

As against the "liberalism" of the preceding article, Rabbi J. David Bleich rejects some of the ingenious solutions proposed by leading rabbis to mitigate a conflict between religious law and modern values. Understandably, controversies involving questions of Jewish identity are not only of crucial Halakhic significance but are also highly charged emotionally. Rabbi Bleich is Rabbi of Congregation Bnai Yehuda in New York City, is Rosh Yeshivah at Yeshiva University and teaches philosophy at Stern College for Women. His widely acclaimed regular contribution to these pages, "Survey of Recent Halakhic Periodical Literature" will be resumed in our next issue.

## THE CONVERSION CRISIS: A HALAKHIC ANALYSIS

*"I am the one who drew Yitro nigh and did not repulse him. You, also, when a person comes to you to be converted AND COMES SOLELY FOR THE SAKE OF HEAVEN draw him nigh and do not repulse him."*

YALKUT SHIM'ONI, YITRO, 268

The Jew today, no less than in the past, is the heir to an unbroken chain of tradition. Survival of the Jew is directly dependent upon preservation of the divinely sanctified identity of the community of Israel. The sanctity of Israel is a concomitant of Israel's acceptance of the Torah on Mount Sinai, a Torah which is an inseparable whole comprised of both Holy Writ and the Oral Law. Thus, for Judaism itself, the question "Who is a Jew?" can have but one answer: A Jew is one whom Halakhah defines as a Jew.

Jews, jealous of their identity, have always heroically resisted any and all attempts to compromise their ethnic purity. As the

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Midrash queries, "Why did Jeremiah compare Israel to the olive? All liquids intermingle with one another; oil is immiscible, and remains apart. Similarly, Israel cannot be assimilated among the nations of the world."<sup>1</sup> Our survival as a people may undoubtedly be credited to our tenacity in preserving inviolate the identity of the Jew.

Yet the peoplehood of Israel is not founded upon racist attitudes nor has Judaism suffered from the maladies of xenophobia. Jewish identity has always been a matter of membership in a specific and unique faith - community. As such Judaism has always welcomed all individuals seeking to embrace the tenets of the Torah. Indeed, the *ger zedek* (righteous proselyte) is extolled in Rabbinic literature and depicted as being the recipient of an extraordinary degree of Divine favor. The *ger zedek* is regarded with awe and wonder. Whereas the Jews who experienced the giving of the Torah at Mount Sinai were so overwhelmed by the difficulties attendant upon the observance of the commandments that they had to be coerced in order to secure their acceptance of the precepts of the Torah, the proselyte voluntarily accepts this discipline. "Had they not witnessed the sounds and the flames, the thunder and the voice of the *shofrot* they would not have accepted the yoke of the kingdom of heaven. Yet this [convert] did not witness a single one of these and joins himself to the Lord and accepts the yoke of the kingdom of heaven. Can there be anyone more beloved!"<sup>2</sup> The delight which God takes in such converts is reflected in the explicit halakhic obligation making it incumbent upon the rabbinical courts to accept sincere and committed candidates for proselytization.

However, in the demands which it makes upon the proselyte Judaism is uncompromising, Judaism is not merely a faith - community; its adherents are bound by a rigorous and demanding code of law governing every aspect of life. Commitment must be total. To be accepted as a member of the community of Israel the convert must not only subscribe to the beliefs of Judaism but must willingly agree to observe its precepts. Should the candidate refuse to accept any detail of this code, his conversion is *ipso facto* invalid.

In this Judaism is unyielding. The basic conditions of genuine

conversion are clearly enunciated in Halakhah. As the guardians of a Divine mandate Jews must perforce refuse to recognize any conversion not performed in accordance with the norms of Halakhah. This stark reality cannot be altered by the fiat of any civil judicial body. Nor for that matter is any rabbinic court or other ecclesiastic body empowered to overlook the *sina qua non* of Jewish identity.

Present circumstances have added a new dimension to the "Who is a Jew?" problem. The high incidence of intermarriage both in Israel and the Diaspora has generated an unprecedented number of applications for conversion. Given the exigencies of the contemporary situation conversion may well be the solution to myriad personal, social and religious problems. On the other hand, improper procedure may not only reduce the conversion ritual to a meaningless charade but may also pose a threat to the very identity of the Jewish people.

The responsa literature of the modern period is replete with questions concerning the circumstances under which conversion is permissible and proper. These discussions are clearly germane to any attempt to find a resolution to the current conversion dilemma. The questions posed with regard to problematic contemporary conversions are threefold in nature: (1) Is it permissible for rabbinical courts to accept prospective candidates for conversion when it appears that application is made, not out of religious conviction, but as a matter of convenience, e.g., to facilitate marriage with a Jewish partner? (2) Is a conversion of convenience, i.e., one undertaken for marriage or other ulterior motive in which the petitioner obviously has no intention of abiding by the precepts of Judaism, a valid one? (3) Granting the validity and propriety of the conversion itself, is it permissible for the convert to enter into marriage with a Jewish spouse with whom the convert has consorted prior to conversion?

## I

The Gemara (*Yevamot* 24b) cites the opinion of R. Nechemiah who maintained that any conversion based upon ulterior motivation is null and void. In addition to conversion for pur-

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poses of marriage, R. Nechemiah specifically refers to the recorded historical episodes of the conversion of the Samaritans predicated upon fear of lions,<sup>3</sup> conversion by servants of King Solomon in anticipation of being appointed to high office in the royal court, and the mass conversions which are recorded in the Book of Esther<sup>4</sup> as instances of invalid conversion. The Gemara rejects the opinion of R. Nechemiah as applied to conversions which are already a *fait accompli*.<sup>5</sup> Once performed, such conversions are valid regardless of motivation. Nevertheless, Jewish law is unequivocal in stating that before the fact such candidates are not to be accepted. The *Bet Din* is constrained to reject applicants prompted by motives other than sincere religious conviction. Thus, *Hagahot Mordekhai*, *Yevamot*, sec. 110, writes that if it is known that the applicants are motivated by desire of personal benefit "they are not be accepted." Moreover, the Gemara flatly declares that proselytes will not be accepted in the days of the Messiah and in fact, were not accepted during the reigns of David and Solomon. The reason for blanket rejection of would-be converts during these historical epochs is that in periods during which the Jewish commonwealth is blessed with economic prosperity and prestigious social status there is ample room for suspicion that prospective proselytes are not prompted by reasons of sincere religious conviction.

Rambam,<sup>6</sup> in his codification of these regulations, is even more explicit:

Let it not enter your mind that Samson, the deliverer of Israel, or Solomon, king of Israel, who was called "beloved of God," married foreign women while they were yet gentiles, but rather the secret of the matter is as follows: The proper performance of the precept is that when a male or female proselyte comes to be converted, he is to be investigated<sup>7</sup> perchance he seeks to enter the [Jewish] religion in order to acquire money or in order to achieve a position of authority or because of fear. In the case of a man, he is to be investigated perchance he has set his eyes upon a Jewish woman; in the case of a woman, [she] is to be investigated perchance she set her eyes upon one of the youths of Israel. If no motive is found in them, the heavy weight of the yoke of the Torah is to be made known to them and the burden which there is for gentiles in its observance. Therefore, the *Bet Din* did not accept proselytes throughout the days of David and

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Solomon. In the days of David, lest they rejected [idol worship] because of fear and in the days of Solomon, lest they rejected [idol worship] because of the sovereignty, the prosperity and the greatness which Israel then enjoyed. For whosoever forsakes heathenism for the sake of some worldly vanity is not a righteous proselyte. Nevertheless, many proselytes were converted in the days of David and Solomon by ignorant persons and the Great Court accorded them doubtful status, not rejecting them . . . and not drawing them nigh until such time as their subsequent conduct could be observed.

