

A SECTION OF THE SUGYA ON PROSELYTIZING
(B. YEBAMOTH, 44a-45b):

Translations of the Text, Rashi, Tosafoth
and Me'iri with Analysis

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Thesis submitted in partial fulfillment of the
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in Hebrew Letters and Ordination

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My appreciation also goes out to Dr. Ezra Spicehandler who took time to give me advice.

DIGEST OF CONTENT AND AIMS

He who takes back his divorcee, or he who marries his haluzah, or he who marries a close relative of his haluzah....

A strange beginning this for a section purportedly dealing with proselytizing; but such is the way of the Talmud. Through complex paths--reasoning tenuous to the uninitiated and commentary tracts only seemingly irrelevant--the following pages actually do logically move from treatment of divorce and levirate marriage to procedures for accepting a proselyte. Spanning dialectical discussions on the causes of being a mamzer and disqualified for the priesthood, the Talmud text is enriched by further tangential topics brought in by the abstruse Tosafoth. Here we find such material as painstaking pilpul in the search for Scriptural evidence to back the unquestioned assumption that a zonah is forbidden to eat terumah; here, also, is the intriguing look into the family pedigree of Herod and Agrippa. Rashi's commentary, straight and to the point, is joined by the chorus of Me'iri, who gives a somewhat wordy, but easy-to-follow and helpful running commentary that brings in the diverse opinions of many major experts.

My aim has always been to produce translations that are as literal as possible; for from the start I wanted, not only to learn by translating, but also to create a text that might easily be used as a teaching aid in Talmudic commentaries. To this end, the final pages of the thesis contain analytical outlines and a glossary.

Including the entire sugya on proselytizing with commentaries, the original assignment (Yebamoth, 44a-48b) proved far too vast to carry out on the allotted time; however to complete the incomplete is an irresistible challenge that I look forward to accepting.

S. D. F.

Jerusalem, 1969

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MISHNAH: (Yebamoth, 44a)

He who takes back his divorcee,^{r1} or he who marries his haluzah,^{r2} or he who marries a close relative of his haluzah,^{r3} must let her go; and any offspring is a mamzer^{r4} --these are the words of Rabbi Akiba. But the Sages say that the offspring is not a mamzer. Yet they agree that in the case where one marries the close relative of his divorced wife,^{r5} that the offspring is a mamzer.

GEMARAH:

Can Rabbi Akiba maintain the view that when one marries a close relative of his haluzah, the offspring is a mamzer? Did not Resh Lakish say: "Here Rabbi (Judah the Prince) taught that the sister of the divorced wife is Scriptural in origin; the matter of the sister of a haluzah is Rabbinic?"

Teach (Emend the text) "the close relative of a divorced wife."^{r6} It indeed follows so from the opinion upheld by the last part of the Mishnah:

But they agree that in the case where one marries the close relative of his divorced wife, that the offspring is a mamzer.

If you say that the Mishnah speaks about her (the close relative of the divorcee), i.e., since it states, "But they agree, " it is well; but if you say it does not speak about her, then what is meant by the statement, "But they agree?" (Akiba and the Sages are really discussing different subjects.)

Perhaps this (the ending of the Mishnah) means to teach us that a mamzer results from a union that incurs guilt punishable by extirpation.^{r7} Yet this is what is already taught infra, p. 49 (So, why teach it twice?):

Who is a mamzer? The result of a union with one's kinsman with whom union is not permitted because of a negative Scriptural commandment. These are the words of Rabbi Akiba. Simeon from Teman says: "All that are punishable by extirpation through Divine action;" the law follows Simeon from Teman.

But perhaps (you may say) the Tanna of the Mishnah intentionally made the statement anonymous to show that the law is like the view of Rabbi Simeon from Teman.^{t1} (Generally an anonymous statement is taken as law; but see the Tosafoth.) If so, he should have taught, "Other cases where the punishment is extirpation."^{t2} Then what is the force of the specific case, "Close relative of his divorcee?" It follows necessarily that "Close relative of his divorcee" must have been meant in the original statement of Rabbi Akiba.

But perhaps it was not explicitly taught in the reference to Akiba's teaching.^{r8} Rather, when the Tanna of our Mishnah (quoting Akiba) mentions "He who takes back his divorcee, and

he who marries his haluzah," as well as "The close relative of his haluzah,"^{r19} he unwittingly inserted, also, "The close relative of his divorcee."

But how can Rabbi Akiba maintain that the offspring of a union with the relative of one's haluzah is a mamzer? (Now that the matter of the textual emendation in Akiba's statement is rejected, our original questioning of Rabbi Akiba's reasoning in this case is continued.) Rabbi Hiya bar Abba said in the name of Rabbi Yohanan, "This is Rabbi Akiba's reason: when Scripture states, 'The house of him who had his shoe loosened,' (Deut. 25:10), it calls it (the house of the brother) his house."^{r10} ("...who does not build up his brother's house. And its /sic/ name shall be called in Israel, 'The house of him who had his shoe loosened.' See the new translation of the Jewish Publication Society.)

Rav Joseph said in the name of Rabbi Simeon the son of Rabbi:

All agree in regard to him who takes back his divorcee^{t3} /44b/ that the offspring is pagum^{r11} with respect to the priesthood.

Who is meant by "All agree"? Simeon from Teman; for although Simeon from Teman said that a mamzer does not result from a union forbidden merely by negative Scriptural commandment,

the offspring is--though not a mamzer--pagum.

This is arrived at by the rule of kal-vaḥomer from the case of a widow. Just as the son from the union of a widow and a high priest is pagum--a case of a woman not prohibited equally to all--so in the case at hand of the divorcee--forbidden equally to all--is it not logical that her son is pagum. This argument may be refuted: a) For although the widow is indeed herself become a ḥalalah (while rendering, also, her children pagum, nevertheless the divorcee is not).^{r12, t4} b) In addition, Scripture calls the divorcee an abomination while her children are not abominations.^{r20} c) Furthermore, it is taught in a Baraitha:

One who takes back his divorcee,^{r13} marries his ḥaluzah, or marries the close relative of his ḥaluzah, Rabbi Akiba says that he does not have a valid marriage with her,^{r14} and she does not require a divorce from him. But she is unfit^{r15} and her offspring is unfit,^{r16} and they force him to divorce her. But the Sages say that he does have a valid marriage with her, and she does require a divorce from him. She is fit^{t5} and her children are fit.

Fit for whom?^{r17} Does it not mean fit for the priesthood!? No, it means for intermarriage within the congregation. (The foregoing is in reference to the offspring.) If this is so, for whom is she fit? If one says, "For the congregation," is not that obvious anyway? For does acting like a zonah cause her to be disqualified for the congregation? No. It must therefore mean for the priesthood. And since she is fit for mar-

rying into the priesthood, likewise her offspring is fit for the priesthood.

Is this an argument? This case refers to one state and that case to another state.^{r18} Reasoning supports this view:^{r19} the first part of the Baraitha states,

She is unfit, and her offspring is unfit.

For what? One might suggest that it is to the congregation. But by acting like a zonah is she disqualified to the congregation? No. Rather it means for the priesthood.

And her offspring is disqualified.

For whom? One might suggest for the priesthood, this meaning that he is fit for the congregation. But did not Rabbi Akiba (whose position we are discussing here in the first part of the Baraitha) say that the offspring is a mamzer (who would be disqualified from entering the congregation)? So it is obvious that the meaning is that he is disqualified for the congregation. Then just as in the first part of the Baraitha the cases (between the mother and her children) are not analagous, so likewise in the last part of the Baraitha, this case refers to one state, and that case refers to another state.

Also, as for the expression, "She is an abomination,"^{r20} (Deut. 24:4), she is an abomination, but her associate wife is not an abomination. However, her children are abominations.

But the case of the widow remains a problem: while the

widow herself becomes a ḥalalah, (the divorcee remains fit for eating terumah). So, if the statement about her was reported at all, it must have been reported in the following way: Rav Joseph said in the name of Rabbi Simeon the son of Rabbi:

All agree in regard to him who has relations with those where the punishment is extirpation that the offspring is blemished.

Who is meant by "All agree?" Rabbi Joshua. For although Rabbi Joshua said that a mamzer does not result from a union punishable by extirpation, although the offspring is not a mamzer, he is pagum. This is arrived at by using kal-vaḥomer reasoning from the case of the widow. Just as regarding the union of a widow with a high priest--a case of a woman not prohibited equally to all--the son is pagum, so in the case at hand of the woman who has engaged in a union forbidden on pain of extirpation--prohibited equally to all--is it not logical that her son is pagum?

And should you say that the case of the widow may not be the same because she herself is become a ḥalalah, here also, when one has had relations with her, he has made her a zonah.^{r22, t6, t7}

* * *

Rabba, the son of the son of Ḥunah said in the name of Rabbi Yoḥanan:

All agree that if a slave or a pagan has relations with a Jewish girl, the offspring is a mamzer.

Who is meant by "All agree?" Simeon of Teman. For although Simeon of Teman says that a mamzer does not result from a union violating a negative Scriptural commandment, these words of his refer /45a/ to a union violating a negative Scriptural commandment, but where the marriage is valid; ^{r23} yet here, with a pagan or a slave, since marriage with them has no validity, the union is like one which is punishable by extirpation. An objection was raised from a higher authority:

If a pagan or slave has intercourse with a Jewish girl, the offspring is a mamzer. Rabbi Simeon ben Judah said: "A mamzer can result only from a union that is a Scripturally forbidden degree of relationship and which is punishable by extirpation." ^{r24}

Therefore Rav Joseph said: "Who is meant by 'All agree?'" Rabbi. Although Rabbi had declared: ^{r25}

These words (that no intercourse is valid after halizah) apply according to Rabbi Akiba--who used to consider a haluzah as one such Scripturally forbidden relationship.

While he did not agree with him about this matter, he did agree with him about a pagan or a slave; for when Rav Dimi came ^{r26} (from Palestine), he said in the name of Rav Isaac bar Avodimi in the name of our Rabbi that if a pagan or a slave has intercourse with a Jewish girl, the offspring is a mamzer. For Rabbi Aha, an officer of the Temple, and Rabbi Tanhum, the son of Rabbi Hiya from the village of Acco re-

deemed some captive women who had come from Armon to Tiberias,^{r27} there was one who had become pregnant from a pagan. When they came before Rav Ammi, he said to them that it was Rabbi Yoḥanan, Rabbi Elazar, and Rabbi Ḥanina who said:

If a pagan or a slave had intercourse with a Jewish girl, the offspring is a mamzer.

Rav Joseph said, "If it be a significant thing to think of names of men to drop, then here: Rav and Samuel in Babylonia, and Rabbi Joshua ben Levi and Bar Kapara in the Land of Israel--There are those who say to change the name Bar Kapara, and to insert 'The Elders of the South'--say:

If a pagan or a slave has intercourse with a Jewish girl, the offspring is fit (to intermarry)."

"However," said Rav Joseph: "It is the opinion of Rabbi to which the text refers. For when Rav Dimi came (from Palestine) he said that Rabbi Isaac bar Avodimi said in the name of our Rabbi:

If a pagan or a slave has intercourse with a Jewish girl, the offspring is a mamzer."

Rabbi Joshua ben Levi said:

The offspring is tainted.

For whom? I might have said for the congregation. But did not Rabbi Joshua say that the offspring is fit.^{r29} Rather,

the meaning must be for the priesthood; for all of the Amoraim, who though they regard the offspring fit, admit, nevertheless, that the offspring is pagum for the priesthood because of the kal-vaḥomer argument from the case of the widow with the high priest. Just as with the union of a widow with a high priest--a woman who is not forbidden equally to all--her son is pagum, here, with one who is forbidden equally to all,^{r30} does it not follow that her son is pagum?^{r31} But while a widow who has relations with a high priest is herself become a ḥalalah, (this is not the case with a Jewish girl who has had relations with a pagan or a slave). Indeed on the contrary, for likewise in this case, when the man has had intercourse with her, he has disqualified her:^{r32}

For Rabbi Yoḥanan in the name of Rabbi Simeon said, "Where do we learn from Scripture that if a pagan or a slave has intercourse with the daughter of a priest, the daughter of a Levite, or the daughter of an Israelite, they declare her disqualified?" From the verse where it is said, If the daughter of a priest be a widow or divorced..." (Lev. 22:13). This refers to someone with whom the terms "widowhood" and "divorce" are applicable for her.^{r34} Now a pagan or a slave, who is not a person with whom "widowhood" and "divorce" are applicable for her, is exempt.^{r35, t8}

Abaye said to him:^{r36} "Why do you place reliance on Rav Dimi?^{r37} Rely on Rabin, for when Rabin came (from Palestine), he said that Rabbi Nathan and Rabbi Judah the Prince rule in her case to remove restrictions. And who is Rabbi Judah the

Prince? Rabbi."

Now even Rav rules in such a case to make her fit. For there came before Rav such an offspring,^{r38} who said to him: "If a pagan or a slave had intercourse with a Jewish girl, what is the law?" Rav said to him: "The offspring is fit." The man said to Rav: "Give me your daughter." "I will not give her to you," Rav said.

Shimi bar Hiyah said to Rav: "Men have a proverb: 'In Media a camel dances on the area of a quart.'^{r39} Here is the "area" of a quart; here is the "camel;" and here is "Media,"^{r40} but the camel does not dance." Rav said to him: "Were he like Joshua ben Nun, I would not have given my daughter to him." The other said to Rav: "Were he like Joshua ben Nun, if the Master would not give her to him, others would give their daughters to him. But as for him, if the Master will not give her to him, others will not give their daughters to him either." He refused to leave his presence,^{r41} so Rav set his eye upon him, and he fell dead.

Even Rav Matanah rules to remove restrictions in her case; so does Rav Judah rule for removal of restrictions in her case. For there came one such offspring before Rav Judah, who said to him: "Go and hide your identity,^{r42, t9} or marry a woman of your own kind."^{r43} And one such offspring came before Rava. Rava said to him: "Either go into exile,^{r44} or marry one of your own kind."

