

Various Aspects Of Adoption

Rabbi Dr. Melech Schachter

“Whoever rears an orphan in his own house is considered by Scripture as if he fathered the child... Whoever teaches Torah to the son of his companion, Scripture considers him as if he begat him.”¹ These statements are corroborated by quotations from Scripture. Bathiah, the daughter of Pharaoh, saved and reared Moses, and was therefore called his mother.² Michal, the daughter of King Saul, reared the children of her sister Merab, and was therefore considered their mother. Ruth’s child was also called the son of Naomi³ by virtue of the fact that he was reared by Naomi. For the same reason the Psalmist called the children of Jacob also the children of Joseph⁴ because he fed them.

These and other similar statements may be quoted to prove that adoption, rearing, and teaching someone else’s children are most meritorious virtues for which one is honored as a parent.

Horav Yosef Dov Soloveitchik has been quoted regarding the

1. סנהדרין יט ב

2. דברי הימים א, ד יח

3. רות ד יז

4. תהלים עז טז

*Member of Faculty of Yeshiva University
and Former Co-ordinator of the Beth Din
of the Rabbinical Council of America*

positive⁵ aspects of raising someone else's child as one's own (e.g. adopting), thereby partially living up to the commandment of reproduction (*Piryah v'rivyah*). The Rov bases it upon the word of the Rambam that he who is seized by the desire for learning so that there remains no room for the earthly desire of being married, as did Ben Azai who remained a bachelor, is considered no sinner,⁶ because his Torah disciples will be considered his offspring. Similarly, adopting a child and raising him in a Torah-true atmosphere and giving him a Torah-true education in a traditional yeshiva will be considered as if he partially abided by the mitzva of reproduction. This is also the opinion of R. Shlomo Kluger.⁷ The lofty practice of rearing someone else's child with parental devotion is moral conduct on the highest level. Consequently, the adopted child is ethically bound to display the highest regard for his adoptive parents and hold them in the highest esteem, possibly even surpassing the one displayed by children towards their own parents.⁸

However, from the viewpoint of Jewish Law, adoption does not constitute natural relationship. Should the adopted child smite or curse his adoptive parents, he will not be subject to the stern punishment reserved for a child acting this way toward his natural parents.⁹ All forbidden incestual relationships apply only to relatives by nature, not by adoption.¹⁰ If the adoptive father is a Kohen or a Levi it does not make the adopted child also a Kohen or a Levi. When the adoptive parent dies, the adopted child should obviously mourn the loss in a proper fashion, including the

5. In a lecture, "Adoption in Jewish Law," given by Rabbi Herschel Schachter, son of the author and Rosh HaKollel of R.I.E.T.S. of Y.U. A synopsis appeared in *Chavrusa*, Nissan 5742, published by Rabbinic Alumni of R.I.E.T.S.

6. רמב"ם הלכות אישות פ' ט"ו הלכה ג

7. חכמת שלמה, אבן העזר ס"א ס"א

8. שמות רבה פרק ד שכל הפותח פתחו לחברו חייב בכבודו יותר מאביו ואמו

9. שמות כא טו ובחולין יא ב "דלמא לאו אביו הוא, אלא ..." הרי שבכל מקום שכתוב בתורה אביו ואמו הכוונה להורים הטבעיים דוקא.

10. באבן העזר סימן טו סעיף יא: מותר אדם בבת אשת אביו שיש לה מאיש אחר ואפילו... הגדלה בבית בין האחין. "הרי שאיסור עריות תלוי בלידה טבעית ולא בגידול ביחד עם שאר הבנים.

recitation of the kaddish.¹¹ But he is not subject to all the minute regulations governing the mourning of a child for his natural parents.¹² Nor does an adopted child free his adoptive mother from "chalitzah" in case his adoptive father dies without issue.¹³

When there is an established custom to have only one mourner recite the kaddish, the adopted child should not take this privilege away from one who mourns his natural parents.¹⁴ Obviously, the same preference would apply to "davening" before the *omud* and leading the congregation in prayer throughout the eleven months and on the subsequent anniversaries of their demise, their *yahrzeits*.

In case a boy infant is adopted right after his birth, he should be circumcised on the eighth day.¹⁵ The infant may, of course, be named after a deceased parent of any one of the adoptive parents. In case the boy infant is the first child of his natural Jewish mother, and neither one of his natural parents is a descendant of Kohanim or Levites, the adoptive parents should have a *Pidyon Haben* celebration on the 31st day after the infant's birth, irrespective of the status of the adoptive parents, whether or not they are descendants of either Kohanim or Levites. Later in this article we shall discuss this law in greater detail.

As for the question of inheritance, in the absence of a will, no one has a right to inherit the estate of an adoptive parent in preference to blood relations. However, everyone has a right to bequeath his possessions to anyone he desires. Adopting a child through a civil court may be considered equivalent to the writing of a will, bequeathing to the adopted child his entire estate or a proportionate percentage thereof.¹⁶