It is quite evident that prospective converts are to be rejected even if proof positive of ulterior motive is lacking. The mere suspicion of impure motive is grounds for rejection of the applicant's candidacy; the burden of proof with regard to sincerity is upon the prospective convert.<sup>8</sup> Apparently, when it is obvious that material benefit or personal gain would accrue to the proselyte, protestations of religious conviction are unacceptable.

There is, however, one exception to this principle. The Gemara records several instances of converts who were accepted despite self-avowed ulterior motivation. In *Shabbat* 31a it is reported that Hillel accepted a proselyte who approached him with the declaration, "Convert me in order that you may appoint me High Priest." Similarly, *Menachot* 44a reports that R. Chiya accepted the candidacy of a woman who wished to convert in order to become the wife of one of his students. *Tosafot*, *Yevamot* 24b, resolves the apparent incongruity by postulating that Hillel and R. Chiya were certain that the respective candidates would ultimately accept Judaism "for the sake of heaven."<sup>9</sup> All authorities agree that an application for conversion may justifiably be entertained only if the *Bet Din* is satisfied that upon conversion the candidate will become a God-fearing Jew and will scrupulously observe the commandments of the Torah. It is clear that, according to Halakhah, certainty of future religious observance is a necessary condition for acceptance of a prospective convert.

In a letter written in response to a question submitted on behalf of the Sephardic community of Buenos Aires, Rabbi Meshullam Roth<sup>10</sup> declares that the candidacy of a prospective proselyte cannot under any circumstances be considered unless

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the candidate assures the *Bet Din* that he will observe the precepts of Judaism, particularly the laws of the Sabbath, family purity and the dietary code. If, in the opinion of the *Bet Din*, it is "virtually certain" that he will fulfill his pledge and the *Bet Din* feels that ultimately the conversion will be "for the sake of heaven," they may then perform the conversion ritual. Rabbi Roth notes, however, that the percentage of converts whose intention is for the "sake of heaven" is so minute that in actuality it "approaches zero."

Some authorities grant considerable leeway in determining sincerity of purpose. R. Shlomo Kluger<sup>11</sup> discusses the propriety of sanctioning the conversion of a young man who threatened to become an apostate if his non-Jewish mistress would not be accepted as a proselyte. Rabbi Kluger rules that under such circumstances the conversion cannot be considered as having been undertaken on account of marriage, since the couple will continue to live together as man and wife in any event. Hence, the conversion may be deemed to be "for the sake of heaven" and not "for the sake of man." A similar view was voiced by R. Eliezer Deutsch and by R. Yechiel Yaakov Weinberg.<sup>12</sup> This contention is also cited by R. Chaim Ozer Grodzinski,<sup>13</sup> and applied by him to the case of a couple who had undergone a civil ceremony and were living together as man and wife. This opinion is, however, by no means universally accepted. R. Meir Arak<sup>14</sup> rejects this view arguing that ulterior motivation is indeed present in that the husband may well wish to legitimize his marriage and not continue an illicit relationship. There is evidence that R. Chaim Ozer himself later reversed his position with regard to this matter and adopted a more stringent attitude. In a responsum dealing with a similar problem dated some twenty-two years later and published in Vol. III, no. 28, of the same work, *Teshuvot Achi'ezer*, R. Chaim Ozer regards conversion under similar circumstances as being undertaken for the sake of marriage and, hence, prohibits it. Even though the couple were not only living together as man and wife but had also sired children without having contracted a valid marriage, R. Chaim Ozer rules that the prospective proselyte was, even in this instance, motivated by reasons of marriage. The dim view expressed by these

authorities regarding the permissibility of conversion despite an already existent conjugal relationship merely echoes in greater detail the succinct but unequivocal decision of a much earlier authority, R. Yaakov Ettlinger.<sup>15</sup>

An argument frequently advanced in favor of the acceptance of converts, regardless of motivation, is that their rejection by an Orthodox *Bet Din* is often followed by acceptance into the Jewish faith by Reform or liberal clergymen. Conversions conducted under such auspices are clearly invalid. As a result individuals converted in this manner are inadvertently accepted by the Jewish community as *bona fide* Jews and are unlawfully permitted to contract marriages with other Jews. If the alleged convert is a female, children born to her are, of course, not Jewish; if a male, the children, while Jewish, are of tainted lineage. Rabbi Mendel Kirshbaum,<sup>16</sup> who served as Dayan in Frankfort, argues that in light of this consideration such candidates should be accepted for conversion. The Gemara (*Yevamot* 47a) states that a prospective proselyte is to be investigated with regard to his motives for conversion and is to be informed of selected *mitzvot* of both lesser and greater stringency and of the punishments incurred upon their transgression. "For what reason?" queries the Gemara. "So that if he changes his mind, let him change his mind." Rashi, in his commentary on this text adds, "For if he should change his mind [and decide] not to convert, let him change his mind *and it is of no concern to us*." Rabbi Kirshbaum contends that one may infer from this comment that if the conversion were to be of concern to Jewry no attempt at discouragement should be made. In instances in which considerations such as those previously stated are operative encouragement of conversion is indeed a matter of positive concern to us. Consequently, argues Rabbi Kirshbaum, under these circumstances the convert should be accepted, even if his decision to seek conversion is prompted by impure motives.<sup>17</sup> This contention was rejected by the late R. Yaakov Mordecai Breish of Zurich in a letter written to Rabbi Kirshbaum upon the publication of *Menachem Meshiv*.<sup>18</sup> Rabbi Breish states that the consideration raised is a specious one and that there need be no fear that the candidate will be erroneously

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accepted as a Jew. In the course of the usual investigation before any prospective marriage it should become clear that the conversion was performed by a Reform rabbi and hence is invalid. Furthermore, adds Rabbi Breish, it is forbidden for the members of the *Bet Din* to participate in a conversion for the sake of marriage and this prohibition devolves directly upon the rabbis involved. Accordingly, they are forbidden to commit this transgression even in order to prevent a more severe transgression on the part of others.<sup>19</sup>