The inhabitants of Bei Miksei^{r45} sent to Rava (and asked):

"If he who is half slave and half free man has intercourse with a Jewish girl, what is the law?" He said to them: "Now if it were with a full slave, they (the Rabbis) have said that the offspring is fit. Should there be a problem for question with a half slave?"

Rav Joseph said: "The authority of this report is^{r46}
 [45b] Rav Judah,^{r47} and did not Rav Judah say:^{r48}

If he who is half slave and half free
 man has intercourse with a Jewish girl,
 the offspring of that union can have
 no change in his status.^{r49}

But that which was said^{r50} by Rav Judah refers to where he
married^{r51} a Jewish girl, so that the slave side of him which
 was within him had intercourse with a married woman.^{t10}

But did not the Nehardeans say in the name of Rabbi Jacob that as far as the words of him (speaking about a full slave and a Jewish girl) who declares the offspring unfit are concerned, one declares him unfit even if the intercourse of the slave was with an unmarried woman. As far as the words of him (speaking about a full slave and a Jewish girl) who declares the offspring fit are concerned,^{r52} he declares him fit even if the intercourse was with a married woman.

Now both of the opposing views base their teaching on none other than the case of one who has relations with his father's wife.^{r53} He who disqualifies the offspring reasons that just as in a union with the wife of one's father,^{t11} where marriage is not valid, the offspring is rendered a mamzer,

so in all cases where the marriage is not valid is the offspring a mamzer. And he who declares the offspring fit reasons that just as only the union of the wife of the father with the son is a non-valid marriage, but with any other Jew the marriage is valid, so this fact excludes the case of the pagan or slave where a marriage with any Jew is never valid at all.

But what was said by Rav Judah must have been specifically for the case where the half slave and half free man had intercourse with a married woman,^{r54} so that the free aspect which he had within him had relations with a married woman.

Ravina said:

Rav Gaza^{r55} said to me that Rav Yosi bar Avin happened to come to some of our towns where there was a slave^{r56} who had relations with an unmarried woman; he declared the offspring fit. While with a married woman he declared the offspring tainted.

But Rav Shesheth said:

With my own ears I heard Rav Gaza say to me that it was not Rav Yosi Bar Avin but Rabbi Yosi the son of Rabbi Zevida, and he declared the offspring fit whether the woman was unmarried or married.^{r57}

Rav Aha the son of Rabba said to Ravina:

It happened that Amimar came to some of our towns and declared the offspring fit whether the woman was unmarried or married.

Now the law is that if a pagan or a slave has intercourse with a Jewish girl, the offspring is fit whether the girl be

unmarried or married.^{r57}

Rava declared Rav Mari the son of Rachel fit,^{r58, t12}
and appointed him among the officials^{r59, t13} of Babylon.
For even though an Amora has said that

You shall surely place a king over you...
from among your brothers....(Deut. 17:15)

means that all appointments which you make can only be

...from among your brothers,

this man (Rav Mari), since his mother was Jewish, may be included in the category we call

...from among your brothers.^{t14}

The slave of Rabbi Hiya bar Ammi made a certain pagan girl undergo ritual immersion in order to make her his wife.^{r60, t15}
Rav Joseph said: "I could declare her^{r61} and her daughter fit.^{r62}
As far as she is concerned, the matter can be settled according to Rav Assi.^{r63} For Rav Assi said:

Did she not undergo ritual immersion
after her menstrual periods?^{t16}

As far as her daughter is concerned, if a pagan or a slave has sexual intercourse with a Jewish girl, the offspring is fit."

There was once such an offspring; they had called him the son of a Gentile woman.^{r64} Rav Assi said:

Did she not undergo ritual immersion
after her menstrual periods.^{r65}

There was once such an offspring; they had called him
the son of a Gentile man. Rav Joshua ben Levi said:

Did not the father undergo ritual
immersion for his seminal emissions?

RASHI

Mishnah:

r1 HE WHO TAKES BACK HIS DIVORCED WIFE: That is, after she has remarried.

r2 OR HE WHO MARRIES HIS HALUZH: For she stands in relation to him through a negative Scriptural commandment that he not again build up (his brother's house). (See Deut. 25:9.)

r3 OR HE WHO MARRIES THE RELATIVE OF HIS HALUZH: The Gemarah further on questions this matter, as the close relative of his haluzah is not Scriptural in origin (but only rabbinic; hence there should be no application of the term "mamzer" to the offspring).

r4 HE MUST DIVORCE HER, AND ANY OFFSPRING IS A MAMZER: For Rabbi Akiba is of the opinion that a mamzer results from those who sin against negative Scriptural commandments.

r5 A CLOSE RELATIVE OF HIS DIVORCED WIFE: For his divorced wife is like his wife, and her sister or her mother are forbidden to him on pain of extirpation. (Lev. 18:18)

Gemarah:

r6 I MIGHT SAY THAT IT SHOULD READ THE "CLOSE RELATIVE OF HIS DIVORCED WIFE:" (A slightly different text than that which we have.) Then our rabbis would be in disagreement with Akiba over him who takes back his divorced wife and him

who marries his brother's wife who has freed him from levirate marriage.

r7 AND PERHAPS HERE IT MEANS TO TEACH US THAT A MAMZER RESULTS FROM A UNION PUNISHABLE BY EXTIRPATION: Thus the Mishnah means to say that even though our Rabbis (Sages) disagree (with Rabbi Akiba) over the offspring of a union prohibited by a negative Scriptural commandment, they agree that with a union punishable by extirpation the offspring is a mamzer.

r8 PERHAPS IT WAS NOT EXPLICITELY TAUGHT IN THE REFERENCE TO AKIBA'S TEACHING: What you may say that it tells us about the others who incur the punishment of extirpation.

r9 RATHER WHEN THE TANNA OF THE FIRST PART OF OUR MISHNAH MENTIONS "HE WHO TAKES BACK HIS DIVORCEE, AND HE WHO MARRIES HIS HALUẒAH, AS WELL AS "THE CLOSE RELATIVE OF HIS HALUẒAH:" In which cases the Rabbis disagree. The Tanna also incidentally mentions where they agree--in regard to the close relative of his divorcee. Nevertheless, the close relative of his haluzah is still mentioned by Rabbi Akiba as producing a mamzer. (We reject the textual emendation to Akiba's statement as quoted by the Tanna.)

r10 SCRIPTURE CALLS IT HIS HOUSE: He disagrees with the anonymous opinion given at the beginning of our chapter (p. 41a) when it teaches that as regards the relationship of a man

subjected to ḥalīẓah and his sister-in-law, if another brother of his had married her sister and died, that sister is subject to perform ḥalīẓah. According to Rabbi Akiba she is completely free from levirate marriage. (In other words, there exists such a strong sort of barrier between a man and the relative of his ḥalūẓah, according to Akiba, that even ḥalīẓah is not required in this case.)

/44b/

rl1 THAT THE OFFSPRING IS PAGUM: If she gave birth to a daughter unfit for the priesthood, the daughter is a ḥalalah.

rl2 WHILE SHE IS INDEED HERSELF BECOME A ḤALALAH: For if the high priest dies, she is not to marry even an ordinary priest, because the former had made her unfit by his relations with her and rendered her a ḥalalah (since she was a widow and forbidden to the high priest), as it is written:

He shall not make his seed ḥalal.
(Yehallel, the piel form which
has two "l's".

--Lev. 21:15

And it is not written:

He shall not yahel. (The
hifil form, which has only
one "l".

It implies that there are two objects (because of the two "l's") that have become ḥalal--one is the woman and the other,

his seed. Thus it is explained in Kiddushin, p. 77a. (Kal-vaḥomer reasoning is used; if the seed that committed no sin is profaned, how much the more so is she who had committed a sin profaned, i.e., made a ḥalalah.) Or if she is the daughter of a priest, he has made her unfit for eating terumah, as it is stated in our tractate below (p. 68a). Now you should say that when one takes back his divorcee, she is not herself made a ḥalalah; for if what happens is that she becomes unfit for a priest, he does not make her unfit by this remarriage. This is because she is already unfit and in this state from the time of the divorce. And if you ask about her being able to eat terumah, she is not forbidden to partake in this state, as it is stated in chapter, "The Widow With a High Priest," infra, p. 69a.

r13 HE WHO TAKES BACK HIS DIVORCEE: After she had remarried.

r14 HE DOES NOT HAVE A VALID MARRIAGE WITH HER: For Rabbi Akiba thinks that a marriage with those who have transgressed negative Scriptural commandments is not valid.

r15 SHE IS UNFIT: For a priest, since she is a zonah.

r16 AND HER OFFSPRING IS UNFIT: He is a mamzer.

r17 FIT FOR WHOM?: For whom has it been taught in the Baraita, "Her offspring is fit;" is it not for the priesthood?

r18 THIS CASE REFERS TO ONE STATE AND THAT CASE TO ANOTHER STATE: She is fit for the priesthood, and her offspring is

fit for marriage in the congregation; but for the priesthood, the offspring is blemished.

r19 REASONING SUPPORTS THIS VIEW: That the cases are not analagous.

r20 AND SHE IS AN ABOMINATION: For you make the challenge by interpreting the clause: "She is an abomination," (emphasizing the "she" to get) "but her children are not abominations." However, do not interpret it in this way; rather, take it as meaning that she is an abomination, yet her rival is not an abomination to be forbidden for levirate marriage, and she may participate in the levirate marriage.

r21 RABBI JOSHUA: Who has said in the Mishnah (infra, p. 49a) that a mamzer is only the result of a union forbidden under penalty of capital punishment.

r22 HE HAS MADE HER A ZONAH: He has made her unfit for the priesthood. However, (supra, p. 16b), concerning him who takes back his divorcee, it is impossible to retort thus; for when it says in chapter "The Widow With the High Priest," infra, p. 69a:

I might say that the statement "She had intercourse with a person disqualified for her" refers to him who takes back his divorcee,

we require the man to have been a person disqualified to her originally. (Obviously, since the first marriage was valid,

the man was not disqualified to her originally.)

/45a/

r23 A UNION VIOLATING A NEGATIVE SCRIPTURAL COMMANDMENT
WHERE THE MARRIAGE IS VALID: Here is an instance which we
derive in chapter "How" (supra, p. 23a) from the Scriptural
statement,

If a man have two wives, the one
loved and the other hated....

--Deut. 21:15.

Could it be that one is loved by God and one
is hated by God? Rather, "loved" means loved
in regard to marriage, and "hated" means
hated in regard to marriage. Yet Scripture
still says, "If a man have two wives...."
(That is, the marriage is valid.)

But marriage is not valid with a slave or a pagan, as it
is written (Genesis 22:5):

Stay here with the donkey.

That is, "Stay here, people that is like a donkey." (Changing
the vowels of 'im (with) to 'am (people). Also, Rashi is
utilizing a midrash which appears in Genesis Rabbah, chapter
56:2, where each slave boy is told to stay with the donkey
because the slaves were like the donkey in that they did not
see the special place from afar off which God showed to Abram
and Isaac. In other words, it follows that slaves are like
donkeys, with restrictions on their rights; a Jew cannot con-
tract marriage with them.)

A pagan, likewise, is not in the category of one with whom marriage is valid, as it is written about the Seven Nations:

You shall not contract marriage
with them.

--Deut. 7:3.

That is, matrimony for you with them cannot be. As for the rest of the foreign nations it is written:

When you go forth to war against your enemies
...and you see among the captives a beautiful woman, and you desire her, if you would take her for a wife, then bring her to her house where she shall shave her head ...and put off her captive's garments... and she shall mourn her father and her mother for a month. Afterwards you may have relations with her, so that you will be her husband and she be your wife.

--Deut. 21:10-13.

The implication made is that originally a legal state of marriage was not possible with her. From these Scriptural statements we make the derivation in Kiddushin (P. 68b) that marriage is not valid with a pagan woman. And also with the pagan male, it is possible to derive from these same statements therefore that his intercourse is not one that may contract a marriage; but rather like it is the intercourse that is forbidden on pain of extirpation.

In the Sh'eltoth of Rav Aḥai, (chapter "Vayishlah," section 25), he derives the matter from this statement:

God came to Abimelek in a dream of the night and said to him: "You are about to die because of the woman you have taken, since she has been taken in sexual relations by her husband."

--Genesis 20:3.

And in Sanhedrin (p. 57b) we interpret the matter:

The heathens have laws forbidding to another man a woman taken in sexual intercourse by her husband, but they do not have such laws regarding the woman who has only entered the hupah, and has not had intercourse with her husband.

How much the less, then, do they have laws forbidding a man to take a woman who is engaged. And the law making intercourse to contract marriage they do not have either--a law where an idea analogy is drawn (from Jewish Scripture) equating the various forms of betrothal to each other.

r24 A MAMZER CAN RESULT ONLY FROM A UNION THAT HAS BEEN FORBIDDEN AS A SCRIPTURALLY PROHIBITED DEGREE OF RELATIONSHIP AND WHICH IS PUNISHABLE BY EXTIRPATION: Now this Tanna (Simeon ben Judah) follows the view of Rabbi Simeon of Teman, but nonetheless teaches that as regards a pagan or a slave with an Israelite girl, the offspring is not a mamzer. (So we conclude that Rabbi Simeon of Teman would not make a special case of the pagan or slave.)

r25 ALTHOUGH RABBI HAD COMMENTED: In Chapter "Rabban Gamaliel" (p. 52b) (regarding the view that) intercourse is not effi-

cacious for marriage after ḥaliṣah, for if one performed ḥaliṣah with a woman and then had intercourse with her rival (the other), she does not require a divorce from him (The marriage is not valid.). Rabbi says that this view could only have been spoken by Rabbi Akiba. But his own opinion is not in agreement with Akiba; nevertheless he agrees in regard to a slave or a pagan.

r26 FOR WHEN RAV DIMI CAME...IN THE NAME OF OUR RABBI:
Rabbi.

r27 CAPTIVES FROM ARMON: Read "To Antioch."

r28 HOWEVER, SAID RAV JOSEPH, IT IS THE OPINION OF RABBI TO WHICH THE TEXT REFERS: You should not rule merely because there is a large number of men; on account of the numerous you may not disqualify the offspring. Note that there are, likewise, many who declare the offspring fit. Rather, it is because of the greatness of Rabbi that the offspring is disqualified, since the law follows Rabbi.

r29 DID NOT RABBI JOSHUA BEN LEVI SAY: Above, p. 44b, that the offspring is fit.

r30 ONE WHO IS FORBIDDEN EQUALLY TO ALL: A pagan is forbidden whether it be with a daughter of a priest, a daughter of a Levite, or the daughter of an Israelite.

r31 THAT HER SON IS PAGUM: Not literally; for obviously,

the son of a pagan woman could not be a priest. One might suggest that he cannot marry the daughter of a priest; but since he is permitted to an Israelite girl, he is permitted also to the daughter of a priest, for there is no sanctity applicable to women. Even if the women be fit, they are permitted to disqualified men--a fact which is established for us in Kid-dushin, p. 73a:

Fit women have not been warned against being married to unfit men.