11. דין קריש יתום באו"ח סי' קלב ס"ב בהגה, והמג"א בס"ק ב מאריך ברינים אלו ומסיק שלא רק בן הנפטר אומר קריש אלא "שאפשר גם להשכיר אחד לומר קריש במקומו". ועיין בביאור הלכה בסוף הסימן "ואם בעה"ב מגדל בביתו..." ועיין שרי חמד אבלות קנו שהאומץ צריך לומר קריש לכבוד המאמצים אותו על פי מ"ר המצוטט לעיל אות 9.
12. פתחי תשובה ביו"ד שם סק"ז
13. דברים כה ה': "ובן אין לו" וביבמות כב ב "עין עליו", ולפיכך "כל שיש לו בן מכל מקום ואפילו ממזר פוטר את אשת אחיו מן היבום" שם במשנה בעמוד א. "אפילו ממזר" וכלבד שהוא בן טבעי, דבלא"ה אינו נקרא בן.
14. שו"ת חת"ס חאו"ח סי' קסד
15. קידושין כט א
16. עין שרי חמד אות מ כלל לח

All this, moreover, does not in any way affect the rights of the adopted child with respect to his inheritance from his *natural* parents. Rambam¹⁷ writes that the language of the Torah¹⁸ "and the law of inheritance shall be unto the Children of Israel a statute of judgment" implies that this has a religious connotation and is not merely a civil matter. Consequently, his legal adoption would not diminish his religious rights as the son of his natural parents.

Knowledge of adoption should not be concealed

Should a child be told that he is adopted? For various reasons, it is wise for the child to know his true status. There is the consideration of the possible consequences should the child, when he or she grows up, wish to marry someone who halachically is forbidden. An adopted girl, who was converted, would not be permitted to marry a Kohen. If the antecedents of the child are known, he would have to avoid marrying a close natural relative; if the antecedents are not known, he would have to avoid marrying someone with a similar problem, such as another adopted child.

There is an additional factor to be kept in mind when adopting a child. The Lubavitcher Rebbe raised the problem of *yichud v'kiruv basar*. According to Jewish Law, a man and a woman, not married to each other, are forbidden to hug and kiss one another or even to be alone together except when they are closely related, e.g. mother and son, father and daughter, etc. This prohibition is especially stringent when the woman is married to another man. How do we allow the adopted son, after he matures, to embrace his adoptive mother and kiss her or even to sleep with her in the same room all alone?¹⁹

Rabbi Eliezer Wohldenberg, a great sage of the Holy Land, tends to be lenient in this respect if the adopted child is ignorant of the status that he is adopted. It seems that Horav Soloveitchik of Boston also tends to be lenient because in the course of all the years during which the adopted child was raised the relationship was that of mother and son or father and daughter.

17. ריש פ"ו מהלכות נחלות

18. במדבר כו יא: והיתה לבני ישראל לחוקת משפט

19. אוצר הפוסקים לאה"ע סוף חלק ט, עמ' קל, והערה ארוכה עמ' 263

However, the late Rabbi Joshua Ahrenberg, head of the Beth Din in Tel Aviv and author of *Dvar Yehoshua*,²⁰ vehemently disapproved of such a lenient attitude. The Chazon Ish²¹ likewise sided with the stringent opinion.

Whether to adopt a Jewish child

For the prospective parents, a major question is whether to adopt a Jewish or non-Jewish child. There are special problems arising from either course of action. We will now proceed to examine the halachic questions arising from adoption of either type of child.

The possible illegitimacy of the adopted Jewish child

A very important aspect in connection with Jewish children offered for adoption is the problem of illegitimacy. Should the adopted child be an offspring of an adulterous relationship, i.e. the mother being married to one and having the child from another, then it is illegitimate (*mamzer*) and is biblically forbidden to intermarry with legitimate Jewish children.

Halachically, the child of an immoral woman, who still lives with her husband, is not considered a *mamzer* because we attribute the fatherhood to the one who cohabits with the mother most of the time. This decision falls into the category of "majority rules" or "majority prevails."²²

In the case of an unmarried girl giving birth to a child, this majority principle is obviously not applicable.²³ There is reason to fear that the child is the product of an incestuous relationship which renders him a *mamzer*. (Even though the majority of men are not related to the mother of the child, yet there is the possibility of the mother making the advances and approaching the man in which case the principle of *kovua* negates the principle of majority.)

20. ח"ג אה"ע סימן טו

21. אוצר הפוסקים שם, פאר הדור חלק ג עמוד מ

22. אבן העזר ד' כו

23. שם

In the case of a child born out of wedlock, the law prescribes a thorough investigation. If the father of the child is not a relative, then both mother and child are permitted to be married to fellow Jews. If the father turns out to be a close relative, the mother is termed a *zonah* and is not allowed to be married to a Kohen, and the child is a *mamzer* and is not allowed to be married to a legitimate child.

Most of the children offered for adoption are born to unwed mothers. If the mother refuses to cooperate in the investigation, the mother is not permitted to marry a Kohen, and the child in question is termed a "*shetuki*" — a possible *mamzer*. If the mother's identity is unknown and the question is centered exclusively on the child, the "*kovua*" principle may be ignored, and on the basis of the majority principle — most men are not related to the mother — the child is considered legitimate and permitted to marry other legitimate Jews. This is the view of Rabbi Ezekiel Landau.²⁴ There are, however, many scholars who differ with him because at the time when the child was born the doubtful aspect of the child's father, involving the subsequent marriageability of both the mother and the child, immediately arose. The disappearance of the mother can therefore not alter the negative decision for both of them.

Whenever a child from a Jewish mother is up for adoption all these possibilities must be taken into consideration.

