



Rabbinical Assembly's Committee on Jewish Law & Standards  
**International Seminar for Halakhic Study**

**Adoption**

Rabbi Nate Crane  
 HM 290:1.2018

**שאלה - Question**

**Can a child adopted through civil law be considered equal in family obligations and halakhic status to that of a biological child?**

Questions for Discussion:

1. Do adoptive relationships have the same expectations and qualifications of biological relationships? Consider mourning observances, inheritance, and kohenic/levitical status.
2. What does it mean to be a parent? What is a parent's role in the parent-child relationship?
3. What does it mean to be a parent's child? What is a child's role in the parent-child relationship?
4. How do we honor and celebrate our sacred familial relationships? How does Jewish law strengthen our relationships?
5. What rituals would you incorporate in sanctifying the adoptive relationship?

**A. What does the TaNaKh say about adoption?<sup>1</sup>**

When the turn came for Esther daughter of Abihail—the uncle of Mordecai, who had adopted her as his own daughter—to go to the king, she did not ask for anything...*Esther 2:15 (JPS Translation)*

ובהגיע תר-אסתר בת-אביחיל יד מרדכי אשר לקח-לו לבת  
 לבוא אל-המלך לא בקשה דבר...

**B. What does Jewish law say about adoption?**

Whoever brings up an orphan in his home Scripture ascribes it to him as though he had begotten him. *b. San. 19b*

שכל המגדל יתום בתוך ביתו מעלה עליו הכתוב כאילו ילדו

'Happy are they who keep justice, who perform charity at all times (Psalm 106:3).'

(תהלים קו, ג) אשרי שומרי משפט עושה צדקה בכל עת וכי אפשר לעשות צדקה בכל עת ... רבי שמואל בר

<sup>1</sup> See Also: (a) Genesis 15:2–3; (b) Genesis 16:2 and 30:3; (c) Genesis 30:4–3:14; (d) Genesis 48:5–6; (e) Genesis 50:23; (f) Exodus 2:10; (g) Leviticus 18:9; (h) Judges 11:1 ff; (i) Ruth 4:16–17; (j) Esther 2:7; (k) Ezra 2:61 (= Nehemiah 7:63); (l) Ezra 10:44; (m) i Chronicles 2:35–41; (n) Genesis 38:8–9; Deuteronomy 25:6; Ruth 4.



<p>Rabbi Shmuel bar Nahmani said: This is referring to one who raises an orphan boy or an orphan girl in his house, and takes care of them, through to his/her marriage. <i>b. Ket. 50a.</i></p>	<p>נחמני אמר זה המגדל יתום ויתומה בתוך ביתו ומשיאן</p>
<p>‘How abundant is the good that You have in store for those who fear You (Psalm 31:20),’ and ‘I will make all My goodness pass before you (Exodus 33:19),’ Rabbi Assi said: ‘When the Holy One of Being showed [Moses] all the treasures that were in store as rewards for the righteous He asked [rhetorically], And for whom is this treasure? For those who raise orphans. <i>Shemot Rabbah 45:6</i></p>	<p>וכן דוד אמר (תהלים לא,כ): מה רב טובך אשר צפנת ליראיך ... ויאמר אני אעביר כל טובי על פניך (שמות לג, יט) ... הראה לו הקב"ה את כל האוצרות של מתן שכר, שהן מתוקנין לצדיקים. והוא אומר ... האוצר הזה של מי הוא? והוא אומר: של מגדלי יתומים</p>
<p>A parable: An orphan girl was raised by a guardian. He was a good and trustworthy man who raised her and protected her, as appropriate. He sought to give her in marriage. The scribe came to write her ketubah. He asked her: What is your name? She said: Thus-and-so. He asked her: And what is your father's name? She was silent. Her guardian asked: Why do you not speak? She said: because I know no father but you. The one who raised a person is called her father, not the one who bore her. <i>Shemot Rabbah 46:5</i></p>	<p>משל ליתומה שהיתה מתגדלת אצל אפוטרופוס, והיה אדם טוב ונאמן, גדלה ושמרה כראוי, בקש להשיאה, עלה הלב לכתב הכתבה, אמר לה מה שמך, אמרה פלונית. אמר לה ומה שם אביך, התחילה שותקת. אמר לה אפוטרופוס שלה למה את שותקת, אמרה לו מפני שאיני יודעת לי אב אלא אותך, שהמגדל נקרא אב ולא המוליד</p>
<p>"The lack of Jewish adoption procedures can be attributed to the fact that adoption, in its current form, is new to Judaism. Additionally, our current status of Jewish adoption developed by historic happenstance. However, there is halakhic and textual precedent to argue that Jewish statutorily adopted children are to be considered equal in status and familial obligations to biological children. We know that a significant number of Jewish families experience growth through the holy act of adoption, but until now there has not been a formal teshuvah that argues the ways in which Jewish adoption is in accordance with the tradition, and/or a method by which we are to record and ritualize the adoption of a child." <i>Rabbi Nate Crane, Adoption</i></p>	