Rather "pagum" refers to her daughter; if she gives birth to a daughter, the latter is forbidden to the priesthood.

r32 HE HAS DISQUALIFIED HER: Even from eating terumah from the house of her father; how much the more so from marrying a priest.

r33 THEY DECLARE HER DISQUALIFIED: A priest's daughter from eating her father's terumah. And as far as a Levite's daughter or an Israelite's daughter is concerned, namely for the case where they were married to a priest and bore him sons, and when their husbands died, they should have been able to eat terumah for the sake of the priest's children. But if a pagan or a slave had sexual intercourse with her, he has disqualified her from eating terumah; how much the more so from marrying into the priesthood.

r34 SOMEONE WITH WHOM THE TERMS "WIDOWHOOD" AND "DIVORCED" ARE APPLICABLE FOR HER: Namely, a Jew. (We follow the sug-

gestion of Rabbi Bezalel of Ranschburg and read "Jew" instead of the given "Jewess.") For if he dies,

...and she has no child, she
may return to her father's
house....

--Lev. 22:13.

r35 A PAGAN OR A SLAVE, WHO IS NOT A PERSON WITH WHOM "WIDOWHOOD" AND "DIVORCE" ARE APPLICABLE FOR HER, IS EXEMPT: Because the marriage is not valid.

r36 ABAYE SAID TO HIM: To Rav Joseph.

r37 WHY DO YOU LOOK FOR RELIANCE ON RAV DIMI?: Who said in the name of Rabbi that the offspring is a mamzer. Rely on Rabin who declares the offspring fit in the name of Rabbi.

r38 THERE CAME SUCH AN OFFSPRING: The son of a pagan from a Jewish mother.

r39 MEN HAVE A PROVERB: "IN MEDIA A CAMEL DANCES ON THE AREA OF A QUART:" A big camel dances with its four feet on the small area of a quart in the kingdom of Media; this is hyperbole.

r40 HERE IS THE "AREA" OF A QUART, HERE IS A CAMEL, AND HERE IS MEDIA: Let him come and dance before us--as if to say, "You who have permitted a novel reinterpretation, verify your words and give him your daughter."

r41 HE WOULD NOT GO FROM HIS PRESENCE: The same son of a pagan

who had said to him, "Give me your daughter."

r42 GO AND HIDE YOUR IDENTITY: In a place where people will not recognize you, and marry the daughter of an Israelite. For if they were to recognize you, they would not give her to you. Consequently he is not a mamzer, since he (Judah) declares him fit for an Israelite girl; for were he a mamzer, he would be prohibited from taking a fit girl.

r43 A WOMAN OF YOUR OWN KIND: A Jewish girl fathered by a pagan--one fit like you. But a mamzereth or a maid servant you shall not marry; consequently he is regarded fit.

r44 GO INTO EXILE: Go out to exile in a place where they will not recognize you and they will give you a fit Jewish girl.

r45 THE INHABITANTS OF BEI MIKSEI: A name of a place.

r46 THE AUTHORITY OF THIS REPORT IS: Who said that if a pagan or a slave had intercourse with a Jewish girl, the child is fit.

/45b/

r47 IS RAV JUDAH: As it says (directly above in the Ge-marah):

And even Rav Judah rules to
remove restrictions in her
case.

r48 AND DID NOT RAV JUDAH SAY: In relation to the case where a half slave has intercourse with a Jewish girl.

r49 THE OFFSPRING CAN HAVE NO CHANGE IN HIS STATUS: By marrying a Jewish girl--for he is a mamzer.

r50 FOR THAT WHICH WAS SAID: That statement about there being no hope for him.

r51 TO THE CASE WHERE HE MARRIED: When he who is half slave and half free man has married a Jewish girl, then afterwards has intercourse with her--after he had married her, her status was that of being married to his free side, but not to his slave side; so the aspect of a slave which he has in him has intercourse with a married woman. Therefore the offspring is a mamzer. For all those who declare him fit do so declare him when his mother was unmarried. But with a married woman, even if the man be a Jew, the offspring is a mamzer; how much the more so with a pagan or a slave. However, where he has intercourse with her without marriage, the offspring is fit.

This is the correct reading:

...the slave side which was within him had intercourse with a married woman.
(Rashi's text is the same as ours--in Hebrew; cf. the Aramaic version of the Tosafoth.)

r52 AS FAR AS THE WORDS OF HIM WHO DECLARES THE OFFSPRING FIT ARE CONCERNED: With a slave who has intercourse with a Jewish girl he declares the offspring fit even if she is a married woman, and he goes on to give the reason.

r53 ON NONE OTHER THAN THE CASE OF ONE WHO HAS RELATIONS

WITH HIS FATHER'S WIFE: Where mamzeruth is mentioned for her case (Indeed, this is the only case "specifically" mentioned by Scripture where mamzeruth is tied in, and even this is tenuous as the Tosafoth point out.), as it is written:

A man shall not take the wife of
his father.

--Deut. 23:1.

And juxtaposed to this:

A mamzer shall not come into the
Assembly of the Lord.

--Deut. 23:3.

r45 SPECIFICALLY FOR THE CASE WHERE THE HALF SLAVE AND HALF FREE MAN HAD INTERCOURSE WITH A MARRIED WOMAN: Because of this the offspring can have no change in status from the mother being a Jewish girl, for the free aspect of the half slave who had intercourse with her had relations with a married woman. However, if all of him were slave, the offspring would be fit, as they say:

As for the words of him who declares
the offspring fit, he declares him
fit even if the intercourse was
with a married woman.

But here he is a mamzer because of the father's free aspect; the situation is like that of any other Jew who, if he has intercourse with a married woman, produces offspring that is a mamzer.

r55 We read, "Rav Gaza." (Rashi must have known of a different manuscript reading.)

r56 THERE WAS A SLAVE: This refers to a full slave.

r57 OR MARRIED: In agreement with what we said--that one only produces a mamzer when he is one for whom marriage is legally possible with others.

r58 RAV MARI THE SON OF RACHEL: He was the offspring of a pagan who had intercourse with a Jewish girl.

r59 AMONG THE OFFICIALS OF BABYLONIA: Collectors appointed over the Jews, and although it is generally forbidden to appoint a convert as a leader over the Jews as the Master has said, nevertheless, this one, since his mother is Jewish is included in the category we call "from among your brothers."

r60 HE MADE HER UNDERGO RITUAL IMMERSION IN ORDER TO MAKE HER HIS WIFE: In order to have her undergo the required immersion for a menstruant; not in order to have her undergo the required immersion for a proselyte.

r61 I COULD DECLARE HER FIT: To be a complete proselyte, even though she did not perform the ritual immersion for the express purpose of becoming a proselyte, for although it says, infra (p. 46b):

One is never a proselyte until he will
have circumcision performed and will
undergo ritual immersion,

the ritual immersion of a menstruant may be construed as the ritual immersion for a female proselyte; for a pagan woman

does not practice ritual immersion for periods of menstruation.

r62 AND HER DAUGHTER: Even though she is the daughter of a slave who had intercourse with a Jewish girl--for the latter had converted to Judaism and is to be considered as a Jewish girl; at any rate, her daughter is fit.

r63 AS FAR AS SHE IS CONCERNED, THE MATTER CAN BE SETTLED ACCORDING TO RAV ASSI: For it has been said according to our text that there was such a male (like the daughter in our case) whom they used to call "a son of a Gentile woman" because his mother had not undergone ritual immersion for the purpose of becoming a convert. But Rav Assi said:

Did she not undergo ritual immersion
after her menstrual periods?

Consequently we can say that her ritual immersion as a menstruant is accounted to her as ritual immersion for the purpose of becoming a convert.

Another interpretation of the phrase TO MAKE HER HIS WIFE, which means for the sake of matrimony: Now the ritual immersion becomes one of making her a convert. But there can be no such ritual immersion, as it says in chapter "How" (Supra, p. 24b):

Neither a man who converts for the
sake of a woman nor a woman who converts
for the sake of a man is a proselyte.

The statement, I COULD DECLARE HER FIT, means, then, by means of other ritual immersions which she should undergo afterwards for her menstrual periods. Such is the interpretation which I have heard.

But I have difficulty: One, when we settle the law there (supra, p. 24b), the law is that all of them (those brought into question as to the sincerity of their conversion) are proper proselytes. And (secondly) even according to the first Mishnah; if indeed the first immersion is not accounted to her as her having converted for the sake of Heaven, so also the second immersion.

Hence, the first interpretation (above) is the right one and the one that I agree with.

r64 THE SON OF A GENTILE WOMAN: Because his mother had not undergone ritual immersion when she converted.

r65 DID SHE NOT UNDERGO RITUAL IMMERSION FOR HER MENSTRUAL PERIODS?: The same ritual immersion is accounted to her as the immersion for a proselyte; for this is a special characteristic of the observance of a Jewish law. Similarly with the statement, DID HE NOT UNDERGO RITUAL IMMERSION FOR HIS SEMINAL EMISSIONS?

TOSAFOTH

t1 BUT PERHAPS (YOU MAY SAY) THE TANNA OF THE MISHNAH INTENTIONALLY MADE THE STATEMENT ANONYMOUS TO SHOW THAT THE LAW IS LIKE THE VIEW OF RABBI SIMEON OF TEMAN: One may make a serious objection to the fact that the Gemarah did not point out that this is a case of an anonymous statement followed by a disagreement (Other opinions are given on p. 49a, as we have seen above.)--like that case where objection is raised in chapter "Those Who Inherit" (Baba Bathra, p. 122b):

You might say that the Tanna of the Mishnah intentionally made the statement anonymous to show that the law is like the view of Rabbi Yohanan ben Brokah. However it may be stated that this is a case of an anonymous statement followed by a dispute; and where an anonymous statement is followed by a dispute, the law is not decided in accordance with the anonymous statement.

One may say, however, that though this is not to be considered an anonymous statement, at all events it is to be taken as a case of a majority opinion (Sages) against that of an individual (Akiba), as I have explained above (p. 42b, Tosafoth, "setham"). And in chapter "There are Those Who Inherit," (Baba Bathra, p. 122b) the challenge relies on another problem where it says, "And furthermore, what is the force of 'except'?"

t2 IF SO, HE SHOULD HAVE TAUGHT "OTHERS WHO ARE LIABLE TO THE PUNISHMENT OF EXTIRPATION:" The Gemarah, however, could have objected: Have we not already learned in a Mishnah that the anonymous Tanna made a statement like Simeon from Teman in

Kiddushin (chapter "He Who Says," p. 66b):

Every instance where (for a woman) there is no kiddushin possible (with a particular person), the offspring is a mamzer. This is the case when one has intercourse with any of the relations prohibited in the Torah by extirpation.

t3 ALL AGREE IN REGARD TO HIM WHO TAKES BACK HIS DIVORCEE:

He mentions the act of him who takes back his divorcee to tell you how much the more strict is this prohibition than the rest of those that involve negative Scriptural commandments--even though it is written in Scripture, "She is an abomination," but her children are not abominations (an interpretation of that Scriptural passage from Deuteronomy 24:4); at all events, the offspring is pagum.

/44b/

t4 FOR WHILE THE WIDOW IS INDEED HERSELF BECOME A HALALAH:

It is not possible to say that she (a divorcee taken back by her former husband) should become a halalah by this kal-vahomer reasoning, for it says in Kiddushin, p. 77b: "A halalah can be only from unions forbidden to the priesthood." Above, in the first chapter of this tractate, p. 15b, with the opening catch word, "mah," I have explained the matter.

t5 SHE IS FIT: To the priesthood, it refers, as is shown in the conclusion; i.e., to eat the terumah of a priest (but not to marry a priest), since she is a divorcee.

You might raise an objection that, according to Rabbi

Akiba, how has she become unfit for eating terumah inasmuch as the principle that he be a stranger to her originally does not apply in this case? (The Rabbis frequently interpret the word "stranger" in Lev. 22:12-13 to mean a disqualified person for her.) For infra, in chapter "The Widow," p. 69a, there is a dispute:

And I might say that the Talmudic statement, "She had relations with a person disqualified for her" (Based on Lev. 22:12-13.) refers to one who remarried his divorcee,

where refutation is made by saying that we require him to have been a person disqualified to her originally.

It is possible to answer (the objection raised above) that this section below (p. 69a) is according to the opinion of our Rabbis, but that Rabbi Akiba did not require him to have been disqualified originally, as it says in chapter "Ten Kinds of Pedigrees" (Kiddushin, p. 75b):

Now if the offspring is a mamzer (as Akiba claims), one must assume that disqualification is brought about through the father's intercourse. (That is, the man who remarries his divorced wife must be a disqualified person, even though he was not originally disqualified to marry this woman.)