Adoption of non-Jewish children

The aspects of adoption discussed hitherto are all valid if the natural mother of the adopted child is Jewish. Should the mother be non-Jewish, most of the above problems are eliminated. Yet, the adoption of non-Jewish children inescapably presents an acute problem. Non-Jewish children are adopted by Jewish couples and are raised as Jews. Some of the boys go through a bar-mitzva ceremony, and like all their Jewish friends, they declare themselves as full-fledged members of the Jewish congregation, without

24. שו"ת נודע ביהודה קמא חלק אבן העזר סימן ז

25. פתחי תשובה, אבן העזר ד מא

"circumcision and immersion for the sake of conversion"²⁶ Sometimes these children even assume the status of Kohen and Levi. These adopted children later intermarry with children of Jewish parentage — all under the assumption that they are Jewish.

However, there is a very serious halachic problem involved — is it possible to perform a valid conversion on a Gentile infant? And if conversion cannot be valid until the child is mature, how can we assume that the child at that point will want to be Jewish?

There is one Talmudic source in favor of such practice. Rav Huna maintains that a minor can become a proselyte "in accord with the Beth Din."²⁷ The knowledge of the three rabbis, constituting the Beth Din, is potent enough to bestow Jewishness upon the child. One may wonder: since the responsibility of so tremendous a change, a change of faith, obviously necessitates the mature consent of the party involved — how then could a minor, a small child and at times only an infant, be converted to Judaism without his consent? The answer to this question is to be found in the basic assumption that to be a Jew is a *z'chus*, a privilege, and one can perform a meritorious deed in behalf of another without consulting him.²⁸ Hence, the minor's consent is not necessary.

It is on this basis that many rabbis, and sometimes even *mohalim* alone, participate in the circumcision of newly adopted non-Jewish children with the assumption that in due time proper immersion will also take place and thus consecrate them in their new faith. Such practice is to be severely criticised, because even on the basis of this Talmudic passage, there is need of immersion in the presence of a Beth Din and, unfortunately, this *absolutely essential* procedure hardly ever takes place. The very same rabbis or *mohalim* do not pursue the matter any further, and the adopted child is raised as a full-fledged Jew without further ado. This practice could perhaps be followed in a well-organized Jewish community like the *Kehillas* of yore. In those days, every Jew was registered as such and the status of every individual was scrutinized and carefully followed. In American Jewish life this is obviously not possible.

27. כתובות יא: גר קטן מטבילין על דעת בית דין

28. בכתובות שם: "מאי קמ"ל דזכות הוא לו וחזין לאדם שלא בפניו כו."

After an analysis of conditions nowadays, we must come to the conclusion that Rav Huna's statement is not altogether applicable today. Many Jewish couples who adopt non-Jewish children are non-observant themselves. These adopted children that are officially converted to Judaism are brought up in an atmosphere of Sabbath violation and total disregard for kashruth and all other precepts of the Torah. Can this kind of Judaism be considered a *z'chus*, a privilege, that would give us the right to perform the conversion ceremony without their mature consent? (We are all aware of the celebrated statement that doing a mitzva under command is greater than doing it voluntarily, but it would be preposterous to assume that not doing a mitzva which we were commanded to do is greater than not doing it when not commanded to do it.) Even when the consent of the child's natural parents is obtained to have him adopted by Jews and reared in the Jewish faith, the predominant view of most early Talmudic scholars is that the Beth Din's accord is still required, and all on the assumption that this change of faith constitutes a *z'chus*, a privilege. Obviously, the way conditions are today, it is by far a greater *z'chus* to remain a non-Jew than to become a Jew and violate every commandment.

It is also important to note with reference to the concept of Jewishness as being a *z'chus*, a privilege, that the *Avnei Nezer* maintains that the entire privilege concept applies only when the recipient of the benefit is aware of it. This is an additional reason for not concealing the fact of adoption from a child. According to the *Avnei Nezer*, should the non-Jewish child be raised in ignorance of the beneficial status bestowed upon him, the entire conversion ceremony is ineffective and in vain.²⁸

One could argue that the adopted child may in due time join the *baale tshuvah* movement and thus the conversion will retroactively be a privilege. Aside from the fact that this is unlikely, in the Responsa of Rabbi Elya Pruzhiner we find that if the privilege aspect is not evident at the time of conversion and is based only on the possibility thereof in the future, the conversion

28a. אבני נזר, אה"ע, קצד אות ד

is not valid.²⁹

The question may still be raised in the case of a genuinely observant Jewish couple that wishes to adopt a non-Jewish child and have him or her immersed for the sake of conversion in the presence of a Beth Din in accord with Rav Huna's statement — are we justified to do it?

Before we answer this question there is yet another point to be considered. Rav Yosef added his remark to that of Rav Huna that when the non-Jewish minor, who was converted to Judaism in the presence of a Beth Din, matures, that is when he grows up, he can nullify the conversion ceremony and go back to his former status and remain a non-Jew.³⁰ There is a difference of opinion among the early scholars as to the exact interpretation of this statement. With reference to the case discussed in the Talmud of a non-Jewish girl who was converted to Judaism in the presence of a Beth Din, then married and divorced while still a minor, we do not grant her the *Kesubah* immediately, lest upon maturity she rejects Judaism and nullifies the act of conversion.³¹

How and when does this rejection take place? Some maintain: a day before her maturity, before her twelfth birthday, she begins to behave demonstratively in a non-Jewish manner; she eats *trefa* food or violates the Sabbath and so she continues to behave several days after she reaches maturity.³² On the other hand, Tosafot and other *Rishonim* emphasize the aspect of her consent upon maturity to remain a Jewess. The *kesubah* is granted to her when she matures and demonstratively behaves like a Jewess.³³ The difference between the negative and the positive interpretations imply a difference in the concept of the conversion performed "*al daas* Beth Din." Does this kind of conversion in accord with the Beth Din immediately go into effect in full force, with only this

29. שו"ת הליכות אליהו חאה"ע סי' לא

30. כתובות יא א: אמר רב יוסף הגדילו יכולין למחות

31. בכתובות שם: "יהבינן לה כתובה ראולה ואכלה בגיורתה? לבי גדלה ... כיון שהגדילה שעה אחת ולא מיחתה שוב אינה יכולה למחות."