## II

There is strong reason to question the validity of conversion, even as a *fait accompli*, when undertaken for purposes of marriage or, for that matter, in order to obtain benefits accruing to Jews granted Israeli citizenship under the Law of Return. As previously noted, the definitive rule of the Talmud is that conversions once performed are valid even if entered into for reasons other than religious conviction. In analyzing the rationale governing the validity of sincere conversions, the most obvious reason which presents itself is the Halakhic principal that mental reservations cannot invalidate an overt act — *devarim she-be-lev ainam devarim*. Hence, even if the act were to be mentally nullified, the conversion would be efficacious. Accordingly, the conversion cannot be invalidated by reservations or insincere motives which remain *in pectore*. However, a quite different line of reasoning explaining the validity of such conversion is presented by the Ritva and Nemukei Yosef in their commentaries on *Yevamot* 24b. These authorities state that all conversions stemming from ulterior motivation are not merely lacking in sincerity, but in a sense, are not undertaken in free will and embody an element of coercion. Nevertheless, conversion as a *fait accompli* is valid even under these circumstances because such coercion ultimately engenders a firm decision to accept the obligations attendant upon acceptance of Judaism. The candidate for conversion recognizes that his desired goal can be achieved only by making such a commitment and accordingly accepts the obligations incumbent upon a member of the Jewish



faith. Since Ritva and Nemukei Yosef are intent upon dissipating the notion that mental reservations exist in instances of insincere conversion we must infer that mental reservations, when and if they *are* present, would, according to these authorities, invalidate the conversion. The ramifications of this crucial issue are discussed by R. Isaac Shmelkes. In his *Bet Yitzchak*,<sup>20</sup> he explains that mental reservations do serve to invalidate conversion because, in his opinion, the general principle that mental negations are ineffective applies only with regard to matters affecting interpersonal relationships such as financial transactions and the like. Matters such as conversion are essentially ritual in nature and "the Lord desires the heart." Hence, it is the ultimate intention which prevails. The Talmud<sup>21</sup> states that a non-Jew who refuses to accept even a single commandment or a single Rabbinic ordinance, must be rejected, since such non-acceptance invalidates conversion. Accordingly, argues *Bet Yitzchak*, converts who have reservations with regard to the acceptance of the dietary laws and laws of family purity cannot be regarded as Jews even if they falsely declare that they are willing to fulfill all the precepts of Judaism. Rabbi Shmelkes declares that such conversions should not be performed not only because the conversions are themselves farcical in nature but also because they leave in their wake spurious proselytes who are commonly accepted as Jews. These invalid conversions subsequently lead to unions between Jews and individuals who are gentiles in the eyes of Halakhah.

R. Chaim Ozer Grodzenski<sup>22</sup> agrees that mental reservations with regard to performance of *mitzvot* nullify the efficacy of ritual conversion. He cites as evidence for this position the terminology of Rambam:

A convert who has not been investigated . . . who has been circumcised and has immersed himself in the presence of three ignorant persons is a proselyte, even if it be known that he has converted on account of some consideration . . . he is accorded doubtful status until his righteousness becomes clear.<sup>23</sup>

The "doubtful status" of a proselyte prompted by ulterior motivation, explains R. Chaim Ozer, arises from the fact that

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actual conversion is ultimately a matter of intent. If the candidate does indeed accept Judaism with all its ramifications he is deemed to be a Jew regardless of motivation; but if these considerations do not ultimately lead to a wholehearted acceptance the conversion is invalid. When no extraneous considerations are present there is no reason to doubt the validity of the conversion: when such considerations *are* present, the status of the proselyte remains in doubt until such time as his "righteousness is demonstrated," i.e. until such time as his general comportment testifies to ultimate acceptance of the norms of Jewish conduct.<sup>24</sup>

An explication of the concept of mental reservation in this context is formulated by R. Chaim Ozer<sup>25</sup> who notes a fundamental distinction between *acceptance* of precepts and *observance* of precepts. The stipulation that a prospective convert must accept all commandments of the Torah means simply that he must accept their binding force. Recognition by the candidate that he is lacking in moral stamina or the requisite willpower to withstand temptation does not invalidate a conversion. R. Chaim Ozer adds, however, that when it is evident that the prospective convert intends to desecrate the Sabbath and to partake of forbidden foods as a matter of course the conversion is invalid. Such an attitude on the part of the candidate is indicative of non-acceptance of these prohibitions in principle and hence nullifies the act of conversion.

R. Chaim Ozer's basic distinction between acceptance and observance of precepts is challenged by the one-time Chief Rabbi of Kovno, Rabbi Abraham Dov Ber Kahane. In his collected responsa, *D'var Avraham*,<sup>26</sup> Rabbi Kahane contends that acceptance of the "yoke of commandments" coupled with clear intention to transgress is a self-contradiction and cannot be termed "acceptance" at all.<sup>27</sup> While disagreeing with regard to what may constitute mental reservations both authorities concur that when mental reservations *are* present, the conversion is invalid.

The necessity for the convert's acceptance of the "yoke of mitzvot" as a *sine qua non* of his conversion raises certain difficulties in our generation. As noted earlier the rationale ad-

vanced by numerous authorities in defense of the *ex post facto* validity of insincere conversions is the consideration that in such instances there is ultimately a determined, albeit reluctant, acceptance of the obligations incurred through the acceptance of Judaism. In the absence of anticipated benefit a candidate lacking deep religious commitment might not wish to incur such responsibilities. Yet weighing the pros and cons of the situation determination to accept the tenets of Judaism is reached by the convert upon recognition that only by the acceptance of such obligations will the benefits attendant upon membership in the Jewish faith-community accrue to him. It is, in a sense, a bargain in which the desire for certain benefits forces acceptance of concomitant disadvantages. Rabbi Kahane argues that a changed social and religious climate no longer demands such a decision on the part of a convert. A convert lacking sincerity of motivation is forced to accept the obligations incumbent upon members of the Jewish faith only if he lives in a society which demands that he conform to the normative standards of Jewish life. In such a milieu the desired benefits can be obtained by the convert only by accepting the tenets of Judaism. Hence, the resolution to embrace Judaism, even if motivated by self-serving considerations, constitutes a valid acceptance. In contemporary society, however, pressure for religious conformity does not exist. Consequently, declares Rabbi Kahane, nowadays in cases where a deeply-rooted commitment of faith is not the moving factor there is no reason to assume that ulterior motivation mandates even a "coerced" acceptance.

Similar misgivings concerning the status of such conversions in our day are echoed in the relatively recent writings of numerous Halakhic authorities. Particularly forceful are the strictures expressed by the late Chief Rabbi of Israel, Rabbi Isaac ha-Levi Herzog. In a letter addressed to a Swiss rabbinic body he writes:

. . . even though the halakhic decision has been formulated that, after the fact, even those converting for ulterior purposes and not for the sake of heaven are converts, I have exceedingly strong reason [to assert] that in these times the law is not so. Since in former times virtually every Jew was forced to observe the commandments, otherwise he would have been disdained and despised as a renegade, this therefore strengthened the supposition that the gentile who comes to

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convert has, in truth, made a decision to observe the Sabbath, etc. . . . But in our day the situation has changed and it is [now] possible to be a leader in Israel while yet a desecrator of the Sabbath and one who partakes of *nevelah* and *terefah* in public, etc. Whereby does one arrive at the supposition that the gentile indeed decided, at least at the moment of conversion, to observe Judaism? Moreover, the vast majority and perhaps all converts of this genre do not commence to observe even the fundamentals of [the Jewish] faith . . .<sup>28</sup>

Rabbi Breish<sup>29</sup> voices a similar opinion and states emphatically that if it is evident that the proselyte will not adhere to the tenets of Judaism the conversion ceremony is in no way efficacious. He further adds that when conversion is preliminary to marriage to a spouse who is non-observant it may be assumed with virtual certainty that the convert will be no more scrupulous in observing the commandments of the Torah than the marriage partner who is a Jew by birth. R. Meir Arak (*Imrei Yosher*, I, no. 176), R. Menachem Panet (*Avnei Zedek*, no. 26) and R. Yitzchak Yaakov Weiss (*Minchat Yitzchak*, I, no. 122) concur with the previously discussed views of *Bet Yitzchak*, *Achi'ezer*, *Dvar Avraham*, Rabbi Breish and Rabbi Herzog. All these authorities are in agreement that when it is evident that the candidate will be non-observant the conversion is null and void despite the candidate's oral declaration of acceptance of the yoke of *mitzvot*.