Rabbi Isaac (RI, the famous tosafist) has raised somewhat of a serious objection as to what Rabbi Akiba would interpret from the verse "She is an abomination" "Deut. 24:4). Akiba would not interpret it as "but her children are not abominations" (stressing the word "She" to exclude the offspring),

since he considers the offspring to be a mamzer; and he would not take advantage of the opportunity to interpret it as "Her rival wife is not an abomination" (seeing an exclusion indicated, but not applying it to the children, rather to the rival wife)--for in the opinion of Rabbi Akiba, the man could have no valid connection with the rival wife (hence she would be an abomination), since (according to Akiba) marriage violating a negative Scriptural commandment is not valid. (Note that the objection goes unanswered.)

t6 HERE, ALSO, WHEN ONE HAS HAD RELATIONS WITH HER HE HAS MADE HER A ZONAH: It implies here that a zonah is disqualified from eating terumah because she has become a halalah like the widow (who married a high priest)--and similar is the case in the first chapter of Sotah (p. 6a): Referring to the Mishnah,

These are forbidden to eat terumah....,

the Gemarah says:

If one says (the witnesses came) before she drank the waters of bitterness, then she is a zonah.

And it is taken for granted, then, that she should have been forbidden to eat terumah.

Rabbi Isaac (RI) raised a strong objection as to from where in Scripture we get the notion that she is forbidden to eat terumah. For, "They shall not marry a zonah" (Lev. 21:7)

it is written (about the priests), but we do not find a reference to terumah. Furthermore, infra in chapter "The Widow" (p. 68b) an objection is raised:

I might say that the statement, "She had relations with a person disqualified for her," refers to relations the punishment for which is extirpation.

Why would one need the Scriptural verse, "If a priest's daughter is married to a disqualified person (stranger), she shall not eat of the terumah of the holy things" (Lev. 22:12)--where the intended application is restricted to the punishment of extirpation, since as soon as extirpation applies, the woman is a zonah, and a zonah is (automatically) forbidden to eat terumah? (The implication is that if this objection of p. 68b has any validity, the zonah is not automatically forbidden to eat terumah, except by inference from Lev. 22:12, the very purpose of which verse can only be to provide for such an inference.)

It had seemed to Rabbi Isaac (RI) that from the Scriptural statement, "If she had relations with a disqualified person" (Lev. 22:12), we may infer (but there is no explicit Scriptural evidence) that a zonah is forbidden to eat terumah, and so is every woman who has engaged in a union where the punishment is by extirpation, and even with unions (involving no extirpation) caused by marriage, in which the man was not originally disqualified to her, is she forbidden to eat terumah. Similarly--in the opinion of Rabbi Akiba--with those who

have violated negative Scriptural commandments--Even with him who takes back his divorcee, a case where he was not originally disqualified to her. As it follows from above, according to Rabbi Akiba, the woman in such a case becomes disqualified from eating terumah; she comes under the category of the "stranger," as we have said in chapter "Ten Kinds of Pedigrees" (Kiddushin, p. 75b):

Now if the offspring is a mamzer, he (the father) certainly causes a disqualification with his intercourse.

And even in the opinion of Rabbi Joshua, who does not consider the offspring a mamzer, is this the case. For strictness prevails when it is thought that persons disqualified for her originally have been with her (Text emended here by HaBaH.).

But where we do require, in chapter "The Widow" (infra, p. 69a), that he have been a "disqualified person for her originally," this is only with violation of a negative Scriptural commandment or rabbinic enactment. According to the Rabbis, one does not limit (text slightly corrected here by HaBaH.) the Scriptural statement, "If she be married to a disqualified person (stranger) she may not eat of the terumah of the holy things," seeing that the interpretation in such matters where the guilt involves extirpation is that strictness prevails. But this excepts the case of the pagan or slave (with whom cohabitation is not punishable by extirpation). For this very case is needed the Scriptural statement from Lev. 22:12:

But if a priest's daughter is a widow or divorced, and has no child, and returns to her father's house as in her youth, she may eat of her father's food (terumah).

This is to say that reference is made to a union where the states of widowhood and divorce can be applied--to include provision for prohibiting the pagan and the slave (from whom she could not be considered widowed or divorced). However, as for Rabbi Akiba, who is of the opinion that the offspring of a union with a pagan or a slave is a mamzer, he makes an inference from the Scriptural statement, "If she marry a man disqualified for her," using "widow" and "divorced" for a different interpretation (infra, p. 69a). But in all cases where the marriage is not valid, the woman is a zonah, as is indicated in chapter "All Those Forbidden" (Temurah, p. 29b): "As with forbidden relations where betrothal has no effect, here also--(Where the woman is a pagan harlot)..." For the meaning of the term "zonah" is that the only thing that is possible with her is the intercourse of harlotry. But here there is not even involved a negative Scriptural commandment--an infraction of which would mean lashes (because she is not an Israelite zonah).

One should not raise the objection, "Why do we need the Scriptural verse, 'They shall not marry a zonah....' (Lev. 21:7), inasmuch as seeing that a zonah is forbidden to eat terumah, how much the more is she forbidden to the priesthood by kal-vahomer reasoning from the divorcee, who is permitted to eat terumah, though she is forbidden to marry a priest?"

For we infer from a similar kal-vaḥomer reasoning on p. 68b that an Ammonite or Moabite proselyte disqualifies a woman from marrying into the priesthood, inspite of the fact that no prohibition can be derived from a kal-vaḥomer, as it says there (p. 68b)." (We do not question the need for Leviticus 21:7) because there is still required the explicit negative Scriptural prohibition against the zonah for one to administer the punishment of two sets of lashes (which are, in fact, prescribed). And furthermore, it (Lev. 21:7) is needed--according to the Rabbis--for the case of the zonah from a union with a pagan or slave--something which for Rabbi Akiba is not required in her case. For we do not learn (of anything prohibiting her from marrying into the priesthood) from the Scriptural statement, "If she be married to a person disqualified for her (stranger)" (Lev. 22:12), but only from the statement, "If she be a widow or a divorcee" (Lev. 22:13)--(hardly a negative Scriptural commandment, and hence a tenuous basis from which to prohibit her from marrying a priest). (The preceding translation based on a marginal correction.)

And furthermore, an explicit negative injunction against a priest marrying a zonah is necessary regarding the proselytess and freed bondswoman--Even according to Abaye, who says in chapter, "All Those Who Are Forbidden" (Temurah, p. 29b), that a priest who has sexual intercourse with a pagan zonah is not given the lashes prescribed for marrying a zonah. But if she has become a proselytess, he would admit that one would administer the lashes because the offspring of the man would be attri-

buted to him. Furthermore, because she became a zonah, and because of the fact that Scripture has forbidden a zonah to a priest on pain of extirpation, it is because there is a violation bringing on extirpation that this union comes under the category of "If she be married to a person disqualified for her" (Lev. 22:12. This is the implication of the Leviticus statement here and in every place where the term "zonah" causes the woman to be disqualified. But if the offspring is from a pagan or a slave, even though the woman's status is that of a zonah, because marriage with her by him is not valid, the act does not come under the Scriptural principle derived from "If she marry a person disqualified for her (stranger)" (Lev. 22:12). Only when extirpation is applicable are we strict.

There is somewhat of a difficulty, for in chapter "Ten Kinds of Pedigrees" (Kiddushin, p. 75b), where an objection is raised:

Now should you think (in agreement with Rabbi Akiba), if the offspring is a mamzer, it is necessary to say that the father disqualifies by his intercourse,

the passage implies that where the offspring is a mamzer, certainly the affair is one that is included in the Scriptural statement, "If she be married to a person disqualified to her (stranger)" (Lev. 22:12)--Even though she is not a zonah.

But, according to Rabbi Joshua, who says that the offspring is not a mamzer from a union punishable by extirpation, the

term "zonah" seems to cause the case to come under the Scriptural statement, "If she be married to a person disqualified for her (stranger)" (Lev. 22:12). Such a conclusion (referring to the objection on p. 75b of Kiddushin) is unlikely, for in all places, since the interpretation is that the term "zonah" causes her to be disqualified from eating terumah, the matter follows the view of Rabbi Joshua. However, supra, at the end of chapter "Four Brothers" (p. 35a, under the Tosafoth catch-word "af 'al pi"), Rabbi Isaac (RI) remarked that in all instances where the marriage has effect, when he was not disqualified to her originally, the act does not come under the Scriptural statement, "If she be married to a stranger" (Lev. 22:12). But as to a zonah, who is forbidden to eat terumah, this is because Scripture includes her with the halalah, and consequently she is disqualified like a halalah. Accordingly it is necessary to reconcile here with the retort in chapter "The Widow" (infra, p. 68b):

I might say that the statement "She had relations with a disqualified person" refers to a union that is punishable by extirpation.

t7 HE HAS MADE HER A ZONAH: It implies that according to Rabbi Joshua, marriage has no effect when extirpation is the prescribed punishment for the union. For on the validity of the marriage depends the applicability of the term "zonah," as is explained in chapter "All Those Forbidden" (ibid.), and similarly at the end of chapter "Rabban Gamaliel" (infra,

p. 53a), it is necessary to inform us that the marriage is not valid where the punishment of extirpation is concerned--an interpretation which has no challenger. But there immediately follows the interpretation that being a mamzer depends upon the validity of the marriage. And similarly below, p. 45b, it is stated:

As with the wife of one's father, marriage with whom is invalid, the offspring is a mamzer, so is the offspring a mamzer in the case of the offspring of all those marriages which are invalid.

This is only according to Simeon from Teman and Rabbi Akiba, who say that Scripture has revealed to us that a mamzer results from a union punishable by extirpation--As we learn at the end of this chapter (p. 49a). And Scripture has also revealed to us that marriage in these cases is not valid, as we have said at the end of chapter, "He Who Says" (Kiddushin, p. 68a). Therefore we must say that both (non-valid marriage and mamzer offspring) are interdependent. But according to Rabbi Joshua, even though the marriage is not valid, where extirpation is involved the offspring is not a mamzer, as Rabbi Joshua has taught at the end of our chapter:

A mamzer results only where the union brings on the punishment of death by the Court.

Therefore, here immediately below in the Gemarah we find:

"All agree" refers to Simeon of Teman.

It did not say: "'All agree' refers to Rabbi Joshua. For although Rabbi Joshua says that a mamzer does not result from a union that is punishable by extirpation, these words of his refer..." (The words do not belong to Rabbi Joshua) because for Rabbi Joshua, marriage is not valid with a union punishable by extirpation, even though the offspring is not a mamzer. (The ruling on the case at hand of the pagan or slave could not be that of Rabbi Joshua because the ruling declares an interdependence between a non-valid marriage and mamzer offspring. See text, top of p. 45a.)

But there is somewhat of a difficulty, for in the first chapter of Temurah (p. 5b) there is an objection raised to Rabba, who said that everywhere Scripture says not to do something, if one does it, it is invalid:

But note the case where a widow married a high priest, about which Scripture says: "A widow or a divorced woman--these he shall not take." And we have learned, "Wherever a marriage is valid, and yet involves a transgression, e.g., a widow married to a high priest, (the child has the legal status of the defective party)."

/45a/

The Gemarah replies that

...the case is different there, since it says: "Neither shall he make a halal of his seed among his people (Lev. 21:15).

"The act makes for hillulim, not mamzerim," i.e., since a mamzer

is not produced, the marriage is valid. On such a basis, then, for Rabbi Joshua the marriage is not valid with the high priest--in accord with the opinion of Rabbah. For according to Rabbi Joshua it is not possible to prove anything about the validity of the marriage from the fact that the child is not a mamzer.

You might raise an objection, on the basis of Kiddushin, chapter "He Who Says," p. 68b, as to why we are forced to ascertain from Scripture regarding the rest of the forbidden unions where marriages are not valid that a mamzer results? Since we have already found that marriage is not valid with one's father's wife, from here can we not now derive all the forbidden unions from which a mamzer results?

One can remove the objection by replying that since we do not even learn directly from Scripture about mamzerim themselves resulting in any of the unions punishable by extirpation, how much the less should we use the idea analogy (hekesh) of Rabbi Jonah from the Scriptural statement:

A man should not take the wife of his
father nor should he uncover the skirt
of his father.

--Deut. 23:1.

This analogy is one which is brought in at the end of our chapter (p. 49a, infra), where it is written about the wife of one's father, and the woman awaiting the levirate decisions of a man's father. (This analogy follows the reasoning that if being a mamzer is connected with one forbidden, invalid marriage,

so it must be connected with all such marriages. Note, also, that the initial connection of the idea of producing a mamzer and that of having relations with one's father's wife is made only on the tenuous basis of the juxtaposition of Deut. 23:1--where the invalid marriage with one's father's wife is mentioned--and Deut. 23:3--where the prohibition of a mamzer entering the Assembly of the Lord is mentioned. Rabbinic reasoning often assumes that proximity of texts implies relationship of ideas.) We cannot derive the notion of being a mamzer in the rest of the cases of forbidden relations--namely, a married woman who might be permitted to marry even during the lifetime of the man who caused her to be prohibited in the first place, and the sister of one's wife, and all like them. Nevertheless, in the end they bring in the analogy. One can merely demonstrate the matter as I have explained it.

t8 A PAGAN OR A SLAVE, WITH WHOM THE TERMS "WIDOW" AND "DIVORCED" ARE NOT APPLICABLE FOR HER, IS EXEMPT: You might object: "Does not Rabbi Yohanan express above the opinion that if a pagan or a slave has intercourse with a Jewish girl, the offspring is a mamzer? If so, what is the function of the verse, "If the daughter of a priest be a widow or divorced ..." (Lev. 22:13)? For,

Now if the offspring is a mamzer, one must assume that disqualification is brought about through the father's intercourse.

--Kiddushin, p. 75b.

But it is possible to remove the objection by saying that the former opinion is his own and the latter, that of his teacher. And furthermore, there is the fact that Amoraim themselves are in dispute as to what was the opinion of Rabbi Yoḥanan, as it is said for us at the end of the first chapter (supra, p. 16b). And there I have explained how a mamzer could result from a pagan when the intercourse involved is not forbidden by Scripture.

t9 GO AND HIDE YOUR IDENTITY: And they will let you marry a girl with legitimate pedigree. You might raise the objection that one requires proof of proper lineage, as it is stated in chapter two of Kethuboth (p. 24b) about those

...who raise a person from the status merely of eating terumah to that of full (priestly) pedigree.

