kosher): that they may be manumitted and (thereby) be permitted (to marry) Jews (of kosher stock)."

This rule is another restatement of Mishnah Kiddushin 3:13.

Thus we see that the codes, like the gemara, follow the mishnah fully in terms of determining lineage. It can be seen that with only a few specific situations estab-

lished through additional mishnayot, Mishnah Kiddushin 3:12 functions as the authoritative source for all lineage questions in the Rabbinic literature.

NOTES

Chapter I

1. David Jacobson, Ph.D., The Social Background of the Old Testament, (Cincinnati: Hebrew Union College Press, 1942), p. 3.
2. Encyclopedia Britannica, 1973, s. v. "Matriliny," by David M. Schneider.
3. ibid.
4. Jacobson, The Social Background of the Old Testament, p. 4.
5. Encyclopedia of Religion and Ethics, s. v. "Mother-Right," by W. H. R. Rivers, p. 851.
6. Jacobson, The Social Background of the Old Testament, p. 5.
7. Encyclopedia Britannica, "Matriliny."
8. ibid.
9. ibid.
10. ibid.
11. ibid.
12. ibid.
13. ibid.
14. ibid.
15. W. Robertson Smith, Kinship and Marriage in Early Arabia, (London: Adam and Charles Black, 1903), p. 151.
16. ibid, p. 185.
17. ibid, p. 153.
18. ibid, p. 165.
19. ibid, p. 166.
20. ibid, p. 184.
21. ibid, p. 153.

22. ibid, p. 84.
23. ibid, p. 93.
24. ibid, p. 92.
25. ibid, p. 159.
26. Jacobson, Social Background of the Old Testament, p. 9.
27. ibid, p. 9.
28. ibid, p. 9.
29. ibid, p. 11.
30. ibid, p. 11.
31. ibid, p. 11.
32. ibid, p. 11.
33. ibid, p. 12.
34. Julian Morgenstern, "Beena Marriage (Matriarchat) in Ancient Israel and Its Historical Implications," Zeitschrift fur die alttestamentliche wissenschaft und die kunde des nachbiblischen Judentums, (October, 1928): p. 91.
35. ibid, p. 96.
36. ibid, p. 92 (Note #1).
37. ibid.
38. ibid.
39. ibid, p. 93.
40. ibid.
41. ibid, p. 96.
42. ibid.
43. Genesis 38:26.
44. Judges 19 and 20.
45. II Samuel 13:23-29.
46. Jacobson, Social Background of the Old Testament, p. 23.

Chapter II

1. Genesis 4:17.
2. Genesis 24:1.
3. Genesis 26:34, 35.
4. Genesis 28:1.
5. Deuteronomy 7:3.
6. Tobit 9:10; 16:6ff.
7. Leviticus 24:40.
8. Genesis 20:12.
9. Exodus 6:20.
10. Genesis 35:22.
11. Rabbi Stephen Passamaneck, "The Halakah of Mamzeruth from the Talmud to the Shulhan 'Aruk" (Ph.D. Dissertation, Hebrew Union College-Jewish Institute of Religion, 1964), p. 3.
12. Louis M. Epstein, L.H.D., D.D., Marriage Laws in the Bible and the Talmud, (Cambridge, Massachusetts: Harvard University Press, 1942), p. 279.
13. Passamaneck, "The Halakah of Mamzerut," p. 3.
14. *ibid*.
15. Nehemia 13:28.
16. Soloman Zeitlin, "The Offspring of Intermarriage," Jewish Quarterly Review LI (1960 - 1961): 137-139.

Chapter III

1. Josephus, Jewish Antiquities, Vol. XVII, Section 341.
2. *ibid*, Vol. XVIII, Section 136.
3. *ibid*, Vol. XX, Sections 142 and 143.
4. *ibid*, Vol. XIV, Section 121.
5. *ibid*, Vol. XVI, Section 11.
6. *ibid*, Vol. XVII, Section 341.

7. *ibid*, Vol. XVII, Section 341.
8. *ibid*.
9. *ibid*, Vol. XX, Sections 142 and 143.
10. *ibid*, Vol. XVII, Section 341.
11. *ibid*, Vol. XVIII, Section 135.
12. *ibid*, Vol. XVIII, Section 171.
13. *ibid*, Vol. XVI, Section 225.
14. *ibid*, Vol. XX, Section 146.
15. *ibid*, Vol. XX, Section 139.
16. *ibid*, Vol. XII, Section 187ff.
17. *ibid*, Vol. XVIII, Section 342ff.
18. *ibid*, Vol. XVII, Section 12.
19. *ibid*, Vol. XIII, Section 292.
20. *ibid*, Vol. XIV, Section 126-128.
21. *ibid*, Vol. XIV, Section 126.
22. *ibid*, Vol. IV, Section 245.

Chapter IV

1. Encyclopedia Judaica, 1971, s.v. "Priests and Priesthood," Menachim Haran.
2. Passamaneck, "The Halakah of Mamzeruth," p. 3.

Chapter V

1. The translation of this passage was taken from the parallel in Genesis Rabbah:
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