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SOME ASPECTS OF RECENT RABBINIC RESPONSA

ON THE SUBJECT OF ADOPTION

By

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SUMMARY

Some Aspects of Recent Rabbinic Responsa on the Subject of Adoption

The acceptance of the concept of child adoption, as we know it in the U. S., is of relatively recent vintage in other parts of the world. Its recentness is reflected in the changing Jewish legal view on the subject. Adoption, as it is commonly understood, is not recognized as a legal concept in traditional Jewish writings. The intent of this paper was to study several recent rabbinic studies in order to understand the problems of evolving a body of law to deal with a "newly created thing." Several aspects of adoption are studied: names and their implied relationships, inheritance, parental obligations, and obligations of children.

The paper compares and contrasts the various authors' presumptions and attitudes, their choice of traditional rabbinic writings, and the manner in which they apply these citations, many of which are intended for areas other than adoption.

Several conclusions are drawn from this study. The author concludes that while many decisions are reached by the individual rabbis, these conclusions differ from authority to authority. There are many areas where the answers are left open. It is, thus, considered that there is as yet no sufficiently comprehensive or generally accepted body of law which can be called "adoption law."

The paper deals with differing evaluations, by the various authorities, of the intents of the parties involved. It makes certain recommendations by which the intentions of the parties will be clearly stated.

Finally, it deals with the problem of deriving fixed law from general ethical statements which have no legal authority.

CHAPTER I

SECULAR BACKGROUND

The area of adoption in Jewish legal studies is a most interesting one for several reasons. It, at present, is one of the relatively few areas of Halachah which is undergoing dynamic change, not only with respect to the particulars but also with respect to its general principles. It is, therefore, an area where one can watch the decision-making process in action. Because of this state of flux and because of various secular pressures, which will be discussed below, there is an acute necessity for some sort of resolution of problems. At least in Israel, rabbinic decisions will have a direct effect on many lives and marriages.

SECULAR BACKGROUND

The lack of final decisions on the part of rabbinic authorities is well understood when one surveys the history and present state of adoption laws in the secular realm. Although there is a growing uniformity with respect to adoption legislation among the various nations of the world and among the several states of this country, there are still substantial differences between the laws of various nations and states. Such differences reflect the great variety in approaches to the subject of adoption.

The basic concept of adoption upon which most western law is based may be found in the laws of Greece and Rome. Such principles are codified in Justinian's Institutes, book I title III.[1] The adopted child was enrolled in the family, and the rights and duties of adopted children were almost identical with those of natural offspring. In most cases, adoption was performed only when there were no male offspring belonging to the adopting parents. It is interesting to note that the adopted person did not necessarily assume the name of his adopting family.

Considering the antiquity of adoption precedents in Greece and Rome, it is surprising, especially to Americans, that the concepts which we

imply by the term "adoption" have come to be accepted in European countries only lately, if at all. As of 1956 Holland still had no adoption law.[2] The first comprehensive adoption law in Great Britian was not enacted until 1950.[3]

Before continuing with other variations in adoption laws, it is best to give an example by what is usually meant by adoption. The British act of 1950 serves such a purpose:

> Upon an Adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the infant, including all rights to the future custody, maintenance and education of the infant, including all rights to appoint a guardian and .... to consent or give notice of dissent to marriage, shall be extinquished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as if the infant were a child born to the adopter in lawful wedlock; and in respect of the matters aforesaid .... the infant shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.[4]

As has been mentioned, there is still no real consensus on such a concept of adoption. In Germany, Denmark, Spain, and Belgium the adopted child still retains some rights against his natural parents, and the adopted parents have fewer rights and duties.[5] In Denmark, Poland, Czechoslovakia, and Hungary adoption may be revoked without judicial action after the child has reached the age of majority.[6] In certain U. S. states a will leaving certain property expressly to heirs of the body is valid,[7] thereby serving to continue the distinction between adopted and natural children.

There are many other, less important, differences between various adoption laws, but the above does indicate the great variety of views on the subject of adoption. Because of such variety and because of the relatively recent date of many of the adoption law, various responses may

deal with the subject in different ways depending on the concept of adoption at a particular time and in a particular place.

Another factor which may have some influence on various rabbinic views should also be mentioned. In most modern countries the right to determine personal status has been assumed by the state. Procedures for the change of personal status, such as, adoption and marriage, if not expressly executed by the state, are done under its sanction and according to its laws. In the United States, for example, marriage may be performed by a religious official in compliance with the laws of a state or it may be performed in a civil ceremony. Such a situation may leave a rabbinic authority with the choice between reconciling his views with concepts embodied in secular society; or, losing the adherence of some of the members of the Jewish community. While this is not a strictly legal matter, some consideration of this effect, whether expressly stated or unconsciously implied, must be taken into account.

ISRAEL

The situation in Israel at present is somewhat different from that described above. While in most areas of personal status rabbinical courts and civil courts have parallel jurisdiction in the question of marital status, the rabbinic courts have sole jurisdiction with respect to Jews.[8] In this one area, at least, rabbinic conclusions about adoption will have a real and direct effect.

In 1960 the Israel Knesset passed the Child Adoption Law of 1960.[9] In procedure and effect the law resembles the adoption laws of the U. S. and Great Britain.[10] The rights and obligations obtaining between parents and children are transferred to the adoptive parents from the natural parents. It is, however, permissible for the court to issue a more limited adoption

order granting the transfer of only certain rights.[11] There are two other provisions unique to Israeli law. The adoption in no way affects the child's status with respect to the halachic prohibitions on marriage and divorce.[12] Upon written agreement between the parties the petition for adoption may be heard in a rabbinic court.[13]

The last described provision may have the interesting effect of granting a rabbinic court jurisdiction of an area in which it has little precedent and which it may eventually decide it does not recognize in such terms as the state has defined it.

CHAPTER II

JEWISH BACKGROUND

ADOPTION IN EARLY JEWISH SOURCES

The writers of the articles on adoption covered in this paper all state without modification that Adoption is unknown to basic Jewish Law. In most cases these statements are made flatly and with no reference to any documents.[14] Short of producing a statement in early Jewish sources which prohibits adoption, the contention that adoption is unknown in Jewish Law is difficult to prove.

BIBLE

Biblical scholars have quoted a variety of verses which may indicate that the institution of adoption existed among the Israelites in biblical times. There are fourteen verses or sections which are most usually cited.[15] Of these only nine are in the Pentateuch. Of these nine only two are found in the Mosaic code itself.[16] Of the two in the Mosaic code only Leviticus 19:9 has any halachic possibilities:

> You shall not uncover the nakedness of your sister, whether she be the daughter of your father or of your mother, whether she be born in the house or outside of it.

The rabbinic commentators, however, either treat the second part of the verse as if it is parallel to the first part, or treat it as a modifier with respect to legal or illicit relations on the part of the parents.[17] In no case is this verse taken to mean an adopted daughter.

A greater argument against the institution of adoption in the Mosaic Law is the existence of Levirate marriage. It is found in Deuteronomy, chapter 25, verses 5 through 10:

> When brothers live together and one of them dies without having a son, the deceased's wife shall not belong to a stranger from outside the family. Her brother-in-law shall possess her and take her as a wife, thereby, performing the

> commandment required of brothers-in-law. The first born male of this union shall maintain the name of the deceased brother so that it is not erased from Israel. But, if such a man does not want to take his sister-in-law, then his sister-in-law shall go up to the gate (of the city) to the elders and shall say, "My brother-in-law refuses and does not desire to maintain his brother's name in Israel." Then the elders of the city shall summon him and speak with him. If, while standing before them, he says, "I do not want to take her," his sister-in-law shall approach him in the presence of the elders. She shall take off his shoe from his foot and shall spit in his face, and shall answer saying,"This is what is done to the man who will not build his brother's house." His family name shall be known in Israel as he who had his shoe taken off.

It was noted above[18] that one of the prime purposes for adoption was the establishment of an heir. It can be seen from the passage in Deuteronomy, that levirate marriage obviates the need for adoption. There is an implication in the passage that levirate marriage was the only way of perpetuating the family name. The whole levirate marriage procedure lays great stress on the blood relationship within the family and its importance in inheritance of property and name. It is, therefore, understandable that there is no adoption in all societies which have procedures similar to levirate marriage.[19]

TALMUD AND CODES

While there are many stories about children who were raised by people other than their parents, and while there are statements encouraging the acceptance of such a responsibility, the idea of adoption as an institution is found nowhere in the Talmud. The term for adoption אמוץ is not used at all. The verב.מ.א is used but not to indicate adoption.[20]

The Shulchan Aruch presents a similar situation. Rabbi Elchanan Scheftelowitz, in stating that there is no Jewish legal basis for Adoption, cites certain passages in the code.[21] What he seems to be

showing is that, in the areas which are important to the concept of adoption and in which some mention of adoption would be expected, there is none. One possible exception is the Isserles note to Hoshen Mishpat 42:15:

> He who has raised an orphan in his house and referred to him in a document as "my son" or the orphan has referred to one of those who raised him as "my father" or "my mother;" the document is not faulty but valid. Because they raised him, he is fit to be inscribed in this way.

The context and possible meaning of this statement will be discussed later. It is enough to say that the statement by itself is not sufficient basis for maintaining that Jewish law acknowledged adoption in its modern sense.

Even early responsa literature is ambivalent on the subject of adoption. As late as the eighteenth century there is no clear cut decision on the matter. Jacob ben Zvi of Emden, in a responsum on the subject, tries to bring himself around to granting the existence and legal force of such an institution but in the last analysis is unable to do so.[22]

Thus, with the exception of a variety of previous responsa on the subject, the modern orthodox rabbi is left with a tradition which is, at best, silent on the subject of adoption. At worst, it can be considered negative, not only by its silence but also by the existence of such practices as levirate marriage which would indicate the importance of blood relationships.

Before dealing directly with the material itself, it might be interesting to note certain general outlooks of the rabbis. As in secular legal matters there seems to be a spectrum of approach from the "strict constructionalists" to the liberals. The basic difference seems to be whether or not a silence on an area constitutes a prohibition to evolve

consciously new concepts or a freedom to develop them.