But it is possible to remove the objection by saying that in the latter case the matter involves marrying off one's daughter to a priest who serves at the altar, as Rabbeynu Tam there has proved; or, also, there (Kethuboth 24b) follows the view of Rabbi Meir (who required investigation in priestly marriages, as opposed to the statement):

But the Sages say that all families stand in the presumptive state of fitness.

--Kiddushin, p. 76b
(corrected page number), chapter
"Ten Kinds of Pedigrees."

t10 BECAUSE THE SLAVERY SIDE COMES AND HAS INTERCOURSE WITH A MARRIED WOMAN (The preceding is a translation of the Aramaic text which the Tosafoth have; it is similar to our (and Rashi's) Hebrew text): But note it is implied in the first chapter of Kiddushin, p. 7a, that he who says,

Be betrothed to half of me,

would have said nothing were it not for the fact that what he has said in reality is (ibid):

If I (correction form "we," noted by Hagahoth HaBaH) want to marry another, I may so marry;

the reason is, since he has left over part of himself in his acquisition, in line with chapter "He Who Sends" (Gittin, p. 43a), where it says:

And here he has not left anything over.

t11 JUST AS IN A UNION WITH THE WIFE OF ONE'S FATHER: You might raise an objection: that while in the case of the wife of one's father there is the punishment of extirpation and death, (there is not such punishment in the case of the slave).

But one may remove the objection by saying that the state of being a mamzer depends only upon the validity of the marriage, as I have explained above (t7).

t12 RAVA DECLARED FIT RAV MARI THE SON OF RACHEL: "Rava" is the correct reading, and not Rav (The Tosafoth must have had

an alternate text.); for Rav Mari was the son of Issur, the convert, who lived in the time of Rava, as is proved in chapter "One Who Dies" (Baba Bathra, p. 149a).

t13 OFFICIALS (PORSEI) OF BABYLONIA: One appointed, as it says in the first chapter of Yoma (p. 9a):

What are parhedrin (officials)?
Porsei.

t14 SINCE HIS MOTHER IS JEWISH, HE IS INCLUDED IN THE CATEGORY WE CALL "FROM AMONG YOUR BROTHERS:" From here we are confronted with a difficulty with the interpretation of Rashi, who gives an explanation in chapter "These May be Recited" (Sotah, p. 41a) concerning Agrippa the King, when the Sages said to him: "You are our brother," and where it says in the Gemarah, p. 41b:

At that very hour, Israel (the text euphemistically reads "the enemies of Israel") became guilty of the punishment of extinction, because they flattered Agrippa.

For the explanation of Rashi is that they called him "our brother" because his mother was from Israel; then according to his explanation, why were they deserving of punishment? Even here in Yebamoth we have said that if one's mother is Jewish, he is included in the category we call "from among your brothers." Although it is taught in a Tosefta (from Sanhedrin, chapter 4) that one does not set up a king unless he be from stock that one would permit to marry into the priesthood, at

any rate it is astonishing to say that because of violating a mere rabbinic prohibition, they became liable to extinction.

But Rabbenu Samuel (ben Me'ir) says that Herod (Agrippa's father) did not marry a Jewish girl (but, a slave), because he repented of his evil deeds (and refused to despoil a Jewish maiden, presumably), as we learn in the first chapter of Baba Bathra, p. 4a. Therefore they were deserving of punishment (since Agrippa's mother was not Jewish either); and although Herod was a slave, they called his son Agrippa "our brother," since he was their brother in regard to his being obligated to the observance of the commandments.

Now the statement makes some sense in the light of what Samuel (the Amora) said in chapter "Ten Geneological Classes" (Kiddushin, p. 70b):

Anyone who says, "I am descended from the Hasmoneans," is a slave.

And to that very Samuel is attributed the statement, supra, p. 45a:

If a pagan or a slave has intercourse with a Jewish girl, the offspring is fit.

However, Herod certainly did not marry a Jewish girl (but, a slave).

Now you might raise the objection "Why, at any rate, was Herod's status that of a slave? May it not be assumed (that he was not a slave)--that Herod's masters had given him up?" Samuel expresses the opinion that:

If one relinquishes ownership of his slave, the slave goes out to freedom, and there is no need of a document ascertaining his release.

--Infra, p. 48a.

But one removes this objection by saying that perhaps they looked forward to Herod's haughtiness being brought down a couple of pegs.

So you might raise the objection that here in the case of Agrippa the implication is that a proselyte--one whose mother is not Jewish--is not fit to judge. For when in chapter "Both Civil and Capital Cases" (Sanhedrin, p. 36b), we learn in the Mishnah:

All are fit to judge civil cases,
someone challenges (Why "All?") and responds (Read m'shanei rather than taninah, as the brackets indicate):

One (civil cases) includes the proselyte, and the other (capital cases) includes the mamzer. (Since all who can try capital cases can try civil cases, the proselyte is included in both categories.)

The understanding is that a proselyte--even though his mother is not Jewish, rather who has converted on his own--is one who is fit to judge, though we call him one who is descended from unfit stock, as it is said in Sanhedrin (ibid.):

But as for a proselyte--whose stock is unfit--(I might have erroneously thought that) he may not judge. (The text of the Tosafoth is incomplete; hence we have filled in words from our text.)

But one may remove the objection by pointing out that in Sanhedrin the teaching is in reference to a preselyte judging a fellow proselyte, as it is said in chapter "The Commandment of Halizah" (infra, p. 102a):

A proselyte may judge a fellow proselyte in a matter of law.... But if one's mother was Jewish, he may judge even an Israelite.

Then you might raise the objection that in chapter "Ten Kinds of Pedigrees" (Kiddushin, p. 76b) we say:

As for the statement, "He whose ancestors are assumed to be from the public officials," does this mean to teach that we do not appoint unfit people to be judges? "No," they object, "All are fit to judge in civil cases...." And Rav Judah says, "This includes the mamzer."

So what would be the difficulty if we were to reason in the same way in regard to the case of the latter (the mamzer), i.e., that he be allowed to judge only his fellow mamzerim?

But we remove this objection by saying that with regard to a mamzer--since his father and his mother are Jewish--we do include him in the category we call "from among your brothers." You surely know that when we expounded on "over you" (Deut. 17:15) we had required the one "over you" to be "from among your brothers." As for a mamzer judging only his fellow mamzer, a mamzer would be considered satisfactory to fulfill the requirement we have placed on the phrase "over you," since he comes from Jewish stock. So, if a mamzer were

disqualified from judging a Jew, he would also be disqualified from judging his fellow. Furthermore, in chapter "Both Civil and Capital Cases" (Sanhedrin, p. 36b), one labors on the necessity of distinguishing between proselyte and mamzer. Even though there already is the distinction between proselyte and mamzer in that a proselyte can judge only his fellow proselyte, in any case the Gemarah seizes onto the necessity since the Mishnah has presented its teaching on the matter without explanation, and there is no explicit distinction contained in it.

t15 HE MADE A CERTAIN PAGAN GIRL UNDERGO RITUAL IMMERSION TO MAKE HER HIS WIFE: Because he wanted her to be joined in marriage to him, he immersed her according to the manner of Jewish girls who take ritual immersion when they wish to marry. But he erred in doing so, because in regard to the slave, the rabbis never issued a prohibition against his marrying a menstruant, a bondsmaid, a pagan, or a zonah, as we (Tosafists) have said in tractate Nidah (p. 47a, Tosafoth catch-word, "He turned over, etc.;" this is a corrected page reference as noted by the marginal reference of Rabbi Bezalel of Ranschburg.).

t16 DID SHE NOT UNDERGO RITUAL IMMERSION AFTER HER MENSTRUAL PERIODS?: This is astonishing because of what is said infra, p. 46b:

The making of a proselyte requires three men because law is being written in this case.

Even in the opinion of him who says at the beginning of Sanhedrin (p. 3a) that it is Scripturally ordained that

Even one person is fit to judge,

it is astonishing. For at any event, it is not the practice of women to bring a man with them at the time of the immersion (for menstrual periods); and a woman (the attendant in a ritual bath is a woman) is not qualified to judge, as we have learned in a mishnah (Nidah, p. 49b):

Anyone who is fit to judge is fit to act as a witness,

and it is explicitly taught in the Palestinian Talmud that from this day forth a woman may not act as a witness nor may she judge. Furthermore, Deborah was not a judge; rather she taught others that they might judge. Or, one might explain Deborah's case by saying that since it was a Divine command, it was different.

But this astonishment may be removed by pointing out that the requirement of ours that there be three men present is intended for the act of the proselytess accepting the responsibility of the commandments; it is not intended for the immersion. Even though we do say (infra, p. 47b) that two learned men should stand outside, i.e., preferably at the beginning, there are those who explain the matter by saying that since it is known to everyone that she has undergone immersion, it is as if the men were standing there.

But there is the difficulty that the ritual immersion of a menstruant takes place at night, and infra, p. 46b, it says:

One does not make a proselyte undergo ritual immersion at night.

However, if law (mishpat) is not being written, but rather (the immersion) is for the acceptance of the responsibility of the commandments, it is alright. And furthermore, note that the rule, "One does not make a proselyte undergo ritual immersion at night," is only rabbinically ordained a priori; (it is not ex post facto binding).

ME' IRI

HE WHO TAKES BACK HIS DIVORCED WIFE: That is, after she is married or betrothed, she is forbidden by negative Scriptural commandment.

AND HE WHO MARRIES HIS HALUẒAH: For even she is forbidden by negative Scriptural commandment. For he is the one "Who has not built up his brother's house" (Deut. 25:9), i.e., since he has not agreed to continue the line of his brother, he should not go back and do it now.

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AND HE WHO MARRIES THE CLOSE RELATIVE OF HIS HALUẒAH SHOULD DIVORCE HER: THE OFFSPRING IS A MAMZER. THESE ARE THE WORDS OF RABBI AKIBA: Inasmuch as Rabbi Akiba thinks that a mamzer results from the transgression of a negative Scriptural commandment, and he who takes back his divorced wife or marries his haluẒah comes under the category of negative Scriptural commandments. The sister of the haluẒah is also thought of by Rabbi Akiba as being Scripturally forbidden since it is written: "The house of him who had his shoe loosened." (Deut. 25:10) Scripture calls the haluẒah "his house," i.e., his wife. Her status is like that of a divorced wife; and her sister becomes one in the category of the sister of a divorced wife.

The Sages agree that he must divorce her; but THEY SAY THAT THE OFFSPRING IS NOT A MAMZER, because a mamzer does not automatically result from transgressing a negative Scrip-

tural commandment. How much the less a mamzer is the offspring of the sister of his haluzah--who according to the Rabbis is forbidden to him only rabbinically. But the Sages agree about him who marries the close relative of his divorcee--namely her sister or her mother--that the offspring is a mamzer; for the close relative of a divorced wife is prohibited under the penalty of extirpation, since she is considered as his wife's sister, as we say: "A woman together with her sister you shall not take...during her lifetime" (Lev. 18:18)--at any time during her lifetime. The case would be the same had it said, "And they agree as regards unions punishable by extirpation." But instead, by way of teaching about the divorcee, it incidentally mentions the sister of the divorcee.

WHO IS A MAMZER: That is to say, while we have begun to explain a bit the laws of being a mamzer--who in Rabbi Akiba's opinion are mamzerim, and in the opinion of our Rabbis are not mamzerim--we shall explain in general who is a mamzer, whether for our Rabbis or for Rabbi Akiba. It has been explained that according to Rabbi Akiba (a mamzer is) ANY OFFSPRING WHICH IS THE RESULT OF A UNION WITH ONE'S KINSMAN WITH WHOM UNION IS NOT PERMITTED: i.e., any relative forbidden by negative Scriptural commandment; and the same is the case with anyone forbidden by negative Scriptural commandment, even though it does not involve a relative, as it is explained in the Gemarah in the opinion of Rav Simai giving the sentiment of Rabbi Akiba.

Simeon of Teman says it involves anyone with whom inter-

course brings on the punishment of extirpation.

Rabbi Joshua says that it involves any forbidden sexual union that is punishable by death by the Court, but not those which have incurred the punishment of extirpation; even though--at all events--he admits that marriage is not binding where the punishment of extirpation holds. And like him have they taught in chapter "Four Deaths:" "Who is there who says that marriage is binding where the punishment of extirpation holds?"

But the law is according to Simeon of Teman; that is, that a mamzer does not result from those who have merely been guilty of a union forbidden by negative Scriptural commandment; and how much the less so where the union is one involving a positive Scriptural commandment. But the offspring of any union incurring the punishment of extirpation is a mamzer; of course, it is not necessary to mention a union incurring the punishment of death by the Court. However, the menstruant is exceptional in that the offspring is not a mamzer; for a marriage with her (the menstruant) is binding--a situation which is not so in other unions incurring extirpation, as we have explained in tractate Kiddushin.

An extraneous Mishnah (from
(49b) brought in here by Me'iri.)

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This is the explanation of the Mishnah and its verdict, and here are the things which come subordinated under it in the Gemarah:

/44b/

With him who takes back his divorced wife after she is married, the offspring is not pagum, i.e., he is not unfit for the priesthood, even though it is possible to make a kal-vaḥomer argument from the case of the widow married to a high priest. The latter is a case where the woman is not equally forbidden to all priests (She may marry an ordinary priest.)--where her son is unfit for the priesthood. In the former case (the remarried divorcee)--where the woman is forbidden equally to any former husband--how much the more so should the son be unfit. The kal-vaḥomer argument is refuted, for while with regard to the widow it is true that she herself becomes a ḥalalah--i.e., she is made a ḥalalah by his having intercourse with her--you must say that in the case where one takes back his divorcee, that she does not become a ḥalalah by this intercourse; for she remains fit for eating terumah. And if one should think that he has made her unfit for the priesthood by having intercourse with her in a forbidden union, it may be pointed out that from the time she had been divorced, she was unfit (for a priest), and she has remained in that condition. Similarly with all unions forbidden by negative Scriptural commandments, for they have no relation to the blemish of the family pedigree. For example, with a free yebamah the offspring is fit for the priesthood. Similarly with one who marries his ḥaluṣah, although she becomes unfit for the priesthood seeing that she is made a zonah, the offspring is fit. But with unions incurring the penalty of

extirpation, since the offspring is a mamzer, there is no need even to speak of his being unfit for the priesthood.