### C. What is the innovation of R. Moshe Isserles?

<p>An individual who raises an orphan in his house and refers to him as ‘my son’ in a contract, or if the orphan refers to the one who raised him as ‘my father’ or ‘my mother,’ the contract is not counterfeit and is considered valid; since he raised him, it is appropriate to write it in this fashion. <i>R. Moshe Isserleses’ commentary to Orah Hayyim 42.15</i></p>	<p>מי שמגדל יתום בתוך ביתו וכתב עליו בשטר בני או היתום כתב על המגדלו אבי או אמי לא מקרי מזויף וכשר הואיל וגדלוהו ראוי לכתוב כך</p>
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### D. What about children with living biological parents who are raised by someone else?

<p>This is not only the case for an orphan, but even when the child’s mother and father are alive, yet is raised in the household of another as a mitzvah. If the latter does not have children and raises the child as his son and heir, the child may call him ‘father,’ and he may call him ‘my son’... for it is considered as if that person were the natural parent. <i>Yaakov Emden, Ya’avetz, (1697-1776 ce) was a German rabbi, Talmudist and polemicist. She’ilat Ya’avetz, 8:1, 165.</i></p>	<p>ולא ביתום בלבד, אלא אפילו יש לו אב ואם, ומתגדל אצל אחר לשם מצווה. אם הלה אין לו בנים ומגדלו לזה להיות לו בן ליורשו, וזה קורא לו אב והוא קורא לו בני...שזה נחשב כאילו ילדו ממש</p>
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### E. What is the permanent guardian’s religious role in the child’s upbringing?<sup>2</sup>

<p>Guardians make arrangements for minors to perform the mitzvot of lulav, dwelling in the sukkah, tzitzit, shofar, Torah, tefillin, mezuzot and reading of the megillah. This is the general principle: guardians are obligated to arrange for minors to perform all positive mitzvot for which the [financial] scope is clearly defined, whether the precept originated from the Torah or from the rabbis. Guardians do so even though the minors are not obligated themselves to fulfill these</p>	<p>האפוטרופין עושין לקטנים לולב וציצית ושופר ספר תורה תפילין ומזוזות ומגלה. כללו של דבר כל מצות עשה שיש להם קצבה בין שהוא מדברי תורה בין שהוא מדברי סופרים. עושין להם אף על פי שאינן חייבין במצוה מכל אלו המצות אלא כדי לחנכן...</p>
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<sup>2</sup> We no longer understand the text in b. Kiddushin, or its later interpretations, to be exclusively applicable to fathers and sons. Rather, we understand the parental obligations to be incumbent upon both mothers *and* fathers toward both daughters *and* sons. We reach this understanding of equal obligation through Rabbi Dr. Pamela Barmash’s teshuvah “Women and Mitzvot.”



mitzvot, but rather, for the sake of educating them. *M.T., Hilkhot Nahlot, Laws of Inheritance, 11:10*

## F. What are the halakhic consequences of Jewish adoption?

### The parental responsibility:

To circumcise him. As commanded in the book of Genesis, 'And when his son Isaac was eight days old, Abraham circumcised him, as God had commanded him (Genesis 21:4).' To redeem him. As commanded in the book of Exodus, 'And you must redeem every firstborn male among your children (Exodus 13:13).' To teach him Torah. As commanded in the book of Deuteronomy, 'And teach them to your children - reciting them when you stay at home and when you are away, when you lie down and when you get up (Deuteronomy 11:19).' To take a wife for him. As commanded in the book of Jeremiah, 'Take wives and beget sons and daughters; and take wives for your sons, and give your daughters to husbands, that they may bear sons and daughters (Jeremiah 29:6).' To teach him a trade. As commanded in the book of Ecclesiastes, 'Enjoy happiness with a woman you love all the fleeting days of life that have been granted to you under the sun - all your fleeting days (Ecclesiastes 9:9).' The sages understood the text of Ecclesiastes, as such, 'If 'wife' is literal, this teaches, just as the father is bound to take a wife for him, so is he bound to teach him a craft for a livelihood; if it is a metaphor for Torah then, just as he is bound to teach him Torah, so is he bound to teach him a craft (Kiddushin 30b).' To teach him to swim, for his life may depend on it. *b. Kid. 29a-30b.*