A good example of the strict constructionalist is Rabbi Gedalia Felder, who, on the subject of adoption, writes:

> The Jewish family, from its very inception, is built on a natural basis, that is to say, on a blood relationship and not on an economic basis which was the custom in other ancient peoples. Therefore, adoption can never be accepted as law since one cannot provide a new moral basis for the Jewish family structure other than that of "honoring one's father and mother" which holds premiership of place. Equally important to the moral principles, upon which the family structure is founded, is the idea that the son forms a link in the chain of relationships which comprise the holy seed (i.e., the children of Israel). The son is not merely a legal person with respect to matters of inheritance.[23]

Thus, Felder, and to a lesser extent, Rabbi Moshe Pindling[24] deal with questions of adoption as if they are an impingement by the secular government on Jewish Law. At the other end of the spectrum is Rabbi Mordachai Cohen who writes:

> Is it possible that someone should say to you that in the Jewish legal system there are clear and obvious bases for decision with respect to flying fortresses, or on judgements concerning jet planes, or in matters of outer space? Let the person who says this cite his verse from the Book. Rather this is the way of the Law and its masters in every age. They compare and make analogies between various words, judgements, and matters. They test and examine, weigh and argue, until it happens that supports, bases, and pegs are found among the greater and lesser lights on which can be hung a new series of judgements for a newly creater thing. . . . It is the same way with the subject of adoption (by whatever name it is known). We must analogously make a basis for decisions on this subject--a basis, which is pure in law--and position it on secure foundations. Only, let it be that adoption by its spirit, intent, and subject matter must not upset Jewish Justice or contradict its spirit.[25]

It is clear from the two quotations above that the Rabbis approach the same subject matter and the same sources with much different intent. It is not surprising that not only will their conclusions differ but also

will the thrust of their conclusions be in different directions.

Regardless of their positions all Rabbis agree that the child's natural parents determine whether or not the child is a bastard, and whether he is a Cohen, Levi, or Israel. All Rabbis further agree that the child's identity in these areas is unchanged by the fact of adoption. They agree further that the child's natural sisters or brothers would be forbidden to him (or her) in marriage, and that other marriage restrictions are to be determined by birth rather than adoption. This still leaves many other areas open for discussion, and it is possible to build a construct of adoption resembling the concept as it is applied in most countries.

The next chapters are devoted to the question of whether a construct of adoption can exist in Jewish Law; if not in name, then in fact. The criteria for such a decision can be grouped in the following catagories: name, inheritance, duties of the parents to their children, duties of the children toward their parents.

CHAPTER III

NAME

NAME

The term "name" in Hebrew includes several catagories: first name, family name, patrinomic, title or relationship, such as, "son" or "father." All of these are important to the Rabbis. The subject of names is the starting point with most Rabbis because most Talmudic and later citations, upon which some concept of adoption might be based, deal in names.

There are several such passages:

A. Sanhedrin 19b. In a discussion of betrothals the following verse is quoted: "The King took the two sons of Rizpah, daughter of Aiah which were born to Saul, Aramni and Mephiboshet and the five sons of Michal who were born to Adriel the son of Barzillai the Meholathite."[26] A little later Rabbi Joshua comments on the verse as follows: "Was it Michal who bore (the five sons), was it not really Merab who bore them? Merab bore them but Michal raised them. Therefore, they are called by her name to teach you that anyone who raises an orphan in his house, Scripture considers him as if he were his (own) child."

Rabbi Hanina derives the same principle from Ruth 4:17: "The neighbors proclaimed, 'A son is born to Naoni' and they called his name Obed." From the book of Ruth it is clear that they are talking about Ruth's son begotten by Boaz.

Rabbi Elazar derives a similar idea from Psalms 78:16: "By Your arm You redeemed Your people, the children of Jacob and Joseph." Rabbi Elazar asks, "Was it Joseph who begot them, was it not really Jacob who begot them? Jacob begot them, but Joseph supported them."

B. The above passage is usually mentioned together with a comment on it by Rabbi Samuel Adels (Maharsha).[27] In brief the Maharsha reminds us that Ruth was still alive at the time when the neighbors proclaimed that a son was born to Naomi. Thus, the principle of "He who raises an orphan

in his house . . . ." applies not only to an orphan but also to one whose parents are still alive.

C. A passage similar to Sanhedrin 19b can be found in Megilah 13a. The idea here is based on 1 Chronicles 4:18. The verse opens with a list of sons born to Ezra's wife who is called Hayehudiyah. The verse concludes, "And these are the sons of Bityah the daughter of Pharaoh whom Mered took." From this the Rabbis conclude that Pharaoh's daughter converted and that all the sons listed are really Moses. Support for this is found in Exodus 2:10: "And the child grew up and she (Moses' real mother) brought it to Pharaoh's daughter and he became her child." Speaking to the multiplicity of names for Moses, Rabbi Jonathan says, "This is to emphasize that anyone who raises a male or female orphan in his house, Scripture considers it as if it were his child."

The same theme is implied in Sanhedrin 32a and again in Sanhedrin 19b but with much less detail.

D. In Sanhedrin 21a the idea is derived that Tamar was the daughter of Ma'ach, a captive proselyte. She was, thus, the sister of Absalom. The Tosophotists comment here that the act of intercourse through which Tamar was begotten was illegal. Therefore, she should not be considered David's daughter. But in 2 Samuel 13:18 we read, "She wore a garment that the King's daughters who are virgins wear." The answer which the Tosophotists give is, "Because she grew up in the midst of David's family, she was called a king's daughter."

There are non-Talmudic sources which are also referred to:

E. Nachmanides comments on Numbers 26:46: "The name of Asher's daughter was Sarach." Nachmanides makes reference to an alternative reading in Targum Onkelos which reads, "The name of Asher's wife's daughter was Sarach." The verse is found in a section dealing with allotment

of portions. Nachmanides posits that Asher's wife's former husband had only one child, Sarach. Asher and hiswwife had sons of their own. If Sarach were also their daughter, she would not receive any portion. Since she does inherit, she is presumably not their daughter and inherits under the principle of the daughters of Zelophedad.[28] She is called Asher's daughter, however, because she was raised in his house.

F. There is another example which is found only in the midrash.[29] In describing the parental relationship which exists between God and Israel, the following parable is given:

> An orphaned girl grew up in the house of her guardian. He was a good and trustworthy man, and he raised her and kept her as was fit. When he sought to marry her off, a scribe came to write the marriage contract. The scribe said to the girl, "What is your name?" She replied, "So and so." He then said, "What is your father's name?" She became silent. The guardian asked her, "Why are you so quiet?" She replied, "Because I do not know any other father except you." In the same way that he who raises a child is called father rather than he who bore him, so Israel is considered the Orphan . . . and the good and trustworthy guardian is the Holy One Blessed by He . . . whom Israel calls "father."

Several questions arise with respect to the above quoted sources. It is clear that, with the possible exception of the Maharsha's comment,[30] all of the sources may easily be considered agadah (i. e., non-legal material). The first question is whether or not such material can be considered a sufficient basis on which to rest a presumption that some sort of family relationship exists between adoptive parents and children. Dayan Meyer Steinberg uses these sources and raises no question concerning their validity.[31] We may, therefore, assume that he sees no difficulty in using agadic material as a basis for a halachic (legal) decision. Pindling feels that these sources provide a sufficient basis for using a child's adopted name in informal and every day situations. He feels, however, that in legal matters, such as, contracts, marriage contracts, bills

of divorcement, and being called to the Torah, these sources are not sufficient basis upon which to draw conclusions. As he says, "Is it not true that one does not study agadic material for the purposes of halachic matters?"[32] Felder does not even quote these sources directly with the exception of the story in Midrash Rabba, which he uses for "limited support."[33] It may be presumed that he too does not trust agadic material as such.

Rabbi Mordachi Cohen, on the other hand, tries to deal with the problem of making halachic decisions on the basis of agadah. At the same time he deals with another question, which arises from dealing with the Talmudic texts. Sources A and C both contain the phrase, "Scripture considers it as if he were his child." While it is difficult to deal with the implications of this statement in an English translation, it is clear, even from the English, that the above is not a strong and defined statement of relationship. The statement could have read, "Scripture considers him as his child," or "Scripture considers him to be his child." The weakness and ambiguity of the Talmudic statement raises questions with respect to its intention. The force of the statement is further vitiated by a similar use of the formula in a passage which follows source A.[34] "Everyone who teaches Torah to the child of his friend, Scripture considers it as if he were his son." It is clear here that the formula is used as pure simile.

To bolster his contention that the Talmudic passages have been used as a basis for legal decisions, Cohen cites a note by Moses Isserles to Hoshen Mishpat 42:15.

> G. He who has raised an orphan in his house and referred to him in a document as "my son" or the orphan has referred to one of those who raised him as "my father or "my mother"; the document is not faulty but valid. Because they raised him (the orphan) he is fit to be inscribed in this way.

Several objections can be made to the use of this passage as support for Cohen's contention that halachic decisions were based on agadic passages. Nowhere in this passage does Isserles cite any of the sources listed above. The source listed in the passage is in fact another responsa.[35] The context of Isserles' note is also important. The note is made to a passage dealing with the validity of documents written in the local language using local idiosyncrasies. It could be argued that the note is merely an example of the validity of local custom. Cohen might have been on firmer ground using the statement of Maharsha[36] as an example of halaha based on agadah.

Cohen quotes Jacob Emden (Yawetz) to show that the "as if" clause of the Talmudic sources (A and C) are to be taken as a basis for declaring a child, who is raised by an adult who is not his father, to be considered the latter's true son. He states:

> H. This applies not only to the orphan alone, but also if he (the child) has a mother and father and is raised by someone else for the sake of mitsvah. If the latter has no (natural) children and raises him (the child) for the purpose of being his son to inherit from him and he (the child) calls him "father" and he (the adult) calls him "my son". . . . he is considered as if he were his real son.[37]

While this may support Cohen's point that halachic authorities do clarify the intention of the "as if" clause, the quotation does place severe limitations on the applicability of that "as if." As another rabbi will show from another quotation of Yawetz, he is emphatic on the point that such a relationship can exist only when the father has no other sons.

Cohen's final example on the general subject of names comes from various places in the Talmud.[38] In these, Abaye refers to his foster mother as "mother" and teaches in her name. Cohen then tries to show that Abaye was also called "Nachmani" in honor of his father's brother Raba bar

Nachmani who raised him. Here he is on shaky ground since he would be entitled to the name from his grandfather either through his father or through his paternal uncle. Kohut[39] relates that Abaye's uncle gave him the name "Nachmani" in honor of his grandfather but called him "Abaye" (a diminutive of "my father") so as not to cause confusion between the two.