However, by way of explanation, even according to him who says that the offspring is not a mamzer, acknowledgement is made that the offspring is unfit because of the kal-vaḥomer argument from the case of the widow. For even if you say that the widow indeed herself becomes disqualified, i.e., she becomes a ḥalalah, you might say in regard to the woman engaging in a union punishable by extirpation that she is not made a ḥalalah. For a ḥalalah can only result from a forbidden union with a priest; at any rate she is unfit for the priesthood because she is a zonah.

It would seem from here that a zonah can only result from engaging in a union forbidden under the punishment of extirpation, or from a gentile or from a slave; for they are like those who are forbidden by punishment of extirpation in the matter of the binding power of marriage--i.e., marriage with them is not legally binding at all. But those unions forbidden by negative Scriptural commandment do not make a zonah; for if so, the offspring would be unfit for the priesthood. Similarly did the Great among the Commentators (RaBad, the Tosafoth, Sefer Mizvoth Gadol) write about her in their notes.

But in spite of this, The Greatest of the Authors (Maimonides) wrote that any woman who has had intercourse with one--where there is a prohibition applying equally to all and not specifically designed for the priesthood, or even where a posi-

tive Scriptural commandment about sexual union has been violated --she has been made a zonah. And similarly it would appear in what we have written just above that "If one be unfit for the priesthood, she is unfit and so remains." Consequently it is not so that he made her unfit, even though he has surely transgressed a negative Scriptural commandment; and in like manner have we written about him who marries his haluzah. Likewise it would appear from that which has been said in this discussion, that one who behaves like a zonah has made herself unfit for the congregation, where in consequence of a union forbidden by negative Scriptural commandment, a woman is called by the term "zonah." (She was already unfit for the priesthood, but by her action she becomes a zonah).

According to this way of thinking it is necessary to explain here that in this case, since he has also made her a zonah when he has had intercourse with her, he has made her unfit for eating terumah--a situation which is not so with those that hold that violating negative Scriptural commandments has no relation to family pedigree, because of the notion that we require the man to have been a person originally disqualified (stranger from the start).

From what we have written you have learned that with him who takes back his divorcee and with him who marries his haluzah, the marriage to him by her is binding, and a bill of divorce is necessary. In addition, she is fit, i.e., for eating terumah, and her offspring is fit. But some read here, "Her offspring is blemished," that is to say, for the

priesthood. "Her offspring is fit," as has been said, means when it is a female; for were it a male, even if he were unfit, he would be permitted to the daughter of a priest, inasmuch as fit women have not been prohibited from marrying unfit men. Furthermore, with him who takes back his divorcee, his divorcee's associate wife remains permitted to him, as we have explained in the first chapter.

/45a/

If a pagan or a slave has intercourse with a Jewish girl, the offspring is fit to marry into the congregation, whether that girl be single or married. There should be no need to point out that one does not make a distinction in the matter whether it occurred by rape or voluntarily.

At any rate, as to the matter of the offspring being unfit for the priesthood or not, the Geonim differ. The majority of the Geonim have written /p. 181/ that the offspring is unfit for the priesthood; and from what they have said in this section of the Talmud, all of the Amoraim who declare the offspring fit admit that he is tainted for the priesthood. Using kal-vaḥomer reasoning: since with the union of a widow with a high priest--a woman who is not equally forbidden to all--her son is pagum, how much the more should the son of the woman in our case be pagum--considering that she is equally

forbidden to all.

Now you might retort: while the widow indeed herself becomes a halalah, (this is not so with the woman in our case). But even this woman, when a pagan or slave has had intercourse with her, he has made her unfit, in the way about which we have already written. Similarly have they (the majority of the majority of the Geonim) said:

Where do we find Scriptural evidence for the statement, : If a pagan has sexual relations with a priest's daughter, Levite's daughter, or an Israelite's daughter, he has made her unfit, "i.e., for marrying into the priesthood or for eating terumah? Where it is said (Lev. 22:13): "If a priest's daughter should be a widow or divorced...." That is, we are speaking about a man with whom the terms "widow" and "divorced" are relevant for her. This one (a Jewish girl who has had relations with a pagan or a slave) has been excluded; for with them widowhood and divorce do not apply to her. Although Scripture refers to a priest's daughter, it also includes the daughters of Levites and Israelites.

--Yebamoth, p. 69a

And since she is unfit to have intercourse with them, it is proper to say that her offspring is also unfit for the priesthood.

The same has been said in the second chapter (Yebamoth, p. 23a):

Might one say that Ravina is of the opinion that if a pagan or a slave had intercourse with a Jewish girl, the offspring is fit?

To which one responds (ibid.):

Granted, he is not a mamzer; but
he is also not fit. Rather he is
called a tainted Jew,

the interpretation of which must be that he is unfit for
the priesthood.

Perhaps you might retort that if so, then the Talmud
should have presented a law as follows:

If a pagan or a slave had sexual intercourse
with a Jewish girl, the offspring is tainted
or unfit (for the priesthood).

This is no valid argument, for the Talmud did not have to
teach a law that the offspring is unfit for the priesthood;
but that he is fit for marrying into the congregation.

There is further proof (of his double status) in the
fact that it was Rabbi Joshua himself who said that the off-
spring was fit; it was the very same Rabbi Joshua who said
that the offspring was blemished. And similarly there is
proof from what is said below (p. 45b):

There was such an offspring whom they
had called "the son of a gentile man."

Surely it was to disqualify him from the priesthood that they
so called him, as it will be explained.

Now according to this opinion, a daughter in such a case
may not marry into the priesthood; but a son would be fit to
marry the daughter of a priest; for fit women have not been

warned against marrying unfit men, i.e., unfit for the priesthood. Such has the Greatest of Rabbis (Rashi) written, and even the shining lights of the generations of scholars agree on the matter. Even in the Palestinian Talmud have they declared:

If she gave birth to a daughter, the daughter is unfit for marriage into the priesthood.

And similar is the case below (p. 45b); it is said:

I could declare her and her daughter fit.

(That is, they are fit only for the congregation.)

Nonetheless there are commentators (Nahmanides and Alfasi) who, in light of the fact that they have learned of the use of the kal vahomer argumentation from the case of the widow--a case where the woman's son is a halal, and if he has sexual relations with a priest's daughter, a Levite's daughter, or an Israelite's daughter, the daughter becomes unfit for the priesthood--so, too, they teach in our case of the Jewish woman with the pagan or the slave. However, all that has been said is relevant only in the case of a female offspring.

Similarly you should know that according to this view, if a man be half slave and half free man, if he has sexual relations with a Jewish girl, the offspring is also tainted through kal-vahomer reasoning from the case of the widow; for she, also,

is rendered a zonah because of his intercourse with her. Even if the terms "widowhood" and "divorce" apply to her from the man's free aspect, nevertheless they do not so apply from his slave aspect; however, the offspring is fit to marry into the congregation.

But at all events, this is true only if the man had intercourse with a single girl. It makes no difference if the intercourse was for the purpose of marriage or not, even though the slave aspect in the former instance has relations with a married woman (married to his other half), the offspring is fit (for the congregation). But if the half slave has intercourse with the wife of another man, there the offspring's status cannot be changed, for he has within him a mamzer aspect on account of the free aspect which was in his father. He also has within him an aspect which is not that of a mamzer, because of the slave aspect which was within his father. Therefore his status cannot be changed--neither by marrying a Jewish girl, nor by marrying a mamzereth.

Now some of the greatest of the latter Rabbis rule that the offspring is even fit for the priesthood. For what has been said:

All of the Amoraim who declare her fit agree that the offspring is tainted,

was said because they were referring to the opinion of Rav Joseph. Yet when Rav Joseph was challenged with contradictory evidence, he afterwards relied on Rabin, who said:

Rabbi Nathan and Rabbi Judah the Prince
rule in her case to remove restrictions.

Since he said "to remove restrictions," the meaning surely is
"completely," i.e., even for marriage into the priesthood.

And similarly there is evidence from the following which
has been said in this section:

Such a one (offspring of a Jewish girl
and a pagan or slave) came before Rav.
He said to Rav: "If a pagan or a slave
...., what is the law?"

Rav said to him, "The offspring is
fit."

The man said to Rav, "Give me your
daughter."

"I will not give her to you," Rav
said.

Rav Shimi said to Rav: "Men have a
proverb: 'In Media a camel dances on the
area of a quart.'"

That is, "the camels are said to be so small"--Figuratively
speaking in hyperbole--"that they can dance within the area of
one quart. We never have seen anything like this. Even so are
your words; for you have uttered a novel interpretation. Yet
you do not /I82/ verify it (by observing it)."

Rav said to him: "Were he like Joshua
ben Nun I would not have given my daugh-
ter to him."

That is, "It is because he was not of my class (honor)."

The other said to Rav: "Were he like Joshua
ben Nun, if the Master would not give her to
him, others would give their daughters to him.
But as for the man in question, if the Master
will not give his daughter to him, others

will not give their daughters to him.

Because he restated it to him in such a way, but still Rav did not say that the man was unfit--at the most he said, "I do not want an unfit mixture for the priesthood,"--the implication is that the man was fit for the priesthood, (that is, the man's daughter could marry a priest).

Nonetheless, this proof is only for him who holds the opinion that says that even the son is unfit; for from the point of view of those who declare only the daughter unfit, the argument here presented should not have been directed towards the son. Similar is the situation with what people have said about the following:

Go and hide your identity, or marry a woman of your own kind,

that is, the daughter of a pagan or slave who had relations with a Jewish girl; or hide your identity, that is, "Hide your identity to pass in the presumptive state of a fit Jew so that no one will be the wiser about you." Hereby, one thus permits the man in question to anyone; consequently he is fit to marry anyone. For if he were not so fit to marry anyone, there would be fear that perhaps a priest would go and marry his daughter. Even this interpretation is proof only for him who holds the opinion which says that even the son is unfit.

At any rate, they (the scholars) have written that since the text merely says "fit" and rules, "The offspring is fit," the intention is for marriage to anyone.

Similar is the case with one who is half slave and half free man. However, if the woman be married, the offspring has no hope of changing his status.

As for their opinion of the statement,

If a pagan or a slave has sexual relations with a priest's daughter, a Levite's daughter, or an Israelite's daughter, he has rendered her unfit,

thus there is that which has been said (Ketuboth 13b and Yebamoth 100b):

If there be a group of ten priests, and one of them separates himself from the group and has sexual intercourse, the offspring is shethuki.

(When the offspring is shethuki, the mother is free of restrictions completely, and the offspring is somewhat restricted.) We have interpreted the situation to mean that though they restrict him from the function of the priesthood, he is not completely unfit (We know his father was a priest, but we do not know his identity precisely from among the group of ten.); however, he is contaminated and is not suitable for service at the altar.

These words appear similar to the first opinion; however, we have seen with the Greatest of the Codifiers (Alfasi) that he vacillates in this matter, with the consequent result that because of doubt he does not permit such an offspring's daughter to marry a priest. But if he (the priest) has already married the woman, [45b] one does not make him divorce her.

One does not appoint a proselyte to any position of authority in the congregation unless his mother is Jewish, as it is said (Deut. 17:15):

Surely you shall place a king over you
from among your brothers.

That is, all appointments which you make must be from among your brothers; and anyone whose mother is Jewish, one calls "from among your brothers." Now since we have explained that if a pagan or a slave has sexual intercourse with a Jewish girl, the offspring is fit, it automatically follows that the offspring is fit to be appointed to any position of authority of the congregation.

Be that as it may, as far as a proselyte is concerned, whether he can judge civil cases even if his mother is not Jewish and capital cases only if his mother is Jewish; or perhaps civil cases only if his mother is Jewish and capital cases only when he is descended from Jews on both sides; or perhaps civil cases even if his mother is not Jewish, and capital cases only if he is descended from Jews on both sides--this is a big area of disagreement among the commentators. Now we have already shed light on the matter in our commentary on tractate Sanhedrin.

If a woman converted to Judaism and afterwards a gentile or a slave had sexual relations with her, even in this case the offspring is fit; because she had been converted, her status

is as it would be with a born Jewess.

If a pagan comes to be converted, they examine him first lest there be some ulterior reason for his doing so. When they have examined him and found that there was no ulterior reason, but that he is converting because of a perfect heart and truest truth, they teach him the principles of our faith. Afterwards they teach him about the yoke of some of the easy commandments, and some of the strict ones and their punishment; how we must spend money on gifts for the poor and for charity, after which they teach him also about the reward of these commandments. If he reconsiders his decision, let him go. But if he says, "Even so (I want to convert)," they accept him and circumcize him immediately. When he has healed, they make him undergo ritual immersion, and again teach him about the yoke of the commandments. In the case of a woman, after they have taught her, they also make her undergo ritual immersion, as it is explained at length below.

Now these things, i.e., acceptance of the commandments, circumcision, and ritual immersion require three men; furthermore, it is necessary that the ritual immersion be for the explicit purpose of conversion.

If this is so, it is necessary to explain what was said here by the ones that had called the man "a son of a gentile woman," coming to declare him unfit and judging him to be like a gentile. Since Rav Ashi said:

Did she not undergo ritual immersion after her menstrual periods?,

this immersion is accounted to her as if it were for conversion.

Now the matter presents difficulties on two accounts: one, because immersion for purity from menstrual periods is not immersion intended for conversion; furthermore, when a woman bathes for her menstrual periods, her immersion is not witnessed by three men; and we have already pointed out that even the ritual immersion for a woman convert requires three men, but the three are not there until women come [183] and cause her to be submerged so that she will be in the water up to her neck. Then when she is in this state, the men come for the express purpose of teaching her about the yoke of the commandments in the presence of her women companions; she is completely immersed in the men's presence. Also, they turn their faces away from her and walk away so that they will not see her when she emerges from the water; they leave her with the women who came with her. If this is so, how can immersion for menstrual periods count for her as immersion for conversion? And this is the question about the one they called "the son of a gentile man," where Rabbi Joshua (ben Levi) said:

Did he not undergo immersion for his seminal emissions?