It is interesting to note that R. Moses Feinstein, in a responsum dated Luban 5689 (1929), voices an identical opinion and adds:

I do not understand the reasoning of those rabbis who err with regard to this. Even according to their opinion, what benefit do they bring to the Jewish people in their acceptance of such converts? For it is certain that the Holy One blessed be He, and the Jewish people are not happy that such converts become intermingled with Israel. According to the Law, it is certain that such [a convert] is not a proselyte at all.<sup>30</sup>

In a later responsum,<sup>31</sup> written in the United States some twenty-one years later, the author, while himself rejecting their position, attempts to find a "slight justification for those rabbis who accept [such converts] in order that they not be considered inferior even to ignoramuses." Rabbi Feinstein cites the argument that

mental reservations cannot invalidate a performed act. In contradistinction to previously cited authorities Rabbi Feinstein accepts this argument in principle, agreeing that this canon (*devarim she-be-lev ainam devarim*) encompasses even ritual acts such as conversion. However, he declares that it is inapplicable to the case at hand. Although mental reservations in themselves cannot invalidate the oral acceptance of the yoke of *mitzvot*, nevertheless in the case of a convert who will definitely not observe the precepts of Judaism "we are witnesses" to the fact that the oral acceptance is not sincere. We are thus confronted by a phenomenon different in kind from mere mental reservation. Whereas a private mental reservation may not invalidate the conversion, common recognition that such reservations exist elevates such reservations to the status of a public act tantamount to an open declaration annulling the acceptance of commandments. Such a declaration would clearly invalidate the conversion.

Rabbi Feinstein also advances a second consideration in defense of the validity of such conversions. Unfortunately, nowadays non-observance on the part of many of our co-religionists is so widespread that the candidate for conversion may fail to appreciate what is implied by the acceptance of religious obligations. Thus, the convert may well believe that the normative fulfillment of a religious obligation is an elective act of piety and not required of every Jew. As indicated by the Gemara (*Shabbat* 68b) ignorance of even the most fundamental observance of Judaism does not invalidate conversion if on the basis of the candidate's limited knowledge, he or she has, in fact, accepted the tenets of Judaism.

### III

The vast majority of questionable conversions are performed in order to facilitate marriage with a Jewish spouse and quite often occur after a civil marriage has already taken place. However, such unions present a grave Halakhic problem. Even when the conversion itself is entered into with utmost sincerity and conviction it is questionable whether a converted Jewess may marry a Jew with whom she has consorted while still a gentile.

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The Mishnah<sup>32</sup> declares that one who is suspected of having cohabited with a gentile woman may not marry the woman in question subsequent to her conversion. The Mishnah adds, however, that if the marriage did take place the couple are not obliged to seek a divorce. Rashi explains that this prohibition was promulgated in order to safeguard the honor and reputation of the husband since marriage under such circumstances is likely to lend credence to rumors of previous immorality. On the basis of the explanation advanced by Rashi, some authorities<sup>33</sup> conclude that this prohibition does not encompass instances in which the couple have been living together publicly, since in such cases previous immoral conduct is an established verity.<sup>34</sup> Other authorities argue that there are more cogent grounds for banning such marriage if prior immoral conduct is a matter of public knowledge. Such arguments are predicated upon an alternate explanation of the considerations upon which the prohibition is based. Rashba<sup>35</sup> explains that the marriage of a converted Jewess to the man with whom she is suspected of having consorted prior to her conversion is forbidden lest aspersion be cast upon the sincerity of the conversion itself. If the couple are suspected of having lived together previously their marriage subsequent to conversion will lead to suspicion that the conversion itself was insincerely contrived merely for purposes of marriage. Quite obviously, according to this line of reasoning, the prohibition is more stringent if the relationship prior to conversion was a matter of public knowledge.<sup>36</sup> It is also evident that the *Tosefta* and the Palestinian Talmud both regard this prohibition as being operative even in cases of positively known prior cohabitation. Rambam regards transgression of the prohibition to be graver in nature in cases of known immorality than in cases of merely suspected cohabitation. Rambam rules that when it is known with certainty that the couple have cohabited before conversion the husband is obliged to divorce his wife, even though the Mishnah in discussing cases of merely suspected immorality rules that when the marriage is a *fait accompli* divorce is unnecessary. Rabbi Schmelkes and R. Chaim Ozer, in their previously cited responsa, both argue that there is no significant disagreement between Rashi and Rashba.

Marriage under the aforementioned circumstances is forbidden for a two-fold reason: it will reflect negatively upon the husband's moral reputation and will cast a cloud of suspicion over the validity of the conversion itself. It is the thesis of Rabbi Schmלקes and R. Chaim Ozer that Rashi, in stating the first of these considerations, does not dispute the rationale of Rashba who, in offering the latter, logically extends the prohibition to instances of known cohabitation. According to this analysis, Rashi presents his own explanation solely for the purpose of explaining a parallel prohibition recorded in the same Mishnah. The Mishnah declares that the same provisions regarding subsequent marriage apply with regard to one suspected of having cohabited with a female slave before her emancipation — an instance in which Rashba's consideration is not applicable since no formal commitment with regard to the acceptance of the precepts of the Torah is necessary on the part of an emancipated slave.<sup>37</sup>

Several authorities find reason to draw a sharp distinction between instances of known promiscuity and cases in which conversion has been preceded by a civil marriage. Rabbi Feinstein<sup>38</sup> asserts that even according to Rashba's interpretation the prohibition against marriage following conversion is not applicable in cases where a civil marriage has already taken place. Since the couple have already established a permanent conjugal relationship, argues Rabbi Feinstein, there can be no grounds for the suspicion that conversion was insincerely sought merely for the sake of marriage. It would seem, however, that the numerous authorities cited in an earlier section who maintain that the desire to legitimize the relationship and to contract a marriage which is valid in the eyes of Halakhah constitute an ulterior motive disqualifying the candidacy of a prospective proselyte would also deem marriage subsequent to conversion to be forbidden, according to Rashba, on these self-same grounds. R. Yosef Sha'ul Nathanson expressly forbids the marriage of a Jew and a prospective convert despite the fact that they had been married in a civil ceremony and had sired children. Such marriages are also forbidden by R. Ya'akov Ettlinger and by R. Meir Arak.<sup>39</sup>