It seems ironic that, with respect to the general use of the terms "father" and "son" in an adoptive relationship, what Pindling, the strict constructionalist, accepts without question, Cohen, the liberal, sets out to prove with only mixed success. Not only is there evidence of sloppy work but also Cohen arrives at a much more limited conclusion by the use of the Emden quotation.[40] The implication here is that the terms "father" and "son" can only be used in a situation where that father has no natural children. Steinberg[41] recognizes the problem but says that it is of little importance since it is clear from the records of the London Beth Din that few parents who desire to adopt have other children. This response ignores two problems. While adopting parents may have no other children at the time of adoption, it prequently happens that they seem to be able to conceive and bear children after they have already adopted. A more recent problem arises from the trend to zero population growth. There are many couples who would like large families but do not feel that it is right to have more than two natural children. They desire to increase the size of the family by means of adoption. In these two cases acceptance of a parent-child relationship, only in cases where no other children are involved, would cause much hardship. It is this problem which Pindling takes up in his discussion of the use of "father" and "son" ("mother" and "daughter") in financial documents.

Pindling begins his discussion with the Maimonic responsa[42] on which Isserles based his comment about using the term "son" in a document.[43]

The responsa, given in the name of Meir b. Baruch refers to a question raised when a certain Reuven referred to his wife's son in a document as "our son." The reply states:

> I. It is apparent that this is an acceptable term since "He who raises a male or female orphan it is if he (she) were his child." . . . Since the person who raises an orphan can call him his son the latter can call the master of his youth "my father," and there is no reason for fear.[44]

Rabbi Haim Benveniste, commenting on the Isserles statement,[45] cites the Maimonic responsa and draws the implication that Meir b. Baruch meant the language to be valid only when the adoptive father did not have any children of his own. Rabbi Yakov Mesila[46] cannot see any reason for Knesset Hagedolah's view except in the case where an adopted son and a natural son might have the same name. Aruch Hashulhan[47] follows Mesila's view when it states, "Even if the person who raises a child has other children, they also call him (the adopted son) "son", and any document using such a term would be valid as long as the person raising a child does not have a son of his own by the same name."

There are others who disagree with Mesila and follow the view of Knesset Hagedolah, which Pindling cites to as the foremost of this group. Pindling first cites the same Jacob Emden, whom Cohen used to support his contention that a parent-child relationship could exist without the accident of birth.[48] As was pointed out there, Emden placed the restriction on the relationship to the effect that the parent could have no children of his own. In quoting from the same source Pindling shows that Emden was almost anti-adoption. Emden is speaking about vows which a parent makes not to profit from his son.

> J. When a person raises an orphan in his house and calls

> him his son and the latter calls the former "father": If one makes a vow concerning the other using the terms "father" or "son" only, or if one should stipulate a gift to the other without the use of proper names, a doubt exists and we go according to strict interpretation. In vows which obligate one person to another or in matters of money, examination of claims are judged strictly. Thus, if the person who raised such a child had children of his own, it is apparent that even in the matter of vows such a child would not be obligated since we should say that his (the parent's) real son was intended. Likewise, where a child so raised has a (real) father, even if he who raised him caused the child to consider him as his father and felt obligated as such; nevertheless, if the child should make a vow (which might obligate his father), we presume that his real father was intended. Since no true intention can be derived from the person who makes a vow or stipulates a gift (where the parties are not listed by proper name), we go according to the rules of strict interpretation in both cases.[49]

Emden goes on to say that he, too, feels that with respect to the Maimonic Responsa the implication is that, only when a father has no natural children of his own can he use the term "our son" with respect to his adopted child in a financial document.

Another authority who agrees with Knesset Hagedolah is Moses Sofer (Hatam Sofer) who states:[50]

> K. When an adopter has no children and his actions stem from love, we do not fear that it would result in a loss to those who would inherit his portion. When the time comes for him to make a will, other possible inheritors are not important to him and he would prefer that his wife's son whom he loves, inherit his property rather than his brother or other relatives. Every day incidents prove this point. There are, however, other considerations when he has children of his own. Then it is well to fear that his natural children might suffer some loss of their father's portion. He should not ignore his children and leave his property to others. In this case he should not call his foster child his son and such a document is invalid.

Hatam Sofer goes on to say that the same is not true of an adopted daughter among natural sons since she would not be in line for inheritance.[51] Pindling points out that such a problem does exist in Rabbinic

courts in Israel today since they adjudicate inheritance according to state civil law. In such a situation a daughter has equal inheritance rights. Pindling contents himself with showing that the Rabbinic courts are wrong in so doing since such a procedure cannot be considered ancient custom and was imposed upon the courts without agreement by the local sages. It is also expressly against Torah Law.

All concerned agree that there is no problem when the adopted father has no other children. Most sources would agree that, if the father has children of his own but designates his adopted son by name and as his son, then such a document would be valid. Knesset Hagedolah and Hatam Sofer would argue that such a document might lead to the assumption that the adopted son is a real son and the inheritance of his brothers would be affected. All authorities would agree that in a case where the adopted son and a natural son have the same name, such a document would be invalid.

The objection of Knesset Hagedolah and Hatam Sofer will be taken up in the chapter on inheritance. The real problem seems to be whether or not an adopted son should be considered as a son if the father wrote "my sons" in a document without stipulating who these sons are. Emden decides "no" on the question of intention. He says that we must be strict in matters of vows and money and that no intention is shown that the father meant to include his adopted son with his other sons.

The determination of presumed intention is a difficult one. Some answer, however, can be made to Emden. In the last two hundred years the concept of adoption has changed in most countries. The intended relationship between parents and their adopted children can best be shown by the laws under which they agree to adopt a child. As can be seen from Chapter I, it is the intention of the adoption laws in the U. S., Great Britain, and Israel to establish the same relationship between parents and adopted

children as exists between parents and their naturally begotten children. In that parents in these countries agree to adopt children under such laws, they are expressing their intention to establish the same relationship with their adopted children as would obtain with their natural children. To borrow a phrase from Hatam Sofer, "Every day incidents prove this point."

In addition, within the last 10 years there has been no outcry against the spirit of such laws in any of the three countries with the exception of certain Rabbis in Israel. I would, thus, contend that it can be assumed that any parent who wrote "my children" in a document today had every intention of including his or her adopted children within the meaning of such a phrase. Times have changed and outlooks have changed with them. When we come do a discussion of intention, we must take into consideration such changes.

SPECIAL CASES

There are three special cases where the use of names must be studied with great exactitude: 1) the name used in being called to the Torah, 2) the name used in a marriage document, and 3) the name used in a bill of divorce. The requirements in the bill of divorce are the strictest. Since the name used in a divorce may be taken from the marriage contract or from the name used in being called to the Torah, almost equally strict procedures must be used with respect to the latter two cases.[52]

The stringent requirements for exactitude in bills of divorce can be seen in Shulhan Aruch.[53] The most applicable example is, "If Joseph the son of Simon made a change and wrote 'Joseph the Son of Samuel', the bill of divorce is invalid and if a marriage took place under this name, it was invalid."[54] Rabbi Shraga Feibish (Bet Shmuel) comments on this, "(This is true) even if the father's father's name was Samuel for this is

one case where we do not say the sons of the sons are considered as the sons."[55] The Shulhan Aruch considers a bill of divorce valid if the fathers' names are not mentioned; thus, in a situation in which the true fathers are unknown only the names of the parties would be written.[56] For a divorce of a convert one would write"_____ the son (daughter) of Abraham our father."[57] It can, thus, be seen that, in a bill of divorce for an adopted child, in any circumstance one would not write the name of the adoptive father a priori.

The question arises as to the judgement ex post facto if the bill had been written using the name of the adoptive father. Since a bill of divorce is a financial document, we will be referring to several of the sources mentioned in the first part of this chapter.

In Responsa Amirah Neimah[58] the author considers a situation where the adopted father of the wife is listed as her father in a bill of divorce, and it is impossible to get in contact with the husband so that he may write a new document. In this case there is a danger that the woman would be placed in a state of an abandoned wife (Agunah). In this situation the author validates the document based on the Maimonic Responsa previously quoted.[59]

The citation of the Maimonic Responsa again raises the same questions discussed earlier as to the validity of calling a child, raised by an adoptive father, "a son." The same sources are then quoted in answer to these questions.[60]

In Even Meir, a work dealing with the writing of names in bills of divorce, the author deals with the case of a document where the father of the wife was called Leib. When the document reached the wife, she pointed out that her father's name was Leibish and that Leib was her stepfather.

The author writes:

> " . . . furthermore, it appears to me that in such a case, everyone would agree that it is valid, and the document only becomes invalid if an entirely different name is substituted. However, if the name of the stepfather is substituted for the father, then all authorities agree that the document is valid."

He bases his answer on Isserles[61] and on the commentary on Numbers 26:46.[62] He further adduces support for calling males by the names of their adopted father from Temurah 16a, which comments on the name "Othniel the son of Kenaz, the brother of Caleb."[63] Raba reaches the conclusion that Caleb was the stepson of Kenaz, but that the Bible can refer to the stepson as "son" and the stepfather as"father."[64] This answers the statement of the Tosafotists[65] that they have never found a place in the Torah where a man's wife's son is called his son.[66]

In Pithe Teshuvah[67] further support is given for a name other than that of the real father. In essence the basis is that names of fathers may be written on the testimony of the children,[68] and that the names did not have to be written in the first place.

There are those who disagree with Pithe Teshuvah.[69] In the same chapter[70] Pithe Teshuvah brings other citations to the effect that, if the adopted child has been in the possession of the adopter, the latter's name can be used as father for the purposes of being called to the Torah and in financial ducuments.

A more recent responsa also give a support to the use of the name of the adopted father in a bill of divorce. Dayan A. L. Grossnass[71] considers the precedents and concludes:

> It is permitted to describe the adopted child as the son of the adoptive father without fear of any consequences that may affect the validity of a get. Since everyone knows that the

> child is described as the son of his adoptive father only, this will not give rise to any false impression nor will it be untrue because an adoptive father is entitled to be described as the father.

The London Bet Din has a procedure for marriage documents which can also be used in bills of divorce. In the marriage document the child is listed as _____ the son (daughter) of _____ who raised him (her). The Hebrew is Hamegadlo (Hamegadlah). By this convention it is clear to any who read the document that the father so listed is adoptive. Since there is no necessity to list the name of the father in a bill of divorce, the use of the term Hamegadlo would clearly indicate the status of the parent listed and there could be no possibility of error. The addition of such a term might be supported from Shulhan Aruch, Even Haezer 129:7: "If he writes _____ the sage or _____ the chief Rabbi, even though he is not usually called this and is not fit for such a title, the bill of divorce is valid since he mentioned his name explicitly." In addition, in the first paragraph of the above chapter it is written that the name should be the one most regularly used. The implication of this statement is that the party in the document should be described by his best known name. Since the party is most likely to be known by his adopted patrinomic,[72] it might be considered better to use such a patrinomic in place of a name by which he is not generally known.

The purpose of chapter 129 of Shulhan Aruch Even Haezer is to make the identity of the parties so explicit that no possible confusion can result. Today when most adopted children have no idea of who their natural parents were, great confusion would result if the name of the natural father were used.