However, as far as the essential part of this matter is concerned, you must first of all make a judgement as to why they came to declare him unfit, prior to considering that the immersion for the seminal emission counts for conversion. For

if this offspring's father had intercourse with a Jewish girl or with a proselytess who had converted properly, even if he were a complete gentile who had not undergone immersion for his seminal emissions, the offspring should have been fit. On the other hand, if he had intercourse with a gentile woman or a female slave, even if this father were a perfect Jew, the offspring would not be fit. Then hence it is that if he had intercourse with a Jewess, there are those who would declare the offspring unfit for the priesthood; for according to the method of reasoning about which we have already written, if a pagan or a slave has intercourse with a Jewish girl, the offspring is fit for marrying into the congregation, but unfit for the priesthood. This seems like conclusive proof for this method of reasoning.

However, as to the other approach, one may interpret,

They had called him "the son of a gentile man,"

as saying "Son who is a gentile," and that the statement (about immersion) concerned the son's own ritual immersion, and not his father's.

However, this interpretation is forced; look at the context, that is, the parallel story:

Such an offspring whom they had called
"the son of a gentile woman."

(Here the Gemarah speaks about the parent's ritual immersion, not that of the offspring.) In any event, the two cases must

be similarly judged: how is this ritual immersion accounted to him for the purpose of conversion--both because it was not intended for conversion, and because three men were not present?

Now the Greatest of the Codifiers (Alfasi) answered the problem of the three men. The three were required only in an a priori sense; that is, while for him we would not practice the Jewish custom to provide a man with a Jewish wife--unless he had been converted in the presence of three men, or unless it had been ascertained by witnesses that before three men he (they) had been converted, nevertheless, ex post facto one does not declare such people unfit.

But they (other commentators--RaMBaN and RaShBA) challenge Alfasi with what is said below in the Talmudic section (p. 47a), where there was one who said:

I have become a proselyte privately.

They said to him:

By your own words you are a pagan and no testimony is possible from a pagan.

But (if Alfasi is right,) then on the contrary, by the man's own words he is a Jew. Similarly, in Tractate Kiddushin, regarding

He who says to a woman, "You are betrothed to after I become converted,

it is said that to become a proselyte is not in one's own po-

wer, for three men are necessary; and who can say if a court of three will consent for him. Yet if there is substance (to Alfasi's words), then it is indeed within his power to become a proselyte.

At any rate, it appears from his terminology that the following is his (Alfasi's) position: Even if we have seen him (a person whose status as proselyte is questioned) following Jewish observance, since he is still in the presumptive status of a pagan--even if he says, "I have converted before three men"--he is not believed a priori to let him marry a Jewish girl, unless he bring witnesses. Then, even if without witnesses one will rely upon the man's words as far as testimony on the matter of his conduct is concerned--because of the fact that this is a situation where prohibitions and the like are involved, in addition to the consideration that this is a situation where marriage is an issue--he should only be believed after one has thoroughly investigated the matter. Even if he has brought the woman home, one makes him divorce her as long as he has not fathered a child. But if he has married her and fathered a child, one does not declare the offspring unfit; for since we have seen his father undergo ritual immersion for his seminal emissions, or his mother undergo ritual immersion for her menstrual period, we accept them (such proselytes) inasmuch as they have already been converted before three men. Now as far as this opinion is concerned, the same applies to the rest of similar circumstances.

Because of the above, it seems to me that the Greatest

Author (Maimonides) has written that if we have seen a proselytess practicing the customs of Israel--namely, undergoing ritual immersion for the menstrual period, setting aside terumah and tithes, and the like; or if we have seen the male proselyte practicing the customs of Israel--namely undergoing ritual immersion for his seminal emissions and performing the commandments, then these people are to be considered in the presumptive state of true proselytes. They are to be so considered even if there were no witnesses before whom they were converted. Even so, if they come to intermarry with Israel, one does not permit them to do so until they bring witnesses, since there is still the presumptive status of the pagan. But if there is no presumptive status of the pagan, he is believed--even by himself; for he who imposes a restriction may also remove it (A man for whom the only source of evidence of his being restricted is his own testimony must be believed if he declares that the restriction has been removed.).

Now there are those who dispute this opinion, as it is explained further on (p. 47a): you learn there that even ex post facto three men are required and that the immersion must also be for the purpose of conversion--except that we rely on the man himself that these things took place. Hence, there is no further difficulty from this statement:

I converted privately;

nor from the statement which they said in response:

Who can say that they will consent for him?

But the scholars of Spain (Maimonides and Solomon ben Abraham Adret) have ruled that a priori three men are necessary. Furthermore, in every case where all the business of one's conversion is done without three men, the individual is no proselyte at all. But anyone who, in the presence of three men, has taken the yoke of the commandments upon himself, after they have informed him about their particulars, and similarly in their presence has accepted the obligation--be a male involved, for circumcision and ritual immersion; be a female involved for ritual immersion--while going on to undergo circumcision and ritual immersion privately, such an individual is a proselyte in every respect of the term. However, although a priori one does not permit him to marry, ex post facto, nevertheless, since he has fathered a child, one does not make him let her go.

This is the solution to the matter /184/ involving the three men; but as far as the matter of immersion for menstrual periods and seminal emissions is concerned, the problem remains. However, they explain that since we have seen him undergoing ritual immersion for the sake of a commandment, surely how much the stronger would be his feeling toward ritual immersion in the general sense--that is, ritual immersion for conversion. This is what has been said in the Palestinian Talmud (Kiddu-shin, chapter III, 12; p. 41a):

A proselyte whom one circumcized, but who did not undergo ritual immersion, is fit. For there is no proselyte who

has not undergone ritual immersion for his seminal emissions.

But can the more rigorous be accounted to him? Does not the major uncleanness outweigh the minor uncleanness? (So, Me'iri's version; our text says the same thing, but as follows: "Does the minor uncleanness outweigh the major uncleanness?")

That is, how can you ascribe ritual immersion for a major event--namely, conversion in a category of required immersion--to immersion for a minor event--namely, a seminal emission?

Rabbi Josi said: "Because both are for the sanctification of Israel, it is considered as if both had taken place."

There are those who have interpreted our Talmudic statement,

She has not undergone ritual immersion for her menstrual periods,

to mean that at the time of the conversion, merely to enter into a state of ritual purity, she underwent ritual immersion--indeed in the presence of three men; but people have complained about them (the interpretators) in that the three men did not specifically mention to her that the immersion was for the purpose of conversion. And then there is one who interprets the meaning of the Palestinian Talmud that since at that very hour she underwent immersion for the purpose of ritual purity, even the purity from a pagan status was included. Now, this interpretation is nice, but the Palestinian Talmud

does not seem to mean this. Even the terminology of our Talmud,

Did (does) he not undergo ritual immersion for his seminal emissions?

literally uses the present tense, to say that he regularly bathes for his seminal emissions; it does not speak about the very hour of conversion.

Then there are those who solve the difficulty by saying that the accepting of the yoke of the commandments and the circumcision require three men, since they are things which must be done by another person. Still, the man involved does not even recognize that circumcision performed by a gentile is invalid! But ritual immersion performed by himself alone still remains satisfactory ex post facto. Such is the case because the requirement of having three men is not Scripturally ordained; rather the Rabbis required the three, basing themselves on the law for acceptance of the yoke of commandments and circumcision. So, ex post facto we do not declare the man unfit; even though we include the matter of the three men among the Scripturally derived commandments, it is only in regard to the matter of acceptance of the yoke of the commandments and circumcision that we do so.

This is the solution to the matter of the three men; as for the matter of bathing for menstrual periods and seminal emission, you interpret the law in the manner we have written about.

BIBLICAL TEXTS ESSENTIAL TO THE ARGUMENTS

LEVITICUS 18:18: You shall not take a woman as a rival wife to her sister, uncovering her nakedness while her sister is yet alive.

LEVITICUS 21:7: They (the priests) shall not marry a zonah or a halalah. Neither shall they marry a woman divorced from her husband; for the priest is holy to his God.

LEVITICUS 21:14-15: A widow or one divorced, or a halalah or a zonah--these he (a high priest) shall not marry. But he shall take to wife a virgin of his own people, so that he shall not make halal his seed among his people.

LEVITICUS 22:12-13: If a priest's daughter is married to a stranger, (There are two possible meanings: 1) One who is not a priest. 2) A person disqualified for her. It is in the second sense that the Gemarah takes the word, "stranger.") she shall not eat of the terumah of the holy things. But if a priest's daughter is a widow or divorced, and has no child, and returns to her father's house, as in her youth, she may eat of her father's food; yet no stranger shall eat of it.

DEUTERONOMY 17:15: You shall surely place over you a king whom the Lord, your God will choose; you shall appoint a king from among your brothers. You will not be able to place over you a foreigner who is not your brother.

DEUTERONOMY 23:1-3: A man shall not take his father's wife, nor shall he uncover her who is his father's. He whose testicles are crushed or whose male member is cut off shall not enter the assembly of the Lord. No mamzer shall enter the assembly of the Lord....

DEUTERONOMY 24:1-4: When a man takes a wife and marries her, if then she finds no favor in his eyes because he has found some indecency in her, and he writes her a bill of divorce and puts it in her hand and sends her out of his house, and she departs out of his house, and if she goes and becomes another man's wife, and the latter husband dislikes her and writes her a bill of divorce and puts it in her hand and sends her out of his house, or if the latter husband dies, who took her to be his wife, then her former husband, who sent her away, may not take her again to be his wife after she has been defiled; for she is an abomination before the Lord, and you shall not bring guilt upon the land which the Lord your God gives you for an inheritance.

DEUTERONOMY 25:5-10: If brothers dwell together, and one of them dies and has no son, the wife of the dead one shall not be married outside the family to a stranger; her husband's brother shall go in to her and take her as his wife, and perform the duty of a husband's brother to her. And the first son whom she bears shall succeed to the name of his brother who is dead, that his name may not be blotted out of Israel. And if the man does not wish to take his brother's wife, then his brother's wife shall go up to the gate to the elders, and say, "My husband's brother refuses to perpetuate his brother's name in Israel; he will not perform the duty of a husband's brother to me." Then the elders of his city shall call him, and speak to him; and if he persists saying, "I do not wish to take her," then his brother's wife shall go up to him in the presence of the elders and pull (halaz) his sandal off his foot, and spit in his face; and she shall answer and say, "So shall it be done to the man who does not build up his brother's house." And its name (So, literally, and so does Rabbi Akiba interpret the matter; but surely the intended meaning is "the name of the man who refused...") shall be called in Israel, "The House of him that had his sandal pulled off (haluz)."

TECHNICAL TERMS LEFT UNTRANSLATED

HALAL (חלל): One unfit for the priesthood on account of illegal descent or marriage.

HALALAH (חללה): The female issue of a priest's illegal connection, or a priest's wife illegally married to him. She is forbidden to eat terumah.

HALIZAH (חליצה): Ceremony of the yebamah taking off the shoe of her brother-in-law who has refused to accept levirate marriage.

HALUZH (חלוצה): The yebamah after halizah.

KAL-VAHOMER (קל וחומר): Reasoning by analogy from the lenient to the strict, and from the strict to the lenient.

KIDDUSHIN (קדושין): Legal and legitimate marriage.

MAMZER (ממזר) (m.s.), MAMZERIM (ממזרים) (m.p.), MAMZERETH (ממזרת) (f.s.): Offspring where the majority opinion rules that the cause is a sexual union bringing on the punishment of extirpation.

MAMZERUTH (ממזרות): State of being a mamzer.

PAGUM (פגום): Defective; blemished for the priesthood. Wherever betrothal is legally recognized, but a sin is connected with it, the issue follows the status of the pagum (inferior) of the parents; e.g., if a high priest marries a widow.

TERUMAH (תרומה): Tithe on produce which was the priest's share of the crop.

YEBAMAH (יבמה): A widow whose husband died without offspring, and who (the widow) is obliged to marry her dead husband's brother.

ZONAH (זונה): A woman who has engaged in a sexual relationship where the marriage cannot be valid.

THE DIFFERING RABBINIC POSITIONS
RELATING TO THE MISHNAH

RABBI AKIBA: A union that violates a negative Scriptural commandment is not valid and the offspring is a mamzer. How much the more is the marriage not binding and the offspring a mamzer where the union is punishable by extirpation or death by the Court.

RABBI SIMEON OF TEMAN (With whom the Law agrees): Where extirpation is the punishment ordained by Scripture for the union, the offspring is a mamzer. If the union violates only a negative Scriptural commandment, the offspring is tainted, but is not a mamzer.

RABBI JOSHUA: A mamzer results only from a union where the punishment is death by the Court as ordained by Scripture. Where extirpation is involved, the offspring is tainted, but is not a mamzer.

THE OFFENSES DISCUSSED IN THE MISHNAH

1. Taking back one's divorcee after she has been married to another: Prohibited by negative Scriptural commandment (Deut. 24:1-4).

2. Taking the close relative of one's divorcee: Prohibited Scripturally on pain of extirpation, because the divorcee is like the wife, and Lev. 18:18 forbids taking the sister of one's wife while the latter is yet alive.

3. Taking one's haluzah in marriage: Prohibited by negative Scriptural commandment. The Rabbis twist Deut. 25:9 out of context and read it as "He shall not build up his brother's house;" or as Me'iri puts it, since he has not agreed to continue the line of his brother, he should not go back and do it now.

4. Taking the close relative of one's haluzah: According to Rabbi Akiba (the other Rabbis feel it is only Rabbinically prohibited) prohibited by Scriptural commandment as is the close relative of one's divorcee. Akiba reasons: Scripture (Deut. 25:10) calls his brother's house his house; hence his brother's wife after halizah is like his divorcee. And just as he is forbidden to take the sister of his divorcee while she (the divorcee) is yet alive, so is he forbidden to take the close relative of his haluzah. See Me'iri and Rashi.