Another argument sanctioning marriage once a civil ceremony

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has taken place is advanced by R. Meshullam Kutner.<sup>40</sup> Rabbi Kutner cites authorities who maintain that if a civil ceremony has already been performed the applicable Halakhah is the ruling of the Mishnah that the husband need not divorce his wife. These authorities declare that this provision is applicable not merely in cases of marriages which are Halakhically valid but encompasses all cases where a permanent conjugal relationship has been established. This ruling is also adopted by R. Benjamin Aryeh Weiss<sup>41</sup> and R. David Hoffmann;<sup>42</sup> it is, however, specifically rejected by Rabbi Weinberg.<sup>43</sup> Rabbi Hoffmann qualifies his position by stating that such permission cannot be granted if the rabbi was consulted prior to the civil ceremony and the candidate was rejected as being insincere in motivation. Rabbi Hoffmann further indicates that if, in practice, this lenient decision will lead to a higher incidence of intermarriage no such candidate should be accepted for conversion. In another responsum<sup>44</sup> Rabbi Hoffmann further circumscribes his ruling by stating that such candidates cannot be accepted unless they pledge "on their word of honor" to observe all the tenets of Judaism and specifically "the commandments concerning the Sabbath, *niddah* and forbidden foods."

There is yet another argument which may be advanced in favor of countenancing such marriages. In the vast majority of such cases the couple will continue living together as man and wife whether or not conversion and subsequent marriage will receive ecclesiastic sanction. R. Chaim of Zanz<sup>45</sup> raises the question of whether conversion should not be permitted and the marriage tolerated in order to spare the husband from the graver prohibition against consorting publicly with a non-Jewess. The latter transgression is clearly Biblical in nature, whereas the prohibition against marriage in this instance is of rabbinic origin. Some authorities argue that in such cases marriage following conversion should be sanctioned as constituting the lesser of two evils. R. Menachem Panet<sup>46</sup> permits such marriages following conversion when it is evident that the couple will, in any event, continue to live together as man and wife.

Employing a similar argument R. Shlomo Kluger ruled that



the marriage may take place in the previously noted case of a young man who threatened apostacy if not permitted to marry his gentile mistress. *Achi'ezer*<sup>47</sup> cites a responsum of Rambam<sup>48</sup> in which the author sanctioned the emancipation of a slave and her subsequent marriage to a young man who was suspected of having had illicit relations with her on the grounds that, although objectively speaking this course of action is not permissible, it constitutes the lesser of two evils. The marriage is an infraction of lesser severity than continued illicit relations with a slave. *Achi'ezer* notes, however, that applied to the case at hand this argument is specious if, as is often the case, the couple have no intention of observing the laws of family purity. Apart from violation of the ban against subsequent marriage, valid conversion will cause a Biblical prohibition of *niddah* to devolve upon each act of cohabitation — a prohibition which does not extend to cohabitation with a non-Jewess.<sup>49</sup> Consequently, the marriage in such cases does not constitute the lesser of two evils but, on the contrary, leads to transgressions of enhanced severity.

Furthermore, argues *Achi'ezer*, the prohibition against accepting insincere converts devolves upon the individual members of the *Bet Din*.<sup>50</sup> Hence, if the conversion is indeed undertaken for ulterior motives, the members of the *Bet Din* are not permitted to commit a lesser infraction in order to spare another individual a graver transgression.<sup>51</sup>

Whatever the final adjudication of the Halakhah with regard to this complex question may be, in any particular case it can be seen that the permissibility of marriage under such circumstances constitutes a matter requiring careful Halakhic deliberation.

#### IV

The conversion problem has recently become a topical issue of major moment and has received a considerable measure of attention in both the general and Jewish press. As the prayerfully awaited Russian immigration turns from a trickle into a steady stream the question assumes new proportions since many of these

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new immigrants are accompanied by gentile spouses. These courageous new arrivals have endured untold hardships and manifested heroic self-sacrifice in effecting their exit from the Soviet Union. It is certainly fitting that every attempt be made to speed and ease their acculturation to life in Israel. When appropriate and Halakhically valid, the Israeli Chief Rabbinate has been most sympathetic in expediting the conversion process. Of late there has been an added attempt to ease procedural forms without prejudicing fundamental principles. In weighing the merits of such cases proper cognizance must be taken of all ramifications of the issue, of the practical problems it poses, and of the unique predicament of the Russian immigrants. However, in the last analysis, the question is purely one of Halakhic determination and certainly is not an area in which political pressure may be brought to bear.

Precisely such pressure raised the atmosphere in Israel to a fever pitch in the unfolding of events surrounding the celebrated Seidman case. At the time controversy raged with regard to the actions of Rabbi Shlomo Goren, Chief Chaplain of the Israeli armed forces. A feature article appearing in the weekend supplement of *Ha-Tzofeh*, 15 Sivan 5730, purports to give the rationale governing Rabbi Goren's actions in this case. It is reported that Rabbi Goren is of the belief that in Israel prospective proselytes are to be viewed differently from the way in which they are regarded in the Diaspora. "Beloved is the Land of Israel for it is receptive to converts," declares *Mesekhta Gerim* 4:3, in a tone remarkably different from that of the oft-quoted dictum of R. Chelbo, "Proselytes are as difficult for Israel as leprosy."<sup>52</sup> Noting that R. Chelbo's aphorism is not incorporated in the Palestinian Talmud, Rabbi Goren asserts that proselytization was frowned upon by the Sages in the Diaspora but welcomed in Israel. It is reported that Rabbi Goren, going a step further, asserts that in Israel sincerity of motivation may be dispensed with as a prior requirement for conversion. In the Diaspora converts motivated by reasons other than religious conviction cannot be accepted since doubts remain with regard to their future comportment; in Israel, where conversion entails not merely religious affiliation but national identification as well,

such fears do not exist, contends Rabbi Goren. Hence, in his opinion, even converts prompted by self-serving motives may be accepted in Israel. This, Rabbi Goren argues, is the meaning of the declaration asserting that the Land of Israel is conducive to converts. Such converts, he maintains, automatically fall into the category of those of whom it may be confidently assumed that despite the absence of proper intent at the time of conversion nevertheless "their end will be for the sake of heaven."

Rabbi Goren's action in the Seidman case evoked disapprobation on the part of numerous rabbinic authorities who argued that his conclusions go far beyond what may be rigorously demonstrated on the basis of his sources. In fairness no detailed analysis of his argument can be undertaken until a published responsum penned by his own hand is available; journalistic accounts are most assuredly not a reliable basis for Halakhic evaluations.

One further point is worthy of note. One of the arguments militating against the conversion of Helen Seidman was the fact that Mrs. Seidman was a resident of an irreligious kibbutz in which dietary laws were flagrantly violated. Accordingly, there appeared to be reason to doubt the sincerity of her acceptance of *mitzvot*. The report in *Ha-Tzofeh* states explicitly that her candidacy was accepted by Rabbi Goren only on the basis of the fact that she was a vegetarian.<sup>53</sup> It would thus appear that there is nothing in Rabbi Goren's line of reasoning which condones acceptance of a proselyte who, we have reason to believe, does not intend to observe the precepts of Judaism.