Certain problems do exist with respect to marriage and divorce of an

adopted child. All authorities are agreed that a person cannot marry a natural brother or sister.[73] Some procedure would have to be devised to prevent this. Gelber[74] proposes some sort of congregational registry which would record the names of the natural parents and other particulars of the adoption. Such registries exist in Great Britain[75] and in Israel.[76] The problems of such a registry in the U. S. vary from state to state. In many cases courts and adoption agencies might be reluctant to give out such information. Most states even change the birth certificate of an adopted child to insure that no mention is made of the child's natural parents. Where the children are born of gentile parents, this is not a problem. Some problem exists where the mother is Jewish. In many cases such adoption is made through a Jewish social agency which will usually provide the necessary information to a Rabbinic court.

Another problem is the lack of communication between various Jewish communities. The same procedures, which are used to insure that a divorced wife does not remarry her husband if she had been married again, can be used to insure that an adopted child does not marry a sibling or, in the case of a girl, that she does not marry a husband who is not permitted to her.

The major objection to the use of the adopted patrinomic in the marriage contract and in being called to the Torah was that the name used in these instances would be the basis for writing the bill of divorce. As we have seen, sufficient authorities would validate a bill of divorce which used the adoptive patrinomic, at least ex post facto. Therefore, this should not be a problem. As Pindling points out, a decent rabbi will undertake his own examination of the proper names in the matter of divorce.[77]

A special problem arises with the name used to be called to the Torah.

If the adopted father is a Cohen or a Levi and the adopted son is not, there is the possibility that the son will mistakenly assume the prerequisites of his adopted father. As Pindling points out[78] in Israel where the Priestly Benediction is done every Sabbath, such a mistake will not be made if the adopted son does not participate in the benediction or its preparations. In the Diaspora, where the priestly benediction is only made on holidays, there may still be cause for confusion. Except when the child becomes Bar Mitzvah or at other times when he is called as Maftir, the fact that he does not read either the first or second portion of the weekly reading would also give clear indication of his status as Israel.

Other support for using the adopted patrinomic comes from Rabbi David b. Zimra who is quoted[79] to the effect that if the adoption is more than 30 days old, the name can be used in being called to the Torah.

In essence we can say that there are sufficient authorities on which to base a decision that in almost all aspects of life a child can be known by the name of his adopted father. He or she can be referred to as his "son" or "daughter", and the adopted parents can be known as "father" and "mother." This is the most important part of constructing a concept of adoption in Jewish law since it covers the majority of instances in daily life.

CHAPTER IV

INHERITANCE

The question of an adopted child's heritability under halacha is almost an academic one since in most countries questions of inheritance are adjucated in secular courts under civil law. In Israel the formal situation is somewhat different but the result is the same. While inheritance may be adjucated in a religious court with the consent of all parties, various chapters of the Inheritance Law of 1965 insure that rabbinic courts will in essence follow the civil courts in judging an adopted child to be equal of a naturally begotten child for the sake of inheritance.[80]

The aspect of inheritance under halacha is important in so far as its refusal to accept the heritability of an adopted child, which would seriously limit the rendering of a construct of adoption acceptable to most modern families. Despite all that has been said in chapter 3 about names and relationships, the inability of an adopted child to inherit from his adoptive parents would render his status closer to that of a foster child than that of a natural child.

Jewish law seems to operate under the assumption that a man dies intestate. Wills as such are not much discussed either in the Talmud or in the various codes.[81] It is further stated that a father cannot disinherit anyone in the automatic line of inheritance nor can he make a stranger his heir.[82] The automatic line of inheritance is first stated in Numbers 27: 8-11, modified in Baba Batra 115a and stated at length in Shulhan Aruch, Hoshen Kishpat 276:1.

The fact that most authorities would consider an adopted child to be a "stranger" in terms of the automatic line of inheritance is clear in the statement in Shaare Uziel[83] that an adopted son does not inherit as one of the (automatic) inheritors. Pindling[84] flatly states that an adopted child has no rights of inheritance. He continues, "Any declaration by the adopter to grant heritability to an adopted child, even by will, is void."[85]

He is here supported by Maimonides[86] who states that a man cannot make an heir of someone who is not fit to inherit; for he cannot sever the inheritance from the inheritor. Anyone who should declare such intention, his declaration is void.

One modern traditional rabbi does feel that an adopted child should inherit automatically. Writing in Pardes[87] Rabbi Joseph Teumin states that a will making an adopted son a heir would be valid, and, that even if the adoptive parent did not make such a will, common sense should surely tell us that it was the adopter's last desire to make his adopted child his heir. As Cohen points out,[88] Teumim's view is based on an incorrect interpretation of Nachmanides' commentary in Numbers 26:46.[89]

This is not to say that the rabbis did not feel that an adopted son should get anything. They, in fact, recognized that the relationship of an adopted father to his child would be such that he would want to leave him his estate or some part of it. Hatam Sofer made this clear in a statement previously quoted.[90] Similarly Jacob Emden[91] stated that a childless adult adopts a child with the intention of making the child his heir.[92]

It should also be noted that the rabbis did recognize the right of a person to dispose of his own estate in any manner which he saw fit.[93] This does not mean that the rabbis always approved of such dispositions, but they did consider them valid.[94]

The most obvious means of circumventing inheritance requirements is to grant property as a free will gift. The requirements of fulfilling such gifts would take precedence over the inheritance rights. It is,, therefore, possible to empty the estate of all inheritable property by means of gifts. At the same time no heir has formally been disinherited.[95]

It is not within the limits of this work to explicate the laws con-

cerning gifts in any detail. The subject is much too complicated. Some description of the law of gifts, and the limitations of such laws, is necessary in order to decide their effectiveness in clarifying the general status of an adopted child under the Halacha.

There are two types of gifts: a gift made when a person is healthy (matanat bari), and a deathbed bequest (Matanat she'chiv mera). For the normal gift (matanat bari) one needs a formal statement of gift and some ceremony of acquisition.[96] This is not necessary for a deathbed gift. The rabbis consider it sufficient that the deceased made an oral statement to witnesses at a time when he knew that death was imminent.[97] Because of this and because a deathbed does not take effect until after death, such a gift was revokable. In a normal gift the donee must take possession during the life of the donor.[98]

The major problem with gifts is that a donor cannot make a gift based on his expectations. In Shulhan Aruch, Hoshen Mishpat, 209:4, it clearly states: "No one can cause another to acquire property which does not exist; regardless of whether such acquisition is done by sale, gift, or deathbed bequest." In chapter 60, paragraph 6 of the same source, the phrase "does not exist," is construed to mean not in the donor's possession. Thus, if the donor was himself expecting an inheritance, he could not include such an inheritance as part of a gift until the inheritance became actual. In the same way, monies collectable by the donor's estate can not be deeded as a gift if they have not been collected before the donor's death.

One way out of this problem is suggested by Pindling.[99] Shulhan Aruch, Hoshen Mishpat 60:6 gives one exception to the rule that one cannot acquire rights to something which does not exist. This is in the case of a loan. On this basis Pindling recommends that an adoptive father

write out a certificate of debt for a sum equal to the anticipated value of his estate at a time one hour before his death. Since such a debt would take precedence over inheritance rights, it would effectively cause his adopted son to inherit. If the father had other natural children, he could write a certificate of debt for a sum equal only to some part of his estate.

There is one major difficulty with using loans. The presumption with a deed of debt is that a specific sum of money or a specific item has been lent. Even if the loan involves an object other than money, such an object can always be evaluated in financial terms. In the chapters of Shulhan Aruch, dealing with loans,[100] all examples of documents are given in terms of specific value. Since loans come under the general rules of acquisition and possession (Kinyan), some support for the view that a loan must be for a specific value can be derived from several sections in Mishnah Baba Batra, chapter 5. The most specific example comes from mishnah 9. "Moreover Hillel used to say: 'A woman may not lend a loaf of bread to her neighbor unless she determines its value in money, lest wheat should rise in price, and they be found partakers in usury.'"

Pindling seems to take the above view with respect to loans:

> . . . Let him declare that he (the adopter) owes the adopted child a specified sum of money sufficiently large for the purpose (of emptying his estate) or merely a sum of money which should approximately equal the value of his property which he expects to have one hour before his death.[101]

From the careful wording of this quote it is apparent that Pindling alone does not believe that a document of debt can be written for an estate or for a portion of it which does not have a specified value at the time of the writing.

To use Pindling's device for avoiding problems of inheritance in

Jewish law means that the adopter must keep close track of his estate and frequently rewrite the loan certificate. While it is a good thing in both secular and Jewish law to review one's will, one can write a will in secular law which will have some sort of general phrase covering that part of the estate not disposed of in bequests of specified sums.

As far as deriving a concept of a special relationship between adopted parents and children in Jewish law, the use of gifts or loans provide little help. While they do provide more or less unsatisfactory means of transferring property to adopted children, the status of these children is no different from that of any person who is not a member of the family to whom the testator may wish to make a bequest.

One possible way of overcoming the problems of gifts and loans is a technique in which the rabbis acted according to their evaluation of the testator's intention and state of mind (umdana). Several sources in rabbinic literature use the idea of intention or evaluation of state of mind as a basis for distribution of the estate.

A. Rabbi Solomon B. Adret, in commenting on Gittin 75a, states that evaluation of intent or clearly known state of mind is preferrable to an oral statement.

B. Rabenu Nissim, in commenting on Kidushin 62, states that one must always evaluate the giver's state of mind and act according to such an evaluation.

C. Shulhan Aruch, Hoshen Mishpat 61:16 echoes Rabenu Nissim when it states: "There is someone who states with respect to the conditions by which one gives a gift to his friend, that we do not go according to the language written therein but according to the intention."

D. Rabbi Moses Isserles in his Responsa, section 34, number 1, echoes the above opinions. He wrote, "Where there is no revealed state of mind,

we follow his intention, and the sages of blessed memory based this on an evaluation."

E. Samuel of Modena writes in Hoshen Mishpat, responsa 341 that one establishes the intention according to one's evaluation of the testator's state of mind. One acts on such a basis even if it means going against Scripture.

F. Great latitude is given to the executors of a deceased's estate. According to Shulhan Arubh, Hoshen Mishpat, 253:1, if the words of the testator could be construed either as an inheritance or as a gift, one construes them to mean a gift.

G. One precedent is quoted in Shulhan Aruch, Yoreh Deah 258:13 and in Ketsot Hahoshen, Shulhan Aruch, Hoshen Mishpat 290, note 2. If a man promised charity to a poor man, the inheritors cannot take it from him. The precedent is doubtful since it involves something already in the poor man's possession, and it is based on charity.