ANALYSIS OF THE GEMARAH

I. How could Akiba think that union with a close relative of one's haluzah will produce a mamzer?

- A. Textual emendation: Akiba must have meant "close relative of divorcee," since the Mishnah concludes that the Sages agree regarding the close relative of the divorcee.
- B. Objection to the proof of the emendation: Since of all the offences cited, union with the close relative of one's divorcee is the only one which brings on the punishment of extirpation, and since the mention of that union comes as an anonymous statement (setham)--which is always the Law, unless followed by a dispute, the Mishnah must wish to point out that the Law follows the author of the position of the statement (identified on p. 49a as Simeon of Teman). Since it is reasonable to assume that the foregoing was the Mishnah's purpose, there is no proof for the suggested textual emendation. The statement expressing agreement with Rabbi Akiba is not out of place; for since Akiba's position is even more stringent than to require a punishment of extirpation, he would naturally also include the offspring of a union with one's divorcee as a mamzer.
- C. Defense of the proof of the emendation: Why, then, wasn't a blanket statement made about all unions involving extirpation? The force of the specific phrase "close relative of his divorcee" must be that Rabbi Akiba mentioned it originally.
- D. Rejection of the emendation: "Close relative of his divorcee" added incidentally and unwittingly by the Tanna who, after listing all the cases of disagreement with Akiba, mentions where they would agree--a case that is the only remaining element in the set of possible combinations.
- E. Scriptural proof for Akiba's reason that the relative of a haluzah in union with the man involved produces a mamzer: Brother's house like his house, means haluzah like divorcee, means close relative of haluzah forbidden like close relative of divorcee (Lev. 18: 18).

II. Discussion of him who takes back his divorcee.

- A. His offspring is said to be pagum for the priest-

hood, though not a mamzer. This position tentatively identified as that of Simeon of Teman, and based on a kal-vaḥomer argument from the case of the widow who has relations with a high priest.

B. Refutation of the kal-vaḥomer argument from the case of the widow with the high priest.

1. The divorcee does not become a ḥalalah like the widow.
2. Scripture's statement can be interpreted to mean that the divorcee is an abomination, but not her children; such is the case when one emphasizes the word "she" in the Scriptural clause, "She is an abomination," to exclude her children. Yet with the case of the widow, both mother and child are profaned. (See Rashi.)
3. The opinion of the Sages in a Baraitha is that with the case of the divorcee, both mother and child are fit--an even stronger statement than 2 above; while with the case of the widow, both mother and child are ḥalalim.

C. Attempt at refutation of the refutation:

1. 3 above not valid because "fit" does not mean the same thing for both mother and child.
2. 2 above not valid because we interpret "She is an abomination" to exclude her rival wife, and not her children. That is, her rival wife is not to be considered an abomination in Levirate marriage. (See Rashi.)

D. Refutation of the above attempt: While 2 and 3 of B are answered by C, the analogy from the case of the widow remains a problem (1 of B); for while the widow becomes a ḥalalah, the divorcee is permitted to eat terumah.

E. Solving the problem with the analogy of the case of the widow by showing that it is not to be applied to the opinion of Simeon from Teman, rather to the opinion of Rabbi Joshua, where the punishment is extirpation, and where, though not a mamzer, the offspring is pagum.

III. Discussion of a slave or a pagan having relations with a Jewish girl. (Brought in by association that involves discussion of unions prohibited by negative Scriptural

commandments or by pain of extirpation.)

A. The offspring a mamzer.

1. This attributed to Simeon of Teman. Simeon of Teman had said that violation of a mere negative Scriptural commandment does not produce a mamzer; but the case is different here because the marriage is not valid.
2. Attributed to Rabbi via Rav Dimi.

B. The offspring tainted for the priesthood: Rabbi Joshua ben Levi.

C. The offspring fit.

1. Attributed to Rabbi via Rabin.
2. Rav also agrees; but reluctant to carry out his own ruling.
3. Rav Judah and Rava agree; but do not advertise such an offspring's identity.

IV. Discussion of a half slave having relations with a Jewish girl.

A. Offspring fit: Rava.

B. Offspring a mamzer: Rav Judah.

1. The slave side has intercourse with a woman married to the free side; hence a mamzer results.
2. Challenge to the notion that the marital status of the girl makes a difference; moving from the case of the half slave back to a consideration of the full slave. We assume that the slave side of a half slave is like a full slave; the free side of a half slave is like a full Jew. Both the challenger and his opponent base their claims on the case of one who has relations with his father's wife. The law is on the side of the challenger; however, as Rashi points out, since with a half slave the free side is like a Jew, if it has intercourse with a woman married to another Jew, the the offspring is a mamzer.

V. Discussion of the offspring of a slave and a Jew as being a public official. The mother must be Jewish.

VI. Ritual immersion for menstruation is good also for conversion; likewise immersion for seminal emissions.

ANALYSIS OF THE MORE COMPLEX COMMENTS
BY THE TOSAFOTH (44b+)

t6 HERE ALSO, WHEN ONE HAS HAD RELATIONS WITH HER HE HAS MADE HER A ZONAH:

What is the Scriptural proof that a zonah is disqualified from eating terumah? The question raised by RI.

- I. It had seemed to RI that from Lev. 22:12, "If she had relations with a person disqualified for her" ("stranger") we may infer that a zonah is forbidden to eat terumah. The apparent purpose of Lev. 22:12 is to provide for the inference, as shown from an objection raised in Yebamoth 68b--an objection which, if it has any validity, would render Lev. 22:12 superfluous were a zonah automatically from another source forbidden to eat terumah.
 - A. The objection of p. 68b declares that Lev. 22:12 refers only to where extirpation applies.
 - B. The definition of a zonah declares her to be a woman union with whom brings on extirpation.
 - C. If a zonah is automatically forbidden to eat terumah because of some other Scriptural verse, Lev. 22:12 has no function--an impossibility, since nothing is superfluous in the Torah.
 - D. Obviously, then, the purpose of Lev. 22:12 is to imply that the zonah is forbidden to eat terumah, and we learn about her prohibition from no other source in Scripture.
- II. For the same purpose Lev. 22:12 is also used by Akiba, who requires less than extirpation (violation of a negative Scriptural commandment) for the offspring to be a mamzer, and by Rabbi Joshua, who requires more (a violation bringing on death by the Court).
- III. The limitation of Lev. 22:12 to him who was a disqualified person for her originally is not applicable in cases of extirpation; for in such cases, strictness prevails.
- IV. What do we do with the problem we create when we say the application of Lev. 22:12 is only when extirpation applies --the problem being that union with a pagan or a slave is not punishable by extirpation? Surely the woman who has had relations with a pagan or a slave cannot eat terumah!

- A. Since the terminology of the Bible (Lev. 22:13) includes the words "widow" and "divorced," and these words do not apply to a woman who has engaged in a union with a pagan or a slave, the answer is clear that such a woman cannot eat terumah.
- B. Rabbi Akiba, because of his definition of mamzer can prove the woman made a zonah by a pagan or slave unfit from Lev. 22:12. But then would not the terminology "widow" and "divorced" be superfluous for him? No, he uses "widow" and "divorced" for another interpretation, described on p. 69a.

Still--even in Akiba's case--the general rule (from Temurah 29b, the case of the non-Israelite zonah) holds that where a marriage is not valid, the woman is a zonah.

- V. We have not rendered Lev. 21:7, "They (priests) shall not marry a zonah," superfluous.

- A. Kal-vaḥomer reasoning from prohibition regarding terumah to prohibition in marriage does not make a law of prohibition where lashes are administered.
- B. Even if we do not need Lev. 21:7 for prohibiting an ordinary zonah--assuming for the moment that we accept the kal-vaḥomer to make a law of prohibition--we still would need (according to the Rabbis, but not according to Akiba) Lev. 21:7 to prohibit marriage by a priest with the zonah made by a pagan or slave. For the kal-vaḥomer is based on one forbidden to eat terumah because of extirpation; and union with the zonah made by the pagan or slave is not covered by extirpation. Such a zonah was included in the negative commandment only by recourse to the terminology "widow" and "divorced." Surely, such a tenuous way of prohibiting her marriage to the priest does not have the force of a negative Scriptural commandment.
- C. Even if we do not need Lev. 21:7 for the above, we still would need it to prohibit marriage by a priest with a woman who is a zonah because she is a proselytess or freed bondswoman.

- VI. The question as to what precisely causes a woman to come under the words of Lev. 22:12, so that she loses her terumah eating privileges ends in a big problem.

RI's answer here is that a woman does not come under the Scriptural statement as long as the marriage is valid, and the man was not disqualified to her originally.

Then he says that the zonah is forbidden to eat terumah because she is included with the halalah by Scripture, and the halalah by definition cannot eat terumah.

So we have a difficulty to reconcile, as we showed at the beginning we would have if a zonah's being forbidden to eat terumah were derived from a source other than Lev. 22:12. We might also note that RI limits Lev. 22:12 to when the man was not originally disqualified to the woman--something the Rabbis do not do when extirpation applies.

t7 HE HAS MADE HER A ZONAH (Referring to a union where extirpation is involved):

- I. Rabbi Joshua says that the marriage has no validity, but that the offspring is not a mamzer; he sees no necessary connection between a non-valid marriage and a mamzer offspring.
- II. Contradiction between Rabbi Joshua and Temurah 5b where a connection is made between offspring not being a mamzer and a valid marriage.
- III. You might have said that there is no need to prove a mamzer results from every invalid marriage; one instance is enough using the hekesh of Rabbi Jonah. But since Scripture does not tell us that a mamzer results in any of the unions forbidden by extirpation (There is no explicit Scriptural statement to this effect), how much the less can we make a blanket statement about all marriages considered invalid.
- IV. The hekesh (idea analogy) is used, however.

GLOSSARY

Return; respond	אחזר [הדר]
Other; another	אחריתי
Hide oneself	איטמר [טמר]
One does not make a law of prohibition from any of the hermeneutical principles	אין מזהירין מן הדין
Also	אי נמי
Happen to come	איכלע [קלע]
Essence, substance	איתא, איתא
Yet; even so; still	אכתי
Consequently	אלמא
Why?	אמאי
You said	אמרך
She said	אמרת, אמרא
You might raise an objection (a minor objection)	[ו]אם תאמר
Woman	אנתחא
At any rate; nevertheless	אפ"ה אפילו הכי
Aramean or gentile	ארמי
Our towns	אתרין
With	בהדי
Her father's house (House of the woman)	בי נשא
Hyperbole	גוזמא
Gentile status	גירותא
Place	דוכתא
Note, but (introduces textual challenge); this, that	הא
One is his opinion; the other, that of his teacher	הא דידיה הא דרביה

That one	האי
Explicitly	[ב] הדיא
(Formula for past perf. tense); only this	הוא ד... .
Status; legal status of marriage	הויה
Flatter	החניף [חנף]
How?	היאך
That is	היינו
Where?	היכא
Such is the correct reading (our text)	הכי גרסינן
These; those	הנך
The same person who by his own testi- mony puts restriction on himself may also remove it	הפה שאסר הוא הפה שהחיר
Proper; see	חזי
More (adv.)	טפי
A <u>yebamah</u> who marries anyone but the levir	יבמה לשוק
Merely, incidentally	כדי
In such a case; in this manner	כהאי גורנא
Like it; like him	כוותיה
You might say (raise objection)	כ"ח כי תימא [אמא]
It is possible to remove the objection	[יש] לומר
Separately; only.	לחדד
With my own ears I heard him say (To me he said to me)	לדידי אמר לי
He disagrees (There is not to him)	לית ליה
Learn the matter from its context	למד מענינו
Does this mean to teach?	למימרא
Flog (Punishment for violating negative Scriptural commandment)	לקי

Contaminated	מזוהם [זהם]
(Sign of a question)	מי
Anything; something	מיד
Nevertheless; in the final analysis; from this	מיהא
But	מיהר
Bring in; include (<u>Afel</u> part. m.p.)	מייחי [אהא]
Imply (include); it follows	מכלל [כלל]
Concludes	מסיק [נסק]
If so	מעתה
Bring forth; derive	מפיק [נפק]
Man; master	מרא
Be it; granted	נחי
Marry (pe'al pres. part.)	נסיב [נסב]
It appears (for solving a problem)	נראה
Furthermore; another part of the argument	[ו] עורד
To insert	[ל] עיילי
As a Divine command, it is different	על פי הדיבור שאני
Rashi	קונטרס
Before; in the presence of	קמי ד...
An objection	קשה
Vacillate	רפף
It follows necessarily (Learn from it)	שמע מיניה
Our report; our text; our <u>sugya</u>	שמעתין [שמעתא]
To teach; to retort (pa'el inf. constr.)	[ל] שנויי
You surely know; you have further proof	תדע
A serious objection (lit., astonishment)	תימה
Answer an objection	תריך

BIBLIOGRAPHY

SOURCES OF TEXTS TRANSLATED:

Menahem ben Rabbi Shelomoh le-beth Me'ir (Me'iri). Beth Ha-behirah ('Al Maseketh Yebamoth). Yerushalayim, Mekon Ha-talmud Ha-yisra'eli Ha-shalem, 1967-68.

-- --. Talmud Babli. Vilna, Rom, 1931.

WORKS CONSULTED:

Marcus Jastrow. A Dictionary of the Targumim, The Talmud Babli and Yerushalmi, and the Midrashic Literature. New York, Pardes, 1950.

-- --. The Jewish Encyclopedia. New York and London, Funk and Wagnalls, 1901-06.

Hayim Jehoshua' Kosovski. Ozar Leshon Ha-talmud. Yerushalayim, Misrad Ha-hinukh va-ha-tarbut shel Memshaleth Yisra'el u-beth Ha-midrash le-rabbanim be-America, 1955--.

' . Z. Melamed. Eshnab Ha-talmud. Yerushalayim, Kiryath Sefer, 1962-63.

-- --. Pentateuch.

Yosef Shekter. Ozar Ha-talmud. Tel Aviv, Devir, 1964-65.

-- --. Talmud Yerushalmi. Yerushalayim, Mif'al Yerushalmi, 1959-60.