In an article which appears in the current issue of *No'am* (5731), a similarly permissive stance is adopted by Rabbi I. Y. Unterman with regard to the spouses of Russian emigrés. Rabbi Unterman strongly emphasizes that throughout the period of his rabbinate in England he remained adamantly opposed to the acceptance of converts motivated by the desire for marriage to Jewish partners. While not altering his general position in this regard, Rabbi Unterman contends that the specific situation with regard to Russian immigrants to Israel is different on several counts. In the first place, the change in social and cultural climate in the wake of immigration to Israel engenders a commit-

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ment to Judaism which is absent in insincere converts in the Diaspora. Presumably Rabbi Unterman means that although conversions of this genre lack sincerity of motivation, such converts will ultimately accept the tenets of Judaism wholeheartedly and hence fall under the category of those whose conversion may be deemed to have been undertaken "for the sake of heaven." The counterargument which has been advanced against this position is that nationalistic identification should not be confused with religious commitment; willingness to share the destiny of Israel is not necessarily the same as an ultimate leap of faith in the God of Israel and commitment to His Torah. Secondly, argues Rabbi Unterman, rejection of such applicants may cause "a spiritual danger to hover over the entire family." The danger that the Jewish members of such families may be lost to Judaism, in Rabbi Unterman's opinion, creates a situation in which the regulations against accepting insincere converts may be suspended.<sup>54</sup>

While it is an axiomatic principle of Halakhah that each case in which a question arises must be decided in light of its own particular ramifications certain general principles emerge with striking clarity from the preceding discussion. It must be emphasized that a positive obligation exists with regard to candidates for conversion whose motivation is sincere. Such converts have always met with warm acceptance. However, conversions of convenience are not sanctioned by Halakhah and cannot be countenanced as a panacea designed to minimize the exacerbating problems posed by intermarriage. The situation with regard to converts who have no intention of observing the precepts of Judaism is even graver. The preponderance of halakhic opinion ranging from Reb Chaim Ozer to the late Chief Rabbi Herzog is that such conversions are null and void. It follows, of course, that the children of spurious female converts can also not be recognized as Jews in the eyes of Halakhah. The serious questions arising from such conversions should prompt a cautious attitude on the part of those whose duty it is to deal with these problems on a day-to-day basis, for it is they who are charged with safeguarding and preserving the identity of the Jewish people.

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The halakhic strictures surrounding the acceptance of converts are but a reflection of the awesome burden and responsibility which accompanies membership in the community of Israel. One who lightheartedly seeks to join this community has no place in its ranks. "Israel," says the Almighty, "in you shall I glorify Myself." Such election is to be borne seriously and wholeheartedly or not at all. Only he who comes for no motive other than "the sake of heaven" may be permitted to become part of the Jewish people, affirming his solidarity not only with their past history and present fate but also with the totality of their faith, their traditions and their practices.

### NOTES

1. *Shemot Rabbah* Tezaveh 36.
2. *Tanchuma, Lekh Lekha*.
3. II Kings 17:25-41.
4. Esther 8:17.
5. According to the interpretation of one authority, *Hagahot Mordekhai, Yevamot*, sec. 110, R. Nechemiah's view is not rejected but interpreted as having been expressed with regard to cases in which personal benefit is the sole motivating factor. According to this analysis R. Nechemiah accepts the validity of conversions which are motivated by a combination of ulterior considerations and "the sake of heaven."
6. *Mishneh Torah, Hilkhhot Issurei Bi'ah* 13:14-15.
7. R. Isaac Schmelkes, *Teshuvot Bet Yitzchak, Yoreh De'ah*, II, no. 100, notes that Rambam carefully chooses the term "*bodkin acharav*" which connotes a careful investigation of the case, rather than the less inclusive "*bodkin oto*" which would indicate merely "examination" or interrogation of the applicant. The implication is that the *Bet Din* must make a full investigation of the facts and not rely upon the declaration of the candidate.
8. *Vide* R. Chaim Ozer Grodzinski, *Teshuvot Achi'ezer*, III, no. 26, sec. 2-3.
9. This interpretation is accepted and cited definitively by R. Joseph Karo in his commentary on the *Tur, Bet Yosef, Yoreh De'ah*, 268 and by *Shakh, Yoreh De'ah* 268:23. This leniency is, however, disputed by R. Ya'akov Ettlinger, *Binyan Zion*, no. 149.
10. *Kol Mevasser*, II, no. 8.
11. *Tuv Ta'am va-Da'at* I, no. 130. R. Shlomo Kluger, in a wider reaching statement, advances the opinion that in the event that the couple have cohabited even once, passion has been reduced and hence the conversion should not be viewed as being "on account of man."

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12. *Pri ha-Sadeh*, II, no. 3, and *Seridei Esh*, III, no. 50.
  13. *Teshuvot Achi'ezer* III, no. 26. *Achi'ezer* indicates that possible ulterior motives must be determined by the *Bet Din* on the basis of individual circumstances. Fear of social ostracism or desire to share a common burial plot are also factors which, of course, must be weighed. *Vide Seridei Esh*, III, no. 50. Desire for immigration to Israel as a possible ulterior motive is discussed by R. Isaac ha-Levi Herzog. *Teshuvot Heikhal Yitzchak, Even ha'Ezer*, no. 21, sec. 2.
  14. *Imrei Yosher*, I, no. 176. R. Yitzchak Ya'akov Weiss, *Minchat Yitzchak*, III, no. 101, concurs with the opinion expressed by *Imrei Yosher*.
  15. *Binyan Zion*, no. 149.
  16. *Menachem Meshiv*, no. 42.
  17. R. David Hoffman, *Melamed le-Ho'il Even ha'Ezer*, no. 8, employs an identical line of reasoning in support of an even more radical contention. It is his opinion that in cases where the conversion is to the advantage of individuals other than the convert himself, the candidate may be accepted despite expressed reservations with regard to observance of a particular commandment. The case considered by Rabbi Hoffman concerned a gentile woman who had been living with a Jewish husband for a considerable period of time. Conversion would have obviated the prohibition of consorting with a non-Jewess and would have legitimized the progeny of the Jewish husband. Rabbi Hoffman, however, offers no supporting evidence for this innovative view.
  18. *Chelkat Ya'akov*, I, no. 13.
  19. Cf., *Achi'ezer*, III, no. 26, sec. 7 and below note 48.
  20. *Yoreh De'ah*, II, no. 100.
  21. *Berakhot* 30.
  22. *Achiezer*, III, no. 26, Sec. 2-3 and II, no. 28.
  23. *Mishneh Torah, Hilkhhot Issurei Bi'ah* 13:17.
  24. The concluding phrase of *Issurei Bi'ah* 13:15 "*ad sheyeirah acharitam*," lit. "until their end is known" is to be understood in the same vein. Accordingly, when quoted earlier it has been rendered, "until such time as their subsequent conduct could be observed."
- A similar analysis of Rambam's exposition is advanced by R. Menachem Panet, *Avnei Zedek*, no. 27. Quoting Rambam and Ritva in their commentaries to *Kiddushin* 75b, *Avnei Zedek* declares that one who converts other than "for the sake of heaven" is deemed to be a convert after the fact only if it is known that he observes the precepts of Judaism even in private. Only when it becomes ascertained that he is scrupulous in his observance is he considered with certainty to be a true proselyte; until such evidence is forthcoming his status is doubtful. The status of one who has no ulterior motive is never in doubt. Since there is no motivation for conversion other than sincere conviction he is immediately regarded as a true proselyte. *Avnei Zedek* employs this line of reasoning in offering a novel explanation of the underlying rationale governing the prohibition against marrying a convert with whom the prospective husband is suspected of having previously cohabited. The prohibition, asserts *Avnei*