H. Some idea of the latitude of the executors, can be gotten from Pithe Teshuvah, note 3 to Shulhan Aruch, Hoshen Mishpat 247. The case, here, is of a person near death who commands that his books be given to his son. It turns out that his sons are dullards but that his stepson is a scholar. The books are given to his foster son.[102]

The above sources raise more questions than they answer. For example if a man said, "I wish that my sons divide my estate equally, except for the oldest who should get a double portion." If the man had an adopted son, would the executors be right in granting the adopted son a gift equal to the inheritance for a younger son? Source H might give some support to such an action. Cohen[103] feels that the above sources are sufficient to establish that an adopted son inherits. Pindling[104] feels that these sources would tend to support the view that an adopted child should auto-

matically receive his share of the estate although not as an inheritance. He does not feel certain enough of these sources to make a firm judgement upon them. This author takes something of a middle ground in feeling that the sources would probably be sufficient foundation to grant an adopted child a portion of the estate, although not as an inheritance.

It might be better to have some sort of positive proof of intention. One suggestion is that an adopting father could state in the bill of adoption that it is his intention to grant his adopted son a fair share of the estate. Such wording would avoid the pitfalls of a gift (matanat bari), while still giving some basis for his executors and the court to evaluate his intentions.

It should be noted that rabbinic courts in Israel require that the adopting father at the time of his adoption, make a deed of gift for his adopted child.[105] While this does provide some protection for the child, it still carries the limitations described earlier in this chapter.

The sources dealing with intent do show that the Halacha does recognize some special relationship between adopted parents and children. They may also have some bearing on the question of intention with respect to calling an adopted son "son" when the adopter has other children. Source H does indicate that some rabbis do accept that such a father would intend to have an adopted child known as his son. Others[106] do not feel that this would not be the case. These sources did feel that an adopting father could grant heritability to his adopted son if he had no sons of his own. If we are to take their words literally, then it is their intention to transgress both the Biblical and Talmudic laws of inheritance which provide an automatic line of inheritors. It may well be asked why they break this line of inheritance at one place and not another. If a man had no sons but had daughters, could one say that he would not mind if they were

disinherited? Is there any guarantee that a person once having adopted a son would, over the years, decide that he truly loves him more than his own father (i.e., the next heir in the formal list)? If one can say "yes" to these questions, then would it not be possible that a father, who has children of his own and adopts a son, could love this son as much if not more than his natural children? The possibilities of intent within a family are endless. Hatam Sofer[107] says that "every day events prove this (that a childless father will love his adopted son enough to make him his inheritor) to be true." "Every day events" seem to be a curious basis for breaking a Biblical commandment. If one accepts this basis, then each man's view of "every day events" renders him fit to judge as he pleases. This author's view of "every day events" is that parents love their adopted children as uch as their natural ones.

One other point should be mentioned with respect to inheritance. The adopted child has been described as a "stranger" with respect to automatic inheritance rights from his adopted parents. The implication is that he still retains automatic inheritance rights from his natural parents. Rabbi Abraham Rodner[108] states this to be the case. In this area the halachic concept of adoption does not match such concepts current in civil law.

CHAPTER V

PARENTAL RESPONSIBILITIES

DUTIES OF NATURAL PARENTS

Jewish tradition is quite clear on the obligations of parents to their children. Shulhan Aruch, Hoshen Mishpat 71:1 states that a father is required to feed his children. The original requirement was that he feed his children up to the age of six. A rabbinic ordinance requires him to feed them until they reach their majority. In commenting upon this Rabbi Samuel Feibish[109] states that the requirement to feed one's children after the age of six is applicable only if the children have no property of their own. If they have property of their own, the father, acting as the children's guardian and administrator, may deduct the expenses for feeding them from their own property.

In a succeeding chapter[110] parental obligations are considerably broadened. There it states that a father is also obligated to clothe his children, to provide them with whatever tools or implements they need, and to provide them with a place to dwell. The next paragraph[111] states that the obligation to feed someone implies and includes the obligation to clothe, to provide necessary implements, and to provide a place of dwelling.

In the Talmud[112] we find other obligations. A father must fulfill the following obligations with respect to his son as the occasion arises: He must have him circumcised. If the son is the first born of his mother he must redeem him from a Cohen. When the son is ready, the father must teach him his religious obligations, or have them taught to him by someone else. Likewise a father must provide adequate training for a trade or profession. Finally, a father must marry his son off.

SOURCES FOR THE IMPOSITION OF PARENTAL OBLIGATIONS ON ADOPTED PARENTS

Rabbi B. M. Ezrachi[113] states that the financial obligations of adoptive parents to their children cannot be judged under any law of the

Torah pertaining to parents and children, nor can they be judged on Jewish law which is based on such Torah law.

Of the commentators, with which this paper deals, Pindling[114] deals with the subject most coherently. He states that ordinances of the sages with respect to parental responsibility are not applicable. One must treat the question of adopted parental responsibility on the basis of general obligations which a person freely accepts. He uses as his source Rabbi Samuel Feibish[115]. The precedents in this area are somewhat limited in their applicability.

The closest precedent is found in Mishna Ketuvot 13:1. "If a man marries a woman and stipulates with her that he will feed her daughter for five years, he is obligated to do do so." This statement is repeated in Shulhan Aruch.[116] This obligation is closely circumscribed. He is also not required to provide health care for her.[117] He is also not required to clothe her.[118] This last statement is in direct contradiction with a statement previously quoted,[119] where it is stated that the obligation to feed implies the obligation to clothe. Perhaps it can be argued that the obligation one makes to his wife is not, in reality, a freely accepted obligation, since the husband makes it because he wants this particular woman for his wife and cannot get her without such an obligation. In such case the obligation would be limited by strict interpretation.

Maimonides also cites the case of a husband who contracts to support his wife's daughter. He permits this with several stipulations.[120] His major stipulation is that such an obligation is valid only under the rule of "dedication before the Lord."[121] In secular acquisition and obligation Maimonides has a completely different view:

> If a man (the buyer) obligates himself to something which does not have a clear limitation--e.g., if he said (to the

> buyer) "I hereby am obligated to feed you or to clothe you for five years."--even though he acquired it (the object of of the transaction) from him (the seller) directly, he (the buyer) is not so obligated and the object (of the transaction) is considered as a gift. . . .This is the way the rabbis taught.[122]

Presumably Maimonides applies the lack of fixed limit to the fact that the buyer merely stated that he would feed or clothe the seller without stating the exact cost of the food or clothing.

Rabbi B. M. Ezrachi has written an extensive treatise on this question.[123] In it he cites exactly who agrees and who does not agree with Maimonides' conclusions. It is sufficient to say that most of the later rabbis do not agree with the position stated above.[124] Even Rabbi Abraham b, David, a contemporary of Maimonides, states that he does not know where Maimonides found this view.[125]

The most encompassing statement about parental responsibilities comes from a recent source, Rabbi Benzion Uziel, in what is probably the classic work on the subject of adoption.[126] He describes the financial obligations as follows:

> When any person adopts a child, it is as though he expressly declared that is taking full responsibility for the adopted child in the same way that any parent does with respect to food, sustenance, health, religious and secular education, and the teaching of a trade or profession. He is responsible for these things to the same extent as is any parent in the same financial and social circumstances. . . . The adopted parents are responsible, within the limits of their status in society, for ensuring that their adoptive children get married.

The above passage is not quoted by Pindling. It is easy to see why. According to Cohen,[127] Rabbi Uziel does not give any basis for this pronouncement. Cohen posits that Uziel may have based his decision on the following interpretation of this verse from Psalms: "Happy are they who keep justice and do righteousness always."[128] "The rabbis at Yavneh in-

terpreted this to apply to he who feeds his children when they are young . . . . Rabbi Samuel b. Nachmani applies the verse to he who raises a male or female orphan in his house and marries them off."[129] Cohen feels that the parallel between the interpretation of the Yavneh rabbis and Rabbi Samuel b. Nachmani is such that it might give some basis to extrapelate the sweeping conclusion of Rabbi Uziel. The commentary on the verse, however, is not only pure agadah, but, even if handled as halacha, there would be great difficulties in broadening it enough to fit Rabbi Uziel's statement. Isserles' comments on Hoshen Mishpat 60:3 show that at least one well-known rabbi did not feel that the use of the words "to feed" implied much more than food when applied to someone who is not a relative.

The opinion of this writer is that Rabbi Uziel is simply defining the word "adoption" to include the above responsibilities. This then becomes the clearest case where the Halacha has adopted a secular concept. Since the term "adoption," for all practical purposes, does not exist in most rabbinic literature, Rabbi Uziel must be deriving his concept from the secular term. Certainly no other rabbinic source has given the term such an endowment. Such a process is not unusual. We have many loan words in Jewish law. The essence of such words is probably borrowed along with the word. One example would be the word Apotropus or guardian, a concept well-known in both Greek and Roman law.[130]

LENGTH OF OBLIGATION

By stating that adoptive parents undertake to support their children in the same manner as do natural parents, Rabbi Uziel implies that the financial obligations would end at the time of the adopted child's majority. This can be seen from the sources quoted in the first two paragraphs of this paper. From the example of Hoshen Mishpat 60:3, we see that a man

who obligates himself to support his neighbor for an unspecified amount of time undertakes such an obligation for as long as the object of his support exists. Isserles' comments on Hoshen Mishpat 60:3 indicate that he feels the obligation continues only as long as necessary. Rabbi J. Falk[131] and Shirte Cohen explain the apparent contradiction in the same way. If the obligation was stated in general terms, then there is no end to it, save the death of the object of such obligation.

By his statement "In the same way as any other parent," Rabbi Uziel clearly implies a terminus ad quem to the support, i. e., when the adopted child reaches his majority. This would be the case with a natural parent and child, as can be seen from Hoshen Mishpat 71:1.

RESIDENCE OF AN ADOPTED CHILD

Residence of the adopted child, as with many other aspects of adopted parental obligations, is based on Shulhan Aruch, Hoshen Mishpat 60:3.

> The case of a person who obligates himself to feed his friend. If the donor says that the obligation was to be rendered in food, and the receiver says that it was to be rendered in money, the decision is as follows: If the donor undertook such an obligation as a gift (rather than a loan) and if the donor explicitly stated that the obligation was to be fulfilled by feeding the recipient at the donor's table then, if the recipient does not want to eat at the table, the donor is obligated to pay the recipient only what it would have cost him to have the recipient share the food at the donor's table (i. e., less than it would cost if the recipient were to have food prepared only by himself).