למולו - (בראשית כא) וימל אברהם את יצחק בנו...ולפדותו - (שמות יג) כל בכור בניך תפדה...וללמדו תורה - (דברים יא) ולמדתם אותם את בניכם...ולהשיאו אשה - (ירמיהו כט) קחו נשים...והולידו בנים ובנות וקחו לבניכם נשים ואת בנותיכם תנו לאנשים...וללמדו אומנות - אמר חזקיה, דאמר קרא: (קהלת ט) ראה חיים עם אשה אשר אהבת, אם אשה ממש היא כשם שחייב להשיאו אשה, כך חייב ללמדו אומנות, אם תורה היא כשם שחייב ללמדו תורה, כך חייב ללמדו אומנות... להשיטו בנהר - מאי טעמא - חיותיה הוא



**The filial responsibility:**

<p>Respect means that the son must neither stand in his father's place nor sit in his place, nor contradict his words, nor tip the scales against him. <i>B. Kid. 21b</i></p>	<p>מורא לא עומד במקומו, ולא יושב במקומו, ולא סותר את דבריו, ולא מכריעו</p>
<p>Honor means that the son must give his father food and drink, clothe and cover him, lead him in and out. <i>B. Kid. 21b</i></p>	<p>כיבוד מאכיל ומשקה, מלביש ומכסה, מכניס ומוציא</p>

**G. Two Modern Rabbis Disagree: Are adopted children considered equal in halakhic status and obligations to that of biological children?**

<p>...If a person has natural children, they should take good care to avoid any error and loss that could arise from diminishing their inheritance [to their children]. There is a legal presumption that a person does not put aside their children and give to another. Hence, any document purporting to do so will be invalid... <i>Pithei Teshuvah, HM 42:13, Rabbi Tzvi Hirsh Eisenstadt (c. 1812-1868)</i></p>	<p>...כשיש לו בנים של עצמו, אזי חושש טובא שלא יבוא מזה טעות והפסד להפקיע בניו מנחלתו, וחזקה לא שביק אינש בריה ויהיב לאחריני, ולכן שטר שנכתב כן פסול...</p>
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Melech Schachter cites the authority of Chaim Hezekiah Medini (nineteenth-twentieth century, Israel, Crimea) to posit that “adopting a child through a civil court may be considered equivalent to the writing of a will.” *Cohen, Halacha and Contemporary Society, 33*

However, we consider issues of inheritance to fall under the category of *Dina d’Malkhuta Dina, the law of the land is the law. The concept of דינא דמלכותא דינא, the law of the land is the law, is developed in b. Nedarim 28a, Gittin 10b, Baba Kama 113a, Baba Batra 54b and 55a.*

**פסק - Ruling**

1. A statutorily adopted child can be considered equal in familial obligations and halakhic status to that of a biological child. However, because the biological ties to the natural father cannot be subverted, the adopted child cannot receive the kohenic or levitical status of the adoptive father.



2a. Halakhah accepts the ruling of a court with sovereignty in the local jurisdiction in establishing the financial ties within a family between an adoptive parent and adopted child.

2b. The Teudat Immutz extends this financial connection to matters of religious obligation, binding the parent to provide the child with religious education and other ritual matters, and the child to honor and respect the parent according to Jewish law.

3. We strongly recommend that adoptive families proceed with the Teudat Immutz and accompanying rituals. However, there are various ways of establishing a relationship within a community, and there is no implication that this is the exclusive mechanism. Additionally, this paper in no way calls into question or compromises the halakhic status of previously statutorily adopted children.

### **Record of Adoption for a Minor Child**

#### The Parent/s

Behold I/we accept upon myself/ourselves the obligations incumbent upon parents regarding (name of child)\_\_\_\_\_. He/she is my/our child in all matters, from this day forward.

(First Parent’s Signature) \_\_\_\_\_

(Second Parent’s Signature if applicable) \_\_\_\_\_

We the undersigned testify that on this \_\_\_ day of the week, the \_\_\_ day of the month of \_\_\_\_\_, in the year 57\_\_\_, corresponding to the \_\_\_ day of the month of \_\_\_\_\_, 20\_\_\_, in \_\_\_\_\_ (city, state) that (name of parent/s)\_\_\_\_\_ (and \_\_\_\_\_) formally adopted this child (name of child)\_\_\_\_\_. He/she/they accepted the obligations incumbent upon parents in accordance with the laws of the people Israel and the customs of our times. May it be God’s will that the father/mother/parents be privileged to lovingly raise his/her/their child to a life of Torah, to *huppah*, and to *ma’asim tovim*, good deeds.

#### Signature of the Witnesses

(Witnessed by)\_\_\_\_\_

(Witnessed by)\_\_\_\_\_

**How would YOU vote on Rabbi Crane's paper? Yes? No? Abstain?**