

On Proving Jewish Identity
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שאלה

If an individual claims to be Jewish, either by birth or conversion, what proof if any is required before recognizing that individual as a Jew and permitting him or her to exercise the rights and privileges of a Jew for such matters as marriage, synagogue membership, participation in religious ceremonies, religious school and burial?

תשובה

1. Realia of Jewish Identity At This Time

Today, perhaps more than at any other time in Jewish history, we are confronted with problems concerning the status of individuals claiming to be Jews. The problem is especially acute in Israel where Jewishness is essential for aliyah rights and where official marriage is controlled by the government-sponsored Chief Rabbinate. The Law of Return permits children and grandchildren of Jews (one grandparent is sufficient), as well as their spouses, to come on aliyah. Often those who enter Israel under that law claim to be Jewish but have difficulty proving it to the religious authorities. Furthermore, the proof of Jewishness that is sufficient for aliyah is not identical to that needed for halakhic purposes. The massive aliyah from the former Soviet Union has brought more than a million people to Israel. Reliable estimates indicate that at least a third of these are not Jews according to halakhah and by their own admission.

Many immigrants who claim to be Jewish have difficulty proving their Jewishness to the satisfaction of the Chief Rabbinate because of the lack of reliable documentation. Ketubot have been largely non-existent among Russian Jews for over half a century. There have also been cases of forged documents. The result has been that often people who sincerely consider themselves Jews cannot prove that fact and are turned away by the official rabbinate when they wish to be married. Similar problems occur for American olim and others in Israel as well.

The well-known journalist Gershom Gorenberg wrote an article on such a case for the New York Times entitled “How Do You Prove You’re a Jew?”¹ in which he states that in previous times in Europe “Trust was the default position. One reason was that Jews were

1. New York Times Magazine, March 2, 2008. See also his article “Israeli Life: Oops, You’re Not Jewish” in Hadassah Magazine, November 2008, Vol. 90 No.3.

a persecuted people; no one would claim to belong unless she really did. The leading ultra-Orthodox rabbi in Israel in the years before and after the state was established, Avraham Yeshayahu Karlitz (known as the Hazon Ish, the name of his magnum opus on religious law), held the classical position. If someone arrived from another country claiming to be Jewish, he should be allowed to marry another Jew, ‘even if nothing is known of his family,’ Karlitz wrote. Several trends have combined to change that.”

This situation has been further compounded by a decision of the Israeli Chief Rabbinate in 2010 to require documents proving the Jewishness of one’s mother, grandmother, great-grandmother and great-great-grandmother when applying for marriage. Needless to say this is a near impossibility for most people.

The problem of proving Jewishness is not confined to Israel but exists in the United States and all other diaspora communities as well. As more children are born to single mothers, for example, and as there are significant numbers of couples who live together and establish families, there are numerous cases in which young people have no mother’s ketubah available for examination. There are also more and more people born to mothers who ‘converted’ to Judaism. Since different groups have different standards for conversion, not all conversions are acceptable to the Rabbinical Assembly.² A further complication has resulted from the fact that American Reform Judaism accepts those with a Jewish father and a non-Jewish mother as Jews. Therefore we often encounter young men and women with non-Jewish mothers who were brought up in Reform congregations, sincerely believe themselves to be Jews and identify themselves as such. In an era of intermarriage, having a ‘Jewish name’ means nothing, just as having a non-Jewish name means nothing. The question arises: when someone comes to us identifying him/herself as a Jew, do we adopt the ‘default position’ of trust? If so, under what conditions, and, if not, what proof do we require?³ In order to answer these questions we should first examine the sources in our history that deal with these issues.

2. Biblical Sources

Biblical sources are not particularly helpful in answering our question since the definitions of Jewishness that are accepted by traditional halakhah were unknown in early Biblical times.⁴ Therefore the question of proving one’s Jewishness (or better: Israeliteness) is not addressed in Biblical sources. It is only in the later books of Ezra and Nehemiah that we encounter the problem of those who claim to be Judeans and are not recognized as such by Jews or of foreign wives who have to be put away because they are not Jews.⁵ The option of conversion as we know it is nowhere mentioned in the Bible.

2. The lack of a central registry for our own converts only adds to the problem.

3. We also encounter so-called “Messianic Jews” or “Jews for Jesus” who consider themselves Jews, many of them born as Jews to Jewish mothers. That issue, however, will not be dealt with here since it has a different set of halakhic issues. A separate teshuvah is required.

4. See *The Beginnings of Jewishness: Boundaries, Varieties, Uncertainties* (Hellenistic Culture and Society) by Shaye J. D. Cohen

5. See Ezra 9-10.

In the early Torah narratives the Israelites - *b'nai yisrael* - are viewed simply as the biological descendants of Jacob-Israel. The criterion established later, that the child follows the identity of the mother, is not at all clear in the text of the Torah. The possibility of children of non-Israelite women being considered Israelites seems to exist. Traditional halakhah, however, does not recognize patrilineal Jewishness, and this stance has been reaffirmed frequently by the CJLS.⁶ In Biblical times non-Israelites could also be added to the family of Jacob-Israel by a process of gradual acculturation and acceptance into the community.

Although the general question of how one becomes recognized as an Israelite is never spelled out in Scripture, certain individuals and groups are prohibited from “coming into the assembly of the Lord” (Deut.23:2-9) either completely or until a certain number of generations has passed. As our colleague J.Tigay has shown, the “assembly of the Lord” was the “national governing assembly of the Israelites...meeting in plenary session...”⁷ “Entering” it is the equivalent of full citizenship and included the right to marry an Israelite woman. How people would prove their eligibility for membership is not discussed. As the Israeli Biblical scholar Y.Kaufman wrote, “For generations ‘conversion’ was conditioned on territorial and cultural assimilation. It is so in P [Priestly source], in the book of Ruth (1:16ff), and in the story of the Samaritans who become quasi-Israelites by virtue of their settlement in the land.”⁸ The subject of the development of conversion is beyond the scope of this responsum and has been dealt with by Rabbi Tuvia Friedman in his *Teshuvah on Conversion*.⁹

By the time of the return from the Babylonian exile, the process of entering into the Jewish People seemed to harden. Although the Torah prohibited only the taking of wives from the Canaanite nations (Exod.34:16, Deut.7:3), there is now the demand to send away all “foreign women” and their children (Ezra 10:3).¹⁰ Similarly this is the first time that we find a requirement for kohanim to prove their status; see Ezra 11:61-63, where the genealogy of the priests and their fitness for serving as priests is under scrutiny. Although the matter under discussion there was confined to proving one's fitness to serve as a priest, it may indeed have served as a precedent for proving one's status as a Jew altogether. Both of these actions were heavily influenced by the experience of the exile and the felt need for Israelites (now known as Jews) to distance themselves from others in order to prevent assimilation into alien cultures.¹¹

6. This is a standard of practice of the Rabbinical Assembly (1986). See the following Teshuvot: 102656, 110658B, 041459B, 013061, 042375.

7. The JPS Torah Commentary: Deuteronomy, Philadelphia 1996