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*Zedek*, is limited to a woman whose status is yet in doubt. A person of good character having knowledge of her private conduct may testify to her comportment as a pious Jewess and hence enter into marriage with the convert. One who has consorted with her, or who is suspected of having consorted with her while she was yet a gentile, is not deemed to be a reliable witness and hence may not marry her. He tentatively concludes that the prohibition is not operative if independent evidence of her personal piety is forthcoming. Cf., also R. Joseph Rosen, *Zofnat P'aneach*, *Issurei Bi'ah* 13:14, and R. Nathan Weidenfeld, *Teshuvot Chazon Nachum*, no. 90. A somewhat different analysis of Rambam's position is presented in *Heikhal Yitzchak*, *Even ha'Ezer*, I, no. 20, sec. 2. Rabbi Herzog, however, agrees that marriage cannot be permitted even though the convert appears to observe the commandments of the Torah "until we come to a recognition of proper inner conviction."

A radically different interpretation is advanced by Rabbi Unterman in the current issue of *No'am* (5731) in the course of an essay entitled "*Hilkhot Gerut ve-Derekh Bitzu'an*," pp. 1-9. Rabbi Unterman argues that conversions such as these are declared to be invalid by Rambam only if the convert subsequently reverts to the worship of foreign gods. In contradistinction to all authorities previously cited, Rabbi Unterman contends that subsequent failure to fulfill other halakhic obligations does not invalidate the conversion.

25. *Achi'ezer*, III, no. 26, sec. 4.

26. III, no. 28. This responsum also appeared in *Talpiot*, II (Sivan, 5705), no. 1-2.

27. *Achi'ezer* draws this distinction in order to resolve a fine point of halakhic reasoning. It may be contended that the candidacy of a woman who is known to have consorted with a Jew should be rejected out of hand if she intends to marry him following conversion. In view of the fact that such marriage is forbidden by Rabbinic edict, the prospective convert has, in effect, refused to accept one of the Rabbinic prohibitions, thereby disqualifying her candidacy for conversion. *Achi'ezer* dismisses this argument by drawing a distinction between categorical rejection of an injunction and recognition that one will sin. *Melamed le-Ho'il*, *Even ha'Ezer*, no. 8, raises the same question and resolves it on other grounds as indicated above. Since he recognizes the question as one which constitutes a serious conceptual problem and fails to advance the distinction formulated by *Achi'ezer* it may be deduced that Rabbi Hoffman's position is in agreement with that of *Dvar Avraham* in opposition to the views of *Achi'ezer*. Cf., R. Yehudah Leib Kagan "*Hilkhot Gerim*," *Ha-Pardes*, XX (Sivan, 5706), no. 3, 30-33, and XX (Tammuz, 5706), no. 4, 29-31.

28. This letter was published by Rabbi Breish in the latter's *Chelkat Ya'akov*, I, no. 14. Similar sentiments are also expressed by Rabbi Herzog in his *Heikhal Yitzchak*, *Even ha'Ezer*, I, no. 20, sec. 2 and no 21, sec. 3. Rabbi Herzog adds that if the candidate for conversion is a female the dangers are greater since an invalid conversion may cause grave ramifications with regard to subsequent marriage involving a Jewish partner and affect the genealogical purity of future generations.

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29. *Chelkat Ya'akov* I, no. 13.

30. *Igrot Mosheh Yoreh De'ah*, no. 157.

31. *Igrot Mosheh, Yoreh De'ah*, no. 160.

32. *Yevamot* 24b.

33. Cf., R. Joseph Colon, *Teshuvot Maharik*, no. 129 and R. Yosef Sha'ul Nathanson, *Sho'el u-Meshiv, Mahadurah Tinyanah*, III, no. 39 and *Binyan Zion*, no. 149.

34. Cf., R. Chaim of Zanz, *Teshuvot Divrei Chaim*, II, *Even ha-'Ezer*, no. 36, and *Achi'ezer*, III, no. 26. Both tentatively make this distinction but later state that cases of non-cohabitation are encompassed by Rashi's explanation. Their argument is that even according to Rashi subsequent marriage serves to intensify the scandal. *Achi'ezer* demonstrates this on the basis of the Tosefta which declares this prohibition to be binding with regard to an emancipated handmaiden even in cases where previous cohabitation is known with certainty to have occurred. Since, according to Rashi, no other rationale is applicable in the case of an emancipated female servant of whom no act of conversion is required (see below note 37). Rashi's intention must have been that when previous immorality is public knowledge subsequent marriage will enhance the scandal. R. Chaim Ozer suggests that in cases where the couple have undergone a civil ceremony there can be no further intensification of the scandal but subsequently rejects this line of reasoning since the Tosefta indicates that the prohibition remains effective even if the couple have sired children.

Another interpretation of Rashi's opinion according to which Rashi forbids conversion in cases of definite cohabitation is offered by *Sho'el U'Meshiv, Mahadurah Tinyanah*, III, no. 39. According to this analysis, Rashi accepts the reasoning advanced by Rashba, i.e. that subsequent marriage would give rise to a well-founded suspicion that the conversion was motivated by a desire to facilitate such marriage, but regards this rationale as being limited solely to cases in which prior cohabitation is known to have occurred. Since such conversions are prohibited only before the fact but are efficacious when actually performed, Rashi, according to this interpretation, feels that there are no grounds on which to forbid subsequent marriages so long as there is no proof of prior cohabitation. Hence in the case to which specific reference is made in the Mishnah, i.e. one who is merely suspected of having previously cohabited with the woman in question, Rashi advances another reason, i.e. intensification of the scandal. Only after rumor becomes publicly accepted as a known fact does the fear that the woman will be suspected of having converted solely for the sake of marriage become an operative consideration.

35. No. 1205 of his collected responsa. Rashba's explanation is a bit problematic. Although it is forbidden to accept insincere candidates, nevertheless, such conversions are deemed valid when they become a *fait accompli*. If so, why is it necessary to protect the woman from the charge of insincerity since in any event her status as a Jewess will not be effected thereby? In resolving this problem *Achi'ezer* cites the words of Rashba in demonstrating that validity of conversion is contingent upon an acquiescent mental state. Conversions mo-



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tivated by extraneous considerations are valid after the fact only if accompanied by an act of mental finality. If mental reservations exist the conversion is null and void. The ruling of the Mishnah regarding marriage is designed to eliminate the suspicion that such a mental state did not in fact exist which in turn would cast doubt upon the status of the convert as a true Jewess.

36. In his previously cited responsum, sec. 4, R. Chaim Ozer speculates that conversion with the intention to marry under forbidden circumstances may in itself invalidate such conversion since such intention constitutes non-acceptance of a Rabbinic prohibition. Such reservation in and of itself is sufficient to nullify any conversion. (Cf., however, *Heikkhal Yitzchak, Even ha'Ezer*, I, no. 19, sec. 2, who questions whether non-acceptance of a Rabbinic ordinance affects the Biblical validity of the conversion. The matter is left unresolved by Rabbi Herzog who fails to note that *Achi'ezer* unequivocally asserts that such reservation nullifies the conversion. *Achi'ezer* maintains that such reservation is tantamount to non-acceptance of the Biblical injunction to heed the pronouncements of the Sages.) *Achi'ezer* notes, however, that the language of the Mishnah indicates that the prohibition regarding such a union devolves upon the husband rather than the wife. Hence the wife's violation is in the nature of "thou shalt not place a stumbling block before a blind person." Accordingly, R. Chaim Ozer concludes that "perhaps" since the husband is not obligated to divorce her once the marriage is a *fait accompli*, the prohibition before the fact does not constitute a "stumbling block" and thus the woman has not declined to accept any obligation incumbent upon her.

R. Shlomo Kluger, *Tuv Ta'am va-Da'at*, I, no. 130, asserts that marriage is forbidden even if previous cohabitation is a certainty arguing that the prohibition would be farcical if it were applicable only to one who had not sinned, but was inapplicable in the case of an actual transgression — the transgressor cannot be permitted to gain by virtue of his transgression.

37. Both authorities note that Rashba is not concerned with providing an explanation for the prohibition with regard to an emancipated handmaiden because he adopts the position of *Tosafot, Yevamot* 48a, to the effect that a slave cannot be forced to accept Judaism upon becoming the chattel of a Jew; hence if the slave has not previously done so he must accept the commandment of Judaism upon emancipation. Thus all considerations regarding voluntary acceptance of religious obligations are identical to those of ordinary converts. Rashi, on the other hand, is faced with a difficulty because of his disagreement with *Tosafot* in maintaining that obligation to fulfill precepts on the part of a slave is not contingent upon voluntary acceptance of the obligations of Judaism and hence no final acceptance of the "yoke of commandments" is ever required at the time of emancipation. Questions of sincerity are thus completely obviated.

For a different resolution of this difficulty with regard to Rashba's position see *Teshuvot R. Akiva Eger*, no. 121. Cf., also R. Yehudah Leib Graubart, *Chavalim Bane'imim*, III, no. 72 and R. Mordecai Winkler, *Levushei Mordekhai, Even ha'Ezer*, no. 42.

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38. *Igrot Mosheh, Even ha-'Ezer*, no. 27.
39. *Sho'el u-Meshiv, Mahadurah Tinyanah*, III, no. 39; *Binyan Zion*, no. 149; *Imrei Yosher*, I, no. 176.
40. *U'ke-Torah Ya'asu*.
41. *Even Yekara, Even ha-'Ezer*, no. 11.
42. *Melamed le-Ho'il, Even ha-'Ezer*, no. 10.
43. *Seridei Esh*, III, no. 50.
44. *Melamed le-Ho'il, Yoreh De'ah*, no. 85.
45. *Teshuvot Divrei Chaim*, II, *Even ha-'Ezer*, no. 36.
46. *Avnei Zedek*, no. 27.

*Heikhal Yitzchak, Even ha-'Ezer*, I, no. 20, sanctions the conversion of a gentile woman who has already entered into a permanent relationship with a Jewish male on similar grounds, but only when it is known that the convert will observe the commandments of the Torah. A similar position is adopted by *Chavalim Bane'imim*, III, no. 72.

47. *Achi'ezer*, III, no. 72.

48. *P'er ha-Dor*, no. 132.

49. The Biblical prohibition of *niddah* applies only to a Jewess. However, the Hasmonean *Bet Din* issued a Rabbinic decree extending the *niddah* prohibition to a non-Jewess as well; *vide 'Avodah Zarah*, 36b. According to Rabbam, *Mishneh Torah, Issurei Bi'ah* 12:2, this decree applies only in cases of a permanent relationship comparable to a common law marriage. The Biblical prohibition of *niddah* encompasses relations between a Jewess and a gentile male according to all authorities with the (possible) exception of Rabbenu Tam, *Sanhedrin* 74b. Cf., *Heikhal Yitzchak, Even ha-'Ezer*, I, no. 20, sec. 2.

50. *Chelkat Ya'akov*, I, no. 13, assumes an identical position with regard to both points. Rabbi Breish adds that encouragement of conversion and subsequent marriage constitutes a disservice to the gentile consort. So long as the prospective convert remains a non-Jewess she commits no transgression in living with her Jewish consort — the transgression of cohabiting with a non-Jewess applies solely to the Jewish partner. However, after conversion, the *niddah* prohibition applies to both equally.

51. It is evident that R. David Hoffman, *Melamed le-Ho'il, Even ha-'Ezer*, no. 8, adopted a contrary position and permitted this infraction on the part of the *Bet Din* in order to prevent illicit relations with a gentile. Cf., *Chelkat Ya'akov*, I, no. 13, who, while not quoting *Binyan Zion*, advances arguments contradicting this view. Rabbi Ettlinger, it should be noted, issued his permissive ruling only on condition that the couple scrupulously observe the laws of *niddah*; otherwise the prohibition attendant upon such a union are more severe following conversion. The case brought to his attention concerned a *kohen* who had already married a gentile in a civil ceremony and had fathered a son by his non-Jewish wife. *Binyan Zion* counselled conversion to be followed by the statutory ninety-day waiting period to determine prior pregnancy. However, since a *kohen* is not permitted to marry a proselyte, he advises that in order to mitigate the severity of their infraction they content themselves with a

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civil ceremony rather than nuptial rites in accordance with Jewish practice. According to many authorities, a Biblical violation of the priestly code occurs only if the marriage is solemnized in accordance with Jewish law.

52. *Yevamot* 47b.

53. However, this defense contains a specious element. Although he does not make specific reference to the Seidman case, Rabbi Unterman, *No'am*, p. 5, notes that even a vegetarian resident of an irreligious kibbutz must perforce violate the dietary laws by utilizing non-kosher utensils.

A second question with regard to Helen Seidman's acceptance of the "yoke of the commandments" is posed by the fact that her husband is a *kohen*. Marriage between a *kohen* and a convert is forbidden by Jewish law. This article alleges that Rabbi Goren sanctioned the marriage on the basis of "positions among the latter-day authorities" permitting such unions. Since it is universally recognized that Jewish law bans such marriages it would be most enlightening to know who the authorities are to whom reference is made. The Halakhah is clear: marriage between a *kohen* and a proselyte is forbidden.

54. This line of reasoning appears to be similar to the previously cited view of R. Shlomo Kluger who permitted conversion for the sake of marriage in the face of threatened apostacy on the part of the Jewish partner.