32. ע"י שיטה מקובצת: כגון שהתחילה מנהג גיורת יום לפני גדלותה, וכן נהגה יום או יומים לאחר גדלותה.

33. תוספות שם ד"ה לבי: לבי גדלה ונהגה מנהג יהודית

weakness that it could be rejected upon maturity, or is this conversion conditioned upon the child's subsequent consent? The difference in halacha is obvious.

Suppose the converted child registers neither a confirmative consent nor a definite rejection, what then? If we assume that the conversion went into effect in full force and can only be nullified by a definite rejection, as long as this rejection was not forthcoming, as long as the converted child did not flagrantly and demonstratively behave in a non-Jewish manner when he or she reached maturity, the conversion stands and remains irrevocable. If, on the other hand, we are to assume that the original conversion is conditioned upon the child's subsequent consent, that is upon a positive, demonstrative Jewish behavior at the time of maturity, as long as this consent was not forthcoming the child remains non-Jewish. And so from this viewpoint, even if the child met all other requirements, namely, it went through the entire procedure of conversion in the presence of a qualified Beth Din and it has been reared in an observant atmosphere, as long as the child fails to demonstrate upon maturity a definite Jewish behavior, such as putting on *t'fillin* or observing the Sabbath, the original conversion remains ineffective.

In connection with Rav Huna's statement that since to be a Jew is a privilege, a non-Jewish child can be converted to Judaism in the presence of a Beth Din on the principle that the rabbis may perform a meritorious deed in behalf of the child without his mature consent — in connection with this statement there is a difference of opinion as to whether its validity is biblical or only rabbinic. If it is only rabbinically valid, then only to the extent of rabbinic laws, such as the wine touched by a non-Jew that becomes "*nessech*," we consider the child Jewish. But we do not permit such a minor to marry one from Jewish parentage, nor do we consider the "*shechita*" of such a minor valid, even if adult *shochtim* watch him — all because biblically the child's status is that of a non-Jew, a non "*Bar Zvicha*." (This is so unless we assume that the Rabbis sometimes have the power to set aside a biblical law even when active violation is involved.³⁴) If, on the

34. יש כח ביד חכמים לעקור דבר מה"ת אפילו בקום ועשה. עיין יבמות צב. ועי' תוס' כתו' שם ד"ה מטבילין.

other hand, Rav Huna's statement is biblically sound, we consider him a full-fledged Jew in every respect even insofar as to marry a Jewess or to slaughter in the presence of others.

It seems that the above question, as to whether the child's rejection upon maturity nullifies the conversion or his affirmation confirms it, depends upon this problem. If we assume that the conversion is biblically sound and we allow the child to marry a Jewess, apparently the conversion is not conditioned on something that is yet to happen. As to the question, how do we allow such a marriage since the child could possibly reject Judaism upon reaching maturity, the answer is that in all likelihood the child, raised in a genuinely religious atmosphere, will continue to be observant after it matures.³⁵ On the other hand, if we assume that the conversion is not biblically sound, it is because it depends upon the child's *positive* consent retroactively at which time we probably interrogate and warn him regarding the difficulties involved in the observance of Torah and mitzvot,³⁶ in the same spirit as Naomi warned Ruth. Since this procedure is rarely followed, the conversion of non-Jewish children is often of questionable validity.

Although Rabbi Moshe Feinstein is usually quite definitive in his halachic decisions, in the course of a lengthy responsum on the subject of whether to adopt a non-Jewish child, he fails to come to a conclusion. He does, however, append the following comment:

*I would add this note of advice, that there is no need or purpose in accepting a minor (for conversion) and only when an adult non-Jew himself comes for genuine reasons should one accept him.*³⁷

To recapitulate briefly the points we have outlined:

1. Civil adoption does not constitute conversion to Judaism.
2. Unless the adoptive parents are observant, there can be no conversion on the assumption of a *z'chus* that is in reality a great disadvantage.

35. בשט"מ שם: שמן הסתם כשנתחנך מקטנותו בתורת ישראל לא יסור ממנו, ומלתא דלא שכיח היא ולא חיישינן לזה אף בדאורייתא.

36. קלות וחמורות. עיין יבמות מז א וי"ד רסח ב ועי' שט"מ בכתו' שם

37. אגרות משה יורה דעה קס"ב

3. Even if the above requirements are met, there is need for a positive consent on the part of the adopted child when it reaches maturity, without which the conversion may not be valid halachically.
4. If all the above conditions were to be met, there is yet special precaution to be taken in the case of a girl that she should not marry a Kohen.

Whose "son" is the adopted child?

In Jewish tradition a person is identified by his or her father. This is the way an infant is called at the time of naming it at the circumcision ceremony or at the synagogue, e.g. Isaac son of Abraham, Dinah daughter of Jacob. This is the way a man is called up to the Torah, and this is the way a person is identified in a *kesubah*, (the marital document read under the canopy) and also in a *Get*, the biblical divorce paper nullifying the marital bond. An adopted child presents a problem in this area. Is the child to be known as the son or daughter of the adoptive father or of the natural father, or the "son of Abraham our ancestor" in case of non-Jewish parentage, as a convert is usually called? How can we call a person the son or daughter of Mr. B, the adoptive father, when he is really not the father?

A. When a *Get* is written

This problem is particularly acute in writing a *Get*, where the slightest deviation from the truth may invalidate the document. According to one authority, mentioning a grandfather as the father renders the *Get* ineffective, even though grandchildren are usually identified as children.³⁸ How much more so should the *Get* be invalidated when a totally unrelated man is ascribed as the father of the person! (Perhaps in a case like this when an adopted child grows up, marries and divorces, his father's name should be omitted altogether. Indéed, a *Get* in which a father's name is omitted is valid,³⁹ while a wrong name renders the *Get* invalid.)⁴⁰

38. בית שמואל אבה"ע סי' קכט ס"ק יט

39. אה"ע קכט פתחי תשובה סק"כ

40. עי' בב"ש שם ס"ק ה. דשינוי גרע טפי

In our Responsa literature we have recorded a case when a man who divorced his wife used his adoptive father's name and then disappeared. There was no way of having him give another *Get* and the woman was faced with the bleak future of remaining an *aguna* — never to remarry again. Ri Halevi⁴¹ validated the *Get* on the basis of the Talmudic dictum that "whosoever rears an orphan in his house is considered as if he fathered the child."⁴² However, Tosafot maintains that we find nowhere in the Torah "a wife's child to be called as his child."⁴³ Rabbi Moshe Sofer differentiates between one who has children of his own — to which case Tosafot's statement refers — and one who has no children of his own when he could be identified as the father of the adopted child.⁴⁴

Rabbi Aaron Gordon likewise took a lenient view and rendered a similar *Get* acceptable.⁴⁵ He added an additional source, namely the verse in Joshua XV, 17, where Caleb's father is mentioned by the name of Kenaz erroneously, to which the Talmud⁴⁶ answers that he was Kenaz's stepson.

Many Rabbinic scholars oppose this lenient view because the above statements are Aggadic in nature and there is an established principle that no halachic decisions can be made on the basis of Aggada.⁴⁷ How would it be if a devout disciple of a great scholar would indicate in his *Get* the name of his revered mentor as his father? Obviously that *Get* would not be valid notwithstanding the Aggadic statement that "whosoever teaches Torah to the son of his companion is as if he begat him."⁴⁸

A famous controversy of a similar case is recorded in detail in *Pischei Tshuva*.⁴⁹ The author of *Avodas Hagershuni*⁵⁰ took a lenient view in a case where the woman's father's name was

41. שו"ת אמירה נעימה סי' קכד

42. סנהדרין יט א וכמו שמצוטט לעיל בהערה 1

43. פסחים נד.

44. שו"ת חת"ס אבן העזר ע"ו

45. בריש ספרו אבן מאיר על שמות גטין

46. תמורה טז א

47. ירושלמי פאה פ"ב ה"ו, ועיין אנציקלופדי תלמודית ח"א ריש עמ' כב

48. סנהדרין יט ב וכמצוטט לעיל בהערה 1

49. אה"ע קכט כא

50. סימן נח

written in the *Get* erroneously. His contention was that any item, which, if omitted would not invalidate the *Get*, then an error in that item is insufficient to render the *Get* invalid.⁵¹ However, the author of *Zemach Zedek*⁵² and others point out that this assertion refers exclusively to an item which used to be included in the *Get*, namely, the birthplace of each one of the couple. If leniency could at all be applied to a false paternal name, it could perhaps be only if the husband hands the *Get* over directly to his wife. But if it is done through the medium of an agent who was ordered by the husband to hand over the *Get* to "my wife X the daughter of Y" and he hands it over to X the daughter of Z, the divorce is definitely not valid. This great scholar concluded that even if the husband hands the *Get* directly over to her she is not divorced, because the document was written by the scribe under false instructions and therefore is totally worthless. A host of other great Sages are recorded to coincide with this stringent opinion.

What follows is that no adopted child may use his adopted father's name in a *Get* unless it is indicated that he is only his adopted father, as for example, "X, called X the son of Y who raised him" or "who adopted him."⁵³

B. When called up to the Torah

A man, the identity of whose father is wrapped in mystery, is to be called up to the Torah as the son of his mother's father.⁵⁴ The Taz⁵⁵ opposes this decision for fear that should he ever divorce his wife, he will use his grandfather's name as his father and thus render the *Get* invalid. He prefers the man to be called up as is a convert to Judaism, namely, "son of Abraham" since we all are descendants of Avrohom Avinu.

R. Moshe Feinstein⁵⁶ writes that a child can be called up to the Torah without any reference to his adoption - for example, simply

51. תוס' גטין פ"א ד"ה ושם

52. סימן פג

53. "פלוני דמתקרי פלוני בן פלוני המגדלו" או "המאמזר"

54. אור"ח קלט ג בהגה

55. שם ס"ק א

56. אגרות משה יורה דעה קס"א

as Reuven son of Yaakov. R. Feinstein sees no reason to fear that his origins will thereby be obscured or forgotten. This is also the accepted practice of the British Beth Din, although they caution that this practice should be followed only if there are no other children of the couple, whether natural or adopted.⁵⁷

It should be noted that in the case of a convert who divorces his wife, "the son of Abraham" will not do. It must be stipulated which Abraham is referred to — "the son of Avrohom Avinu."⁵⁸ The Taz probably meant to have the adopted son called up as "the son of Avrohom Avinu."⁵⁹

If he prefers to be called up by his adoptive father's name, the word "*hamegadlo*" should be added to make sure that should he ever have to go through a divorce proceeding the *Get* would be valid. The additional *hamegadlo* (who raised him) is particularly essential if the adoptive father is a Kohen or a Levi. Without *hamegadlo* he will be considered a Kohen and be called up to the Torah first as is his adoptive father. Furthermore, the people may send him up to "*duchan*" along with his "father" or use him in the ceremony of *Pidyon Haben*. If the adoptive father is a Levi, he may be called up next to the Kohen, and when he marries the daughter of a Yisroel and is blessed with a son, he may be given erroneous information that there is no need for a *Pidyon Haben*. The same holds true of an adopted girl whose adoptive father is either a Kohen or a Levi.

Above all, "*hamegadlo*" will prevent the serious violation of his adoptive mother's ever remarrying without *chalitza* after his adoptive father's demise.

Should the family have other sons of their own and later in life should one die and his wife would need *chalitza*, the adopted brother is not the one to go through with this procedure. "*Hamegadlo*" added to his name will make sure that such a mistake shall never come to pass.

57. Dayon Meyer Steinberg, *Responsum on Problems of Adoption in Jewish Law*, Office of the Chief Rabbi, London, 1969, p. 12.

58. אה"ע קכט ב

59. הרב משה פינדלינג בנועם ח"ד עמ' עז

C. When the name is written in the *kesuba*

When the adopted boy or girl is getting married, the name in the *kesuba* "son or daughter of Mr.X" should also be accompanied with the word "*hamegadlo*" indicating that Mr. X is the adoptive father for the same reasons enumerated above. According to the author of the *Nachlas Shivoh*⁶⁰ the names in the *kesuba* must be written with the same care as in a *Get*, because should ever that marriage terminate in a *Get* the names of the *kesuba* will probably serve as guidelines. However, in order that no one should be embarrassed in public, when the *kesuba* is read at the marriage ceremony, the officiating Rabbi should not read aloud the word *hamegadlo*.⁶¹

D. Naming the adopted baby

When naming the adopted baby at the time of circumcision or in the synagogue, the word "*hamegadlo*" should accompany the name of the adoptive father for the above reasons. Some synagogues issue special documents in which the name of the baby is recorded. This is especially done at the time of bar-mitzva. These documents are framed and kept for future reference. Surely, the word "*hamegadlo*" should be added for subsequent purposes.

At the circumcision ceremony

"Blessed are Thou...Who...Hast commanded us to make (the son) enter into the covenant of Avrohom Avinu." This benediction is recited by the father at the time of his son's circumcision.⁶² If the father is not present at the time, the benediction is recited by someone else, customarily by the "*Sandik*" - the one who holds the infant at the circumcision.⁶³ According to Rabbi Akiva Aiger⁶⁴ the grandfather — especially so if he is the "*Mohel*" — should be the one to recite this benediction rather than the *Sandik*, because he, like the father, is obligated to see to it that his grandchild receives a

60. סימן יב אות טו

61. *Responsum on Problems of Adoption in Jewish Law*, p. 20.

62. יורה דעה רסח א

63. ברמ"א בשם הטור

64. שו"ת רעק"א סימן מב

Torah-true education, the spiritual implication of ushering him into the covenant of Avrohom Avinu.

In the case of an adopted son, the adoptive father, by virtue of his obligation as such, has obligated himself to give him a Torah-true education. Consequently, preference should be given to him as far as the recitation of this benediction is concerned. Far more preferable is to have the adoptive father act as the *Sandik* and thus avoid all possible argumentation.⁶⁵

Obviously, in the concluding prayer, naming the child, it is reasonable to omit the words "*beyotzei chalotzov*" and "*befree vitno*" and amend the text thus: "...preserve this child to his adoptive father and mother, and let his name be called in Israel — the son of — *hamegadlo*. Let the adoptive father rejoice and the let the adoptive mother be glad..."⁶⁶

At the *Pidyon Haben*

There are two alternatives in the redemption of a first-born son: First and foremost the father is obligated to redeem his son from the Kohen. Secondly, if the father fails to abide by this commandment, then the boy, when he grows into maturity, redeems himself from the Kohen.⁶⁷

In the case of an adopted Jewish child the question begs itself as to whether the adoptive father could perform this redemption. Rabbi Moshe Isserles (Ramo)⁶⁸ maintains that, unlike circumcision, no one can act as an agent of the natural father, nor does the Beth Din redeem him without his father. Rabbi Sabbattai Cohen (Shach)⁶⁹ differs, maintaining that the principle of agency is applicable to this mitzva as well. Some scholars differentiate between an agent directly ordered by the natural father to represent him at the *Pidyon Haben*, which is valid, and when no such demand was made by the natural father and the adoptive father

65. הרב פינדלינג שם בנועם ע"י פח

66. קיים את הילד הזה להמגדלים אותו, ויקרא שמו בישראל פלוני בן פלוני המגדלו. ישמח האב המגדלו ותגל אמו המגדלתו...

67. יו"ד סי' שה סעיפים א וטו

68. יו"ד שם סעיף י

69. ש"ך שם ס"ק יא

wishes to act in his behalf voluntarily, which is not valid. Still others claim that one can voluntarily act in behalf of the natural father as his agent, only that he is not obligated to do so unless he so chooses.⁷⁰ The British Beth Din expressed a novel thought on this subject:⁷¹

With regard to an adoption case... it could be argued that the adoptive father is able to redeem his adopted son because he is his legal guardian. Proof for this can be adduced from Mamonides [משנה תורה הלכות יא:י נחלות] who states that all affirmative commandments may be performed by the legal guardian on behalf of the child. In this respect, an adoptive father who accepts the responsibility for educating and rearing the child is a legal guardian [מלמד להועיל, יורה דעה, צו, צח]. Rabbi D. Hoffman mentions the case of a Jewish woman who gave birth to a first-born son where the father was non-Jewish. He decides that the Jewish legal guardian may redeem the child without reciting the benediction. [אגרות שרידי אש II, צו] Rabbi Weinberg [יורה דעה, יו"ד קצח] considers the case of a Jewish unmarried mother who gives birth to a child and raises doubts as to whether it is the duty of the Beth Din to redeem the child. He quotes authorities who give varying views on this point. [בנין ציון, קד, קה, מנחת אליעזר IV, כד].

It is recommended that the redemption should take place without the usual benediction being recited. Where, however, the Beth Din definitely established that the adopted child is a first-born, without the doubts referred to above, then the adoptive father may recite the usual benediction and should conclude with the words על פדיון הבן instead of על פדיון הבכור.

Because of these different opinions it would be advisable to have the adoptive father perform the *Pidyon Haben* without the recitation of the benedictions — since the validity of any mitzva is

70. צרה לדרך והג' צבי לצדיק ביו"ד שם

71. *Responsum on Problems of Adoption in Jewish Law*, pp. 25,26.

not affected by the omission of the *brocha*. When the boy grows up, he should redeem himself again, lest the original redemption was not valid on account of the natural father's not ordering anyone to represent him. Obviously, the benediction should again be omitted lest the first redemption was valid. (However, the opinion of the author of the *Aruch Hashulchan*⁷² coincides with the *Shach*, to have the *Pidyon Haben* with the benedictions take place on the thirty-first day, and "this seems to be the prevalent custom.")

Parenthetically, in case the natural father of the child dies before the thirty-first day when the ceremony of *Pidyon Haben* is due, there is ample reason to doubt the above procedure of two redemptions. According to the *Taz*,⁷³ no one can act as the agent of the infant because the concept of agency is inapplicable to minors.⁷⁴ Therefore, he must wait until he matures and redeem himself. While the *Shach*⁷⁵ offers a method to circumvent the problem of agency, a host of scholars agree with the *Taz*, including the *Chazon Ish*.⁷⁶ In such a case, some tangible sign should be made to serve as a reminder to the child to redeem himself when he grows up. In *Shulchan Aruch*⁷⁷ it is suggested to have a silver amulet suspended from his neck to serve as a reminder. If this is impractical, some other method should be undertaken to assure that the child will be aware of the obligation of *Pidyon*.

At Bar Mitzva

Rabbi Elazar's opinion is quoted in the *Midrash*⁷⁸ to the effect that until the son attains the age of thirteen, the father must busy himself with guiding him in the right direction. Henceforth, the father proclaims: "Blessed be He Who Hath freed me from the responsibility for this (child)."⁷⁹

72. סימן שח סעיף יד

73. שם ס"ק יא

74. אין שליחות לקטן היכי שיש קצת חוב כבנידון דידן שיקיים המצוה בגופו כשיגדיל

75. נקודות הכסף שם

76. בהוצאה חדשה חאבה"ע דף רפה ע"ב

77. סימן שח סעיף טו

78. בראשית רבה סג יד

79. ברוך שפטרני מענשו של זה

Ramo quotes the custom of having the father of a bar mitzva recite this benediction, usually at the time the son is called up to the Torah.⁸⁰ Since this benediction is not mentioned in the Talmud, the name of G-d and His all-pervasive Kingdom⁸¹ are omitted.⁸² According to Rabbi Mordecai Jaffe the meaning of the benediction is the exact opposite of the above explanation. It is the bar-mitzva boy who recites this benediction, because according to an Aggadic statement minor children die on account of their parents' sins.⁸³ Once he reaches bar-mitzva, he is relieved of this responsibility.⁸⁴

Whether this benediction should be recited when the adopted son reaches his bar-mitzva depends upon these two opinions. Assuming the adoptive father has accepted all responsibility for his minor adopted son's misbehavior and that he adopted him on this condition, he could very well recite it when the "son" reaches his bar mitzva. If, however, the adopted son is to recite it, then certainly there is no place for him to say it, because he was never held responsible for his adoptive parents' misdeeds.

As long as the name of G-d and His Kingdom is omitted, there is no reason for a possible violation of a wrong benediction and the adoptive father could recite it without hesitation.

Mutual obligations and rights

Whether or not the acquisitions of the adopted child, either by sheer luck (found treasures) or by the dint of labor (earnings), rightfully belong to the adoptive parents is a matter of serious debate. From a strictly halachic view, raising someone else's child implies one-sided obligations from the adoptive parents to the child but not the other way around.⁸⁵ This is so because as a minor, the child cannot be subjected to responsibility and obligations. Yet, these mutual obligations are of supreme importance for the normal

80. א"ח רכב ב

81. השם אלוקינו מלך העולם

82. עין בערוך השלחן רכב ד. דנוטה לומר הברכה בשם ומלכות

83. ספרי דברים כד טז: איש בחטאו יומתו. גדולים מתים בעון עצמם; קטנים מתים בעון אבותם.

84. מגן אברהם שם ס"ק ח

85. אבה"ע קיד ב, ורמ"א בחו"מ סי' עב ס"ב

and psychological development of the child as an integrated member of the family unit. Consequently, we have to resort to another legal principle, namely, the Beth Din has a right to declare someone's possession ownerless,⁸⁶ because of which the adoptive parents may appropriate the child's earnings since they are considered ownerless.⁸⁷

Sitting in judgment or rendering testimony

Persons related to one another are disqualified from sitting in judgment or rendering testimony for one another.⁸⁸ The disqualification of a relative from rendering testimony is considered a biblical law not necessarily rational, because the testimony is rejected under all circumstances whether rendered in favor or disfavor of the relative. Furthermore, even relatives are not suspected to lie and distort the facts.⁸⁹ However, disqualifying a relative from sitting in judgment is quite rational. It is assumed that relationship subconsciously motivates the judge to interpret the law one-sidedly. It is for this reason that one should disqualify himself from acting as a judge in a case in which he may have a far-fetched interest in the outcome.⁹⁰

Insofar as adoptive parents and their adopted child are concerned, it stands to reason that neither may act as judge for the other, but may render testimony to establish the facts the way they occurred.⁹¹

Marrying an adopted brother or sister

Rav, the founder of the Sura Academy, was Rabbi Chiya's nephew from both sides of his family — both his father and his mother were the brother and sister of Rabbi Chiya. Rav's father was Rabbi Chiya's half-brother on his father's side; and Rav's mother was Rabbi Chiya's half-sister on her mother's side.⁹² To be

86. חו"מ ריש סי' ב הפקר ב"ד הפקר

87. שער עזיאל ח"ב דף קפד; הרב פינדלינג בנועם שם

88. חו"מ סי' ז סעיף ט, וסי' לג סעיפים ב"ט

89. חו"מ שם סעיף י

90. חו"מ ד"ו

91. הרב פינדלינג שם

92. סנהדרין ח סוף ע"א

more explicit, when Rabbi Chiya's parents married each other, they each had a son and a daughter, respectively, from previous marriages. Those two children were allowed to marry each other since they were not related at all.⁹³ They were later blessed with a son who turned out to be the famous Rav. Whether Rav's parents were raised in the same home after their parents married (for the second time) is not known. However, it is assumed that even when they are raised together there is no reason to fear that they would be considered brother and sister.⁹⁴

Is an adopted son allowed to marry the natural daughter of his adoptive parents? From a strict biblical viewpoint it is permissible, as is evident from Rav's parents. This seems to be the opinion of the celebrated Rabbi Moshe Sofer,⁹⁵ "the Hungarian Groh."⁹⁶ The reason he gives is that the two step-children, parents of Rav, were known not to be natural brother and sister. However, on this basis we should not allow the adopted son, who bears the family name of his adoptive parents and is always identified with them, to marry their natural daughter because it is generally not known that they are not natural brother and sister. Furthermore, according to Rabbi Yehuda Hachosid, even two step-children should not marry each other for fear of being identified as brother and sister, the story of Rav's parents notwithstanding.⁹⁷ As a matter of fact there is even a Tannaitic opinion to this effect.⁹⁸ Consequently, an adopted son should not marry his adoptive parents' natural daughter.⁹⁹

* * *

An additional consideration is the treatment of adopted children by their parents and teachers. Reb Herschel Schachter points to the fact that an adopted child, forsaken by his natural

93. עיין אה"ע טו יא

94. עיין שו"ע שם

95. שו"ת חת"ס אה"ע ח"ב סי' קכה

96. כידוע מה שהגרי"א ה"י לבני ישראל מליטא ה"י החת"ס לבני ישראל מארץ הגר

97. צוואת רבי יהודה החסיד אות כט

98. ראב"י בסוטה מג סוף ע"ב

99. ככה דעת הרב יצחק ווייס בהערותיו לספר ליקוטי מאיר של הרב מאיר הלוי שטיינבערג. אמנם לדעת הרב משה פינדלינג בנועם ח"ד עמ' צ יש לב"ד לפרסם הדבר שאינם אח ואחות כדי לבטל המראית עין שבוה.

parents or orphaned by them, is usually more sensitive than children under normal conditions. There is a special biblical command not to vex a widow or an orphan¹⁰⁰ or anyone who feels inferior to others and is therefore very sensitive to the slightest derogatory remark. "One must be careful with orphans and widows because their souls are downcast and their spirits low, even if they be wealthy...one must speak to them kindly and respect them...He, by Whose Words the World was called into existence made a covenant with them, their prayers will be answered. For it is said:... 'If he cries unto Me, I shall hearken unto his cry.'¹⁰¹

"All this applies to a case where he afflicts them for his own advantage, but when he afflicts them for the purpose of teaching them the Torah or a trade, or to lead them upon the right path, it is permitted. Nevertheless, one must...lead them with kindness, great mercy and with respect as it is said: 'The L-d will plead their cause'..."¹⁰²

Reb Herschel concludes: "When parents or teacher scold an adopted child or stepchild for purposes of *chinuch*, they must be very careful not to be harsh with them as they would naturally be with other children."¹⁰³

100. שמות כב כא

101. שם כב

102. רמב"ם הל' דעות פ"ו ה"י

103. *Chavrusa*, Nissan 5742.