On the basis of this paragraph one makes certain presumptions. The adoptive parent presumably is adopting the child and treating him as would natural parents. This means that he would give the child shelter in his own house as do natural parents. If the adopted child does not want to live with the adopter, then the adopter is obligated to give the child a sum equal to what he would have had to spend to maintain the child in the

adopter's home.

Rabbi J. Falk expands upon the reason for leaving.[133] If the child leaves home because the adopter's family, in effect, forced him to do so, then the adopter must pay the full cost of supporting the child outside the home. According to Isserles' precedent[134] if the child left because of stubborness or similar emotion, then the father owes him nothing. Pindling[135] says that this is also the procedure with natural children.

The determination as to the reasons for leaving would be made by a rabbinic court.[136]

RESPONSIBILITY OF HEIRS

As stated in Shulhan Aruch, Hoshen Mishpat 60:4, if a person pledges himself to feed his friend or specifically to feed him at his table, this obligation devolves upon the heirs if the person should die. According to Even Haezer 73:7, the meaning of feeding is to be expanded to include, clothing , domicile, and necessary implements. Using this as a basis and agreeing to the presumption of Rabbi Uziel[137] then one may maintain that the heirs are required to provide the same services as was the adopted father. Hoshen Mishpat 60:4 does state that the cost of fulfilling the donor's obligation by his heirs may be drawn from the donor's estate. One should then have to be careful not to void the estate by making it a gift to the adopted child. This, however, can be solved by appointing one of the heirs as legal guardian if the child is under age.

Thus far it has been shown that with respect to financial obligations the adopted child is on a par with a child residing with his natural parents. He is required to be fed, clothed, housed, cared for medically, educated religiously and secularly, and married off. There are two which are mostly in the province of religious obligations, which need some discussion.

CIRCUMSION

Both Kidushin 29a, and Shulhan Aruch, Yoreh Deah 261:1 state that if the father does not have his son circumcised, then the rabbinic court may do so. The adoptive father, in circumcising the child, is acting as an agent for the court.

The question becomes one of whether or not the adoptive father has the right to say the benedictions which the natural father would say. There are two blessings in question:

> 1. We praise you, Lord our God, Ruler of the Universe, who has sanctified us by Your commandments and has commanded us to enter him (the child) into the covenant of Abraham our father.
> 2. We praise you, Lord our God, Ruler of the Universe, who has kept us alive, sustained us, and allowed us to reach this day.

With regard to the first blessing Maimonides[138] states that these benedictions are not recited if the father is not present. Rabbi Elijah of Vilna[139] agrees with him. Rabbi Abraham b. David[140] feels that the Sandek (the person who holds the baby on his knees during the during the circumcision) may say the benediction. Rabbi Akiba Eiger[141] cites a case where the child's grandfather actually performed the operation when the father was dead and recited the blessing in place of the Sandek. Eiger gives the basis as being the grandfather's responsibility to educate the child. Cohen,[142] Pindling,[143] and Steinberg[144] all use this precedent for stating that the adopted father may say the blessing since he has assumed the responsibility for the child's education. Both Cohen and Pindling recommend that the adopted father act as Sandek so that there can be no doubt as to who should say the blessing.

With respect to the second benediction, Pindling[145] feels that since a court cannot say the blessing, the adoptive father should not. Cohen[146] cites Rabbi Joel Sirkes[147] who writes that such a blessing is only an

expression of the heart's happiness. Therefore, any adoptive father would be able to say it.

REDEMPTION OF THE FIRST BORN

Redemption of the first born, by an adopted father presents problems not encountered in circumcision. Like circumcision it is mentioned as a responsibility of the father, in Kidushin 29a. Unlike circumcision the Kidushin passage does not say that where a father does not redeem his first born son a rabbinic court may do it. The passage merely states that if the child's father did not do it then the child will do so.

The question, therefore, of whether an agent or a court may redeem a first born child is subject to much discussion. Isserles[148] states that a father cannot redeem his son via an agent nor can a court redeem the son without the presence of the father. As Pindling[149] points out, most commentators do not agree with Isserles. We can ignore those commentators who discuss the question if an agent can redeem a first born son, since in the situation of adoption, the natural father of the child is either unaware of the child's existence or wants nothing to do with the child. The question remains whether the court or some individual can redeem the child.

According to Rabbi Isaac b. Sheshet[150] while an individual or a court is not required to redeem, they can voluntarily do so. In this case the appropriate blessings would not be said since they had no obligation to fulfill the commandment. Steinberg[151] cites a source[152] who does believe that the adopted father, in his capacity as legal guardian, may redeem the child. He uses as his basis Maimonides[153] who states that all affirmative commandments may be performed by the legal guardian on behalf of the child.

Shivte Cohen[154] renders an opinion on the basis of various sources[155]

who state that in certain cases a court can perform certain acts in the name of those who are deaf, fools, or minors, which cannot be performed either by the parties themselves or by another individual acting in their names. According to this opinion, a court may have a child redeemed. Pindling[156] raises only one stipulation. A child should be redeemed with his own money; therefore, the court must first endow the child with the requisite funds. Pindling[157] also says that to be safe the child should also redeem himself when he comes of age.

Steinberg[158] states that it would appear that the father may say the appropriate blessing.[159] Steinberg continues that the blessing would only be said where the court had ascertained that the child was the first born of his mother, and that he was not either a Cohen or a Levi. The blessing is modified to end "concerning the redemption of the firstborn," rather than "concerning the redemption of the son." The father should wear something new or eat a fruit for the first time in that season so that he can recite the blessing, "who has kept us in life." Steinberg[160] has listed all the changes in the service for redemption of the first born, so as to reflect that the person participating is not the child's natural father.

It is clear from the material discussed in this chapter that material or financial obligations of adoptive parents with respect to their children, have been lifted almost as one piece from the concepts of adoption current in the secular world. While there are some precedents in Jewish law to support some of the concepts, they are not sufficiently broad enough to support the complete co-optation of parental responsibility by adoptive parents.

In the case of circumcision, we find an adoptive father effectively may assume the responsibility of having his son circumcised. We find

that there is support for the adoptive father to say the blessings concerning circumcision. The support is not sufficiently strong to enable the stricter commentators to permit the father to say the blessings without having him act as Sandek. For the father to act as Sandek is, to say the least, unusual. It is as if the parents also decide to act as a child's god parents at a Christening in a church.

With respect to redemption of the first born there is still a confusion of opions. While the London Bet Din has prepared a procedure in which the father does redeem his child, this procedure is not universally accepted. Thus in certain areas of parental responsibility the halachic concept of adoption is incomplete vis a vis the secular concept.

CHAPTER VI

RESPONSIBILITIES OF CHILDREN WITH RESPECT TO THEIR ADOPTED PARENTS

Relatively little is written about the obligations of adopted children to their adoptive parents. This is primarily because there is little written about the obligations of children to their natural parents. The primary obligation is generally termed "honor" or "respect" on the basis of the fifth commandment. Shulhan Aruch, Yoreh Deah 240-241 explicate the commandment and derive from it various other obligations such as supporting one's parents when they are indigent, or obedience to their commands. It is, however, because these particular obligations are derived from one commandment that it is possible to discuss them not by particulars but by the general rule. The question is, therefore, is an adopted child obligated to "honor" his adoptive parents?

Hatam Sofer[161] writes that an adopted child is not obligated to honor his adoptive parents. He bases his conclusion on a passage in Sota 49a. "Rabbi Aha b. Jacob reared Rabbi Jacob, his daughter's son, in his house. When the latter was grown up, the former said to him, 'Give me some water to drink.' He replied, 'I am not your son.'"

This passage is also quoted in Sde Hemed, "Laws of Mourning," chap. 156. The author also quotes a midrash,[162] wherein God commands Moses to go to Pharaoh. Moses refuses and says that Jethro received him and opened his gates to him, and made him like a son. "Whoever opens his gates to a person must be honored more than his parents. The person owes him his life." The story cites the precedent of Elisha, the prophet, who did not return home after Elijah was taken up. Instead he went on to Jericho. Elisha called Elijah, "my father."[163]

The author of Sde Hemed sees no contradiction between the two passages cited above. He states that while it is not a positive commandment to honor one's adoptive parents, it certainly is the right thing to do.

Cohen[164] presents an argument for the assumption of obligations by

the adoptive parent to the child. It is possible that it may be applicable for the assumption of obligations by the child toward his adoptive parents. It is based on a passage in Baba Metsia 62a. The question is raised about two men walking in the desert with only one flask of water between them. The final decision is that if there is not enough water for both of them, the one who owns the flask will keep all the water for himself so that both will not die. If, however, there is enough for both to survive even though it would cause suffering to both parties, the water should be divided. Cohen derives a progression of responsibility from this passage. Responsibility starts with one's self and spreads outward to the persons to whom one is closest and then, with diminished force, to other people. Thus, Cohen says, although there may be many poor in a city, we normally do not go seeking them to share a meal with us. However, if someone in our house is in need, even though it may cause us hardship, we would share our meal with him. Cohen in this case likens a person within one's house to a person accompanying us in the desert.

In the case of an adopted child, Cohen says, before he was adopted he was a ward of the public and he would feel no close ties or responsibility with any particular person. Once he is adopted, he is "in the same house" with his adoptive parents and, thus, has obligations to them; to support them when they are in need, even if it imposes hardship on himself.

Pindling[165] also deals with certain obligations of adopted children. On the basis of Shulhan Aruch, Yoreh Deah, 253:5 and Isserles' comments thereto, it is agreed that an adoptive parent raises his child purely for the sake of mitsvah (in this case, good deed). He, therefore, cannot expect any compensation. Isserles adds that even if the child has property of his own, we presume that the adopter made a gift to the child of the

expenses he incurred in raising him.

Pindling states that this separates an adopted child from a natural child since the natural child must give his parents his earned and unearned income as long as he is in their house. In theory a father can say to a son who is older than six years of age, "Either give me your income or go find yourself a place to live." While, under Rabbi Uziel's interpretation of adoptive parental obligations,[166] an adoptive parent might be able to do the same thing. He might be prevented from doing so on the basis of the Hoshen Mishpat passage cited above. Pindling makes another point. It is not the object to force the adopted child to leave home, but, to teach him the obligations which he has to his adoptive parents.

The father might have the son sign a document stating that he will provide a home for the adoptive child based on the condition that any income will be turned over to the father. Such a contract would negate the Hoshen Mishpat passage cited above. Since, however, the child would still be a minor and the fulfillment of his obligations is not in his complete control, there is a danger of asmachta (i. e., a contract in which something will be acquired in the future only upon fulfillment of conditions the completion of which is problematic). Pindling solves this problem by having the contract made by a court. As is stated in Nedarim 27b and Hoshen Mishpat 207:15, when an acquisition is done in from of an important court, there is no question of asmachta. As insurance Pindling would have such a contract written, using the term "from now and until . . . " which has the result of dating the acquisition at the time of the contract even though the conditions of its fulfillment are in the future. This too avoids the problem of asmachta.

KADDISH AND MOURNING

The laws of mourning required of relatives are listed in Shulhan Aruch, Yoreh Deah 342-403. The question arises if these laws and customs are required of adopted relatives. The consensus seems to be expressed by Isserles to Yoreh Deah 374:6. He who wants to mourn, and is not a relative, may do so, but he is not required to do so. Rabbi Akiba Eiger[167] is of much the same opinion as Isserles. Eiger, however, states that mourning obligations negate the performance of such positive commandments as study of Torah, a non-relative (and this would include adopted relatives) may not use such mourning as a reason for not performing these commandments.

In Europe it was the custom to assign the various doxologies (Kaddish) to persons who were either in mourning or were observing the anniversary of the death of someone whom they had been required to mourn. The question arose as to whether an adopted son could receive such a Kaddish. Hatam Sofer[168] replied that an adopted relative could be given a Kaddish as long as he did not displace someone who was obligated to recite it. He suggested that where all the recitations of the Kaddish were obligated, an extra Psalm be added so that there can be another recitation of the Kaddish.

While the general custom is now to have all mourners recite the Mourners Kaddish together, the fact that these precedents are referenced indicates the minds of the commentators now writing.

In essence it can be said that little is required of an adopted son with respect to his parents. He is encouraged to honor them but is not bound to do so. This area is one where there is the least confluence of Jewish and civil law.

CHAPTER VII

CONCLUSIONS

IS THERE A CONCEPT OF ADOPTION IN JEWISH LAW?

To the question, "Is there a concept of adoption in Jewish law?" the answer, for several reasons, must be "no."

1. While, during the course of this paper, many references and precedents have been cited, it is clear that there has been no unified body of law which can be called "adoption law." In most cases the precedents cited have not directly dealt with adoption and have been applied by the modern commentators to a specific problem. The question may well be asked, "What does the author mean by 'a body of adoption law?'" The answer is best illustrated by an example. The codes contain several chapters on the laws of mourning. While the codes are derivative of the Torah, the Talmud, and the writings of various other rabbis, most commentators today say that it is sufficient to cite a section in Shulhan Aruch as authority rather than trace through all the sources from which it derived. There is no work analagous to Shulhan Aruch for the laws of adoption. While Sha'are Uziel seems to be at least a watershed work in this area, one should note that Pindling, who must have been aware of the book, never quoted from it. This is not to say that there will never be such a work. It has not yet been written. Because of the need for such a work, the author feels that it will appear in the not too distant future. Adoption is growing more common and demands for authoritative guidance will be met.

2. On many matters there has been no "final halacha"; i. e., decisions to which everyone subscribes. One example is the conflict of authorities with respect to redemption of the first born, as described in chapter V of this paper. Other, more glaring, examples of such conflict can be found in chapter III of this paper, dealing with the subject of names. Many times the author has found himself stating, "There are

sufficient authorities to support . . . ;" a statement which implies that there are also many other important authorities who would disagree.

3. The basis presumption that an adopted child is first of all the child of his natural parents and a priori has no claim on his adopted family, pervades the whole area of adoption. This concept is so basic to Jewish law that the author doubts that there will ever be a concept of adoption which is completely analagous to the concept expressed in civil law. This is quite clear from chapter VI: obligations of adopted children to their adoptive parents.

The problem includes more than just the limitations implied in the concept of blood kinship. At the present time, even in cases where the rabbis do work out some way of overcoming blood kinship, the introductions to most topics begin something like, "While the adopted party does not prima facie . . . ." This author does not consider that there will be a true adoption concept in Jewish law. At present the subject is approached negatively. Hopefully there will come a day where, within the boundaries of blood kinship, rabbinic writers will begin their subjects positively.

INTENT

If there has been any leit motif running through this paper, it has been the subject of intent. Within the limitations set by the idea of blood kinship, almost every rabbinic source has tried to evaluate the intent of a person performing a particular act. While many rabbis have great insight into the area of human emotions and attitudes, they are still human beings and bring certain presumptions to the study of their fellowmen. The problem of intention is further complicated by the demands of stringency, which certain areas of the Halacha impose. Thus, while in certain areas evaluation of the average man's state of mind is acceptable, there

are other areas where definite knowledge of a particular individual would be required.

It is the author's suggestion that the certificate of adoption issued by a rabbinic court would express the intention of the adoptive parents. An example of such a certificate would be the following:

In the _____ day of the week _____ of the month of _____ in the year _____ from the day of creation as we account it here in the holy congregation of (city) in the state of ____ there appeared before us Mr. _____ b. _____ also known as (secular name) and his wife Mrs. _____ b. _____ also known as (secular name) in the matter of the adoption of a baby boy (girl).[169] The particulars of the child's birth have been examined by this court, and it has been ascertained that the child was born of a Jewish mother and a (non) Jewish father.[170] The child is permitted (forbidden) to marry a Cohen. (The child is forbidden to marry an Israelite.)

The adoptive parents listed above agree to treat their child in the manner which Jewish parents treat their children, namely, to feed, clothe, shelter, provide medical treatment, educate in religious and secular matters, to prepare him (her) for a profession, and to find a spouse for him (her) according to their means and social status. They have stated that they expect to receive no remuneration from the child save that which is required from all Jewish children from their parents, and to which this court has consented.

The adoptive parents further state that it is their desire that their son (daughter) be known in Israel as _____ b. _____ who raised him (her) also to be known as (civil name). To this the court has consented. It is their further intention that this child be known as their son (daughter) and that he (she) ne included within the meaning of the terms sons (daughters) or children in any document signed by the above listed

adoptive parents.

The above listed adoptive parents also state that it is their intention in the absence of other testimony to provide their adopted child with a part of their estate equal to the portions which their younger children will inherit, exclusive of any bequests made to particular children for any reason.

Therefore, this court has issued this certificate of adoption as a testament to its validity.

Signed _____

_____

_____

HALACHA AND AGADAH

While one purpose of this paper was to acquire knowledge of the subject of adoption in Jewish law, an equally important purpose was to acquire some understanding of the rabbinic mind and reasoning. One major question which has arisen is the merits of halacha and agadah as bases for decisions. In most cases this paper has examined halacha. While agadah may well express the ethical aspirations and exhortations of the rabbis, the important criteria is what a person is actually required or permitted to do, i. e., halacha.

One question, especially important in chapter III but also arising in other chapters, is the propriety for using agadah to derive halacha. As we have seen,[171] various rabbis hold different opinions. Pindling holds that one may not learn halacha from agadah while Cohen holds that one may and tries to prove it. Pindling drew his support from writers who were making halachic decisions. In this sense he was true to his de-

cisions. In the larger sense Cohen was right for even Pindling's sources could be traced back to a basis of agadah. In the area of chapter III one had to go back to agadah eventually since there was no other source for decisions. Pindling seems to ignore this. He seems to accept implicitly that agadah can be co-opted into halacha as the co-optation was sufficiently long ago. There is a feeling in Jewish law that the earlier the source the less he is to be challenged as long as his contemporaries did not challenge him. Thus, the unchallenged decisions of the Tanaim are sacred and those of the Amorai are only slightly less so. A responsa of the twelfth century is sufficiently holy that only the most compelling of reasons would permit examination of its reasons. One may try to deduce the implications of the responsa, its intentions, even the subtleties of its choice of words. Its logic for the most part should be left alone.

From the reformed point of view one would tend to side with Rabbi Sohen. Where there are too direct precedents for a decision, one must use every resource available to derive a judgement. If this means the use of agadah then so be it.

With knowledge and concepts changing as quickly as they are today, one may not be able to find a source of sufficient vintage which has done the dirty work for us. On the other hand, this is not something to be undertaken lightly. While Jewish law can change it does seem to have certain limits; certain permanent bases which must be respected. Only those who are knowledgeable in the field of Jewish law truly know what these limits are and how far one can bend them. It is easy to criticize the struggles of various rabbis in their attempts to evolve the halacha in a manner by which it can maintain its authenticity and yet respond to the needs of people in new situations. If the results of their labors do not agree with the author's biases, their labors have his respect.

Footnotes

1. "Adoption," The Encyclopaedia Britannica (New York, 1926), I, 213.

2. The Ministry of Justice, Israel, Draft Family Code For the State of Israel (Cambridge, 1956), p. 124.

3. The Public General Acts and Church Assembly Measure of 1950 (adoption) (London, 1951), chap. 26.

4. The Public General Acts, loc. cit., p. 411.

5. The Ministry of Justice, Israel, loc. cit., p. 130.

6. Ibid., p. 132.

7. John L. Mason (ed.), Pages Ohio Revised Code, Annotated (Cincinnati, 1960), p. 87.

8. Reuven Alcalay (ed.), Israel Government Year Book, 5728 (Jerusalem, 1968), p. 271.

9. Elchanan Scheftelowitz, Diney Hamishpahah V'shiputam Lihudey Yisrael (The Family Law and its Jurisdiction of the Jews in Israel) (Tel-Aviv, 1965), p. 155.

10. Ibid.

11. Ibid., p. 156.

12. Ibid.

13. Ibid., p. 192.

14. G. Felder, Nahalat Tsvi (New York, 1969), p. 15. Mordachi Cohen, "Child Adoption According to Halacha," (Hebrew) Sinai (December, 1960), p. 204. Moshe Pindling, "Child Adoption," (Hebrew) Noam, Vol. IV (Jerusalem, 1961), p. 66.

15. Gen. 15:2-3; 16:2; 16:29; 30:3; 48:5-6; 50:23; Ex. 2:10; 21:7-11; Lev. 18:9; Jud. 11:1; 17:10-11; Ruth 4:16-17; Ester 2:7; Ezra 10:44.

16. A. Speiser (Genesis New York, 1964 , p. 112) and W. Albright (Yahweh and the Gods of Canaan New York, 1968 , p. 66) show that adoption did exist in the Middle East during patriarchal times. That such adoption was a means of providing a heir or a means of transferring property, does give support to the idea that Genesis 15:2-3 is a reference to such a practice. From the rabbinic standpoint this would be irrelevant for two reasons. Abraham has not yet made the covenant, and that one does not base halacha on the actions of the Patriarchs unless they are substantiated in the Mosaic code.

17. Mikraot Gedolot (New York, 1951), III, 47.

18. Page 2.

19. "Adoption," The Jewish Encyclopedia (New York, 1901), p. 208. It should be noted that, even under the new British adoption law cited above, adopted children do not inherit titles or possessions associated with titles.

20. M. Jastrow, Dictionary of Talmud Babli, Yerushalmi, Midrashic Literature and Targum (New York, 1950), p. 78.

21. E. Scheftelowitz, The Family Law, p. 154. His citations are as follows: Yoreh Deah 247:1; 247:3; 248:1; 253:5; Even Haezer 114:1; 114:7; Hoshen Mishpat 42:15 (Isserles' note); 60:3-4.

22. As quoted in S. Freehof, A Treasury of Responsa (Philadelphia, 1963), pp. 211-215.

23. G. Felder, Nahalat Tzvi, p. 15. This quotation and the succeeding one are very freely translated since they are both written in a flowery rabbinic style.

24. M. Pindling, "Child Adoption," Noam, pp. 15-16.

25. M. Cohen, "Child Adoption," Sinai, p. 205.

26. 2 Samuel 21:8.

27. Hidushe Halachot Veagadot Maharsha on Sanhedrin 19b

28. Numbers 27:6-11.

29. M. Mirkin (ed.), Exodus Rabba II (Tel Aviv, 1960), 46:5, p. 180.

30. Source B, p. 10.

31. M. Steinberg, Responsum on Problems of Adoption in Jewish Law, ed. and trans. M. Rose (London, 1969), pp. 15-16.

32. M. Pindling, "Child Adoption," Noam, p. 71.

33. Felder, Nachalat Tsvi, p. 34.

34. San. 19b.

35. This will be discussed in greater detail later on.

36. Source B, see p. 10.

37. Responsum of Yawetz, Pt. I, chap. 165.

38. Berachot 62a, Shabat 61a, 133a, 134a, Erubin 29a, et al.

39. Aruch Hashalem, Erech Abaye

40. Source C

41. Steinberg, Responsum, pp. 18-19.

42. Tshuvot Maimoni, Mishpatim, chap. 48.

43. Source G. It is clear that Isserles, contrary to Cohen's statement, does not directly base his statement on agadah but on another legal decision. This decision is based on agadic passages from the Talmud, and if Cohen had used this responsa as an example, he would have been on firmer ground.

44. It should be noted here as Felder does (Nahalat, p. 31) that the Maharsha (Source B) has already broadened the interpretation of "orphan" to include children whose parents are still alive.

45. Knesset Hagedolah to Shulhan Aruch, Hoshen Mishpat 42.

46. as cited in Netivot Hamishpat on Shulhan Aruch, Hoshen Mishpat, chap. 42.

47. Hoshen Mishpat, chap. 42, note 35.

48. Source G.

49. Teshuvot Yawetz, Pt. I, chap. 165, as quoted in Pindling, "Child Adoption," p. 72.

50. Teshuvot Hatam Sofer, Even Haezer, chap. 76.

51. Nachmanides' interpretation of the Daughter of Asher (Numbers 26:46. See Source E.) holds true since Sarach was the only offspring of her father. She would not have deprived any males of an inheritance.

52. Isserles to Shulhan Aruch, Even Haezer 129:10.

53. Shulhan Aruch, Even Haezer 129:3.

54. Ibid., par. 10.

55. Ibid., note 19.

56. Ibid., par. 9.

57. Ibid., par. 20.

58. No. 124.

59. Source H.

60. Sources E., I., and J.

61. Source G.

62. Source E.

63. Joshua 15:17.

64. Steinberg, Responsum, p. 18; Gelber, Nahalat, p. 32; Pindling, "Child Adoption," p. 75.

65. Pesahim 54a.

66. While the Temurah citation does not come from the Torah, it does lend some Biblical authority to the practice.

67. Even Haezer, chap. 129, note 21.

68. Isserles, Even Haezer 120:3.

69. Pindling, loc. cit., p. 75.

70. Note 24.

71. Lev Aryeh, Responsa, No. 55.

72. If one accepts the conclusions from the first part of this chapter

73. i. e., both natural parents being the same

74. Nahalat, p. 35.

75. Steinberg, Responsum, pp. 38-42.

76. Scheftelowitz, The Family Law and Its Jurisdiction of the Jews in Israel (Tel Aviv, 1965), p. 156.

77. Pindling, p. 77.

78. Ibid.

79. Pithe Teshuva, Shulhan Aruch, Even Haezer, chap. 129, note 24.

80. Scheftelowitz, The Family Law, p. 192.

81. L. Dembitz, "Will," Jewish Encyclopedia (New York, 1901), XII, 523.

82. Baba Batra, p. 130a.

83. p. 186, par. 10, as quoted in Cohen, p. 215.

84. p. 215.

85. Ibid.

86. Mishneh Torah, Sefer Mishpatim.

87. 1951, Vol. II, as quoted in Pindling, p. 83.

88. Cohen, p. 216.

89. Source E, chap. III.

90. Source J, chap. III.

91. Source G, chap. III.

92. If we are to take the words of Emden and Hatam Sofer literally, they are implying an infraction of Biblical and Talmudic law. As it has already been cited, Baba Batra (p. 103a) clearly states that a testator may not disinherit anyone who is in the automatic line of inheritance. It would be interesting to know the basis on which Emden and Hatam Sofer would maintain that an adopted child could inherit in place of other relatives who are in the automatic line of inheritance but not in place of sons. The adopted child in either case would be considered a "stranger" and logically should not inherit in any situation.

93. Baba Batra 5:8, Rabbi Solomon be Adret as cited in Netivot Hamishpat to Shulhan Aruch, Hoshen Mishpat, chap. 253.

94. Baba Batra, op. cit.

95. Ibid.

96. Shulhan Aruch, Hoshen Mishpat 241:1.

97. Baba Batra 128b.

98. Hoshen Mishpat 257:6, 258:1-2.

99. pp. 83-4.

100. Hoshen Mishpat, chaps. 57-75.

101. Pindling, p. 84.

102. It is interesting to note that this almost contradicts the text in Shulhan Aruch itself which reads to the effect that if a man on his deathbed says, "Give my property to my sons," (Note that the plural in Hebrew can denote either all masculine gender or mixed gender) and it turns out that he has only one son and several daughters, the property goes to his son and nothing is given to his daughters. Even if the son has a son, it would not be construed that the latter would be given anything since this is one case where the "sons of sons" are not considered as sons.

103. "Child Adoption according to the Halacha," p. 216.

104. p. 83.

105. Cohen, p. 215.

106. Sources G and J, chap. III.

107. Source J, chap. III.

108. A. Rodner, "Child adoption and one who is obligated to feed his friend," Noam (Jerusalem, 1961), IV, 63.

109. Bet Shemuel to Shulhan Aruch, Hoshen Mishpat 71, note 2.

110. Shulhan Aruch, Hoshen Mishpat 73:6.

111. Ibid., par. 7.

112. Kidushin, 29a.

113. B. Ezrachi, "The Limits of Obligations in Child Adoption," Noam (Jerusalem, 1961), IV, 148.

114. Pindling, loc. cit., p. 78.

115. Bet Shemuel to Shulhan Aruch, Even Haezer 114, note 1.

116. Shulhan Aruch, Even Haezer 114.

117. Ibid., par. 10.

118. Ibid., par. 12.

119. Shulhan Aruch, Hoshen Mishpat 73:7.

120. Mishneh Torah, Mechirah 11:17, and Ishut 23:17.

121. Amirah.

122. Ibid., Mechirah: 11:16.

123. "Limits of Obligation in Child Adoption," Noam (Jerusalem, 1961), IV, pp. 94-172.

124. Pindling, loc. cit., p. 78, cites Shivte Cohen to Shulhan Aruch, Hoshen Mishpat 60, note 2; Knesset Hagedolah on Ibid, note 30 et al.

125. Rabad on Mishneh Torah, Mechirah 11:16.

126. Shaare Uziel, Part 2, p. 184.

127. Cohen, loc. cit., p. 213.

128. Psalms 106:3.

129. Ketuvot 50a.

130. Henry Gaudy, "Roman Law," Encyclopedia Britannica (New York, 1926), XXIII-XXIV, p. 531.

131. Me'irat Enayim to Ibid.

132. Shulhan Aruch, Hoshen Mishpat 60, note 15.

133. Sefer Me'irat Enayim to Shulhan Aruch, Hoshen Mishpat 60, note 13.

134. Shulhan Aruch, Hoshen Mishpat 60:3.

135. Pindling, loc. cit., p. 79.

136. Sha'are Uziel, Part II, p. 185.

137. Uziel, loc. cit.

138. Mishneh Torah, Mila 3:1.

139. Hagahot Hagra as quoted in Steinberg, Responsum on Problems of Adoption in Jewish Law (London, 1969), p. 21.

140. as cited in Steinberg, loc. cit., p. 31.

141. Ra'aka, Responsa 42.

142. Cohen, loc. cit., p. 204.

143. Pindling, loc. cit., p. 85.

144. Steinberg, loc. cit., p. 22.

145. Pindling, loc. cit., p. 85.

146. Cohen, loc. cit., p. 209.

147. Biet Hadash, on Tur, Orech Hayim 29:2.

148. Shulhan Aruch, Yoreh Deah 305:9.

149. Pindling, loc. cit., p. 86.

150. Responsum 131.

151. Steinberg, loc. cit., p. 25.

152. Melamed Lehail, on Yoreh Deah, chaps. 97 and 98.

153. Mishneh Torah, Nahalot 11:10.

154. Shulhan Aruch, Yoreh Deah 305.

155. Tosefta, Yevamot, chap. 9; Mishneh Torah, Trumot 7:15.

156. Pindling, loc. cit., p. 87.

157. Ibid.

158. Steinberg, loc. cit.

159. He cites no sources. Possibly he is basing this on the concept of the adopted father as legal guardian. However, according to what has been written about the legal guardian, he may say to perform the redemption but is not required to do so. Therefore, it would seem that he should not say the blessing since he is under no obligation to perform the act.

160. Steinberg, loc. cit., p. 40.

161. Responsa, Hatam Sofer, Orech Hayim 164.

162. Exodus Rabba 4:2.

163. 2 Kings 3:11-15.

164. Cohen, loc. cit., p. 214.

165. Pindling, loc. cit., p. 80ff

166. Shaare Uziel, Pt. II, p. 185.

167. as quoted in Pindling, loc. cit., p. 91.

168. Responsa Hatam Sofer, Orech Hayim 164.

169. If the adopted child has already reached the age of understanding, then the word "baby" would not be used.

170. In cases where the mother is not Jewish, the certificate would read: "And the child has been brought into the covenant of Israel by the rites of immersion (and circumcision) on the authority of this court."

171. pp. 15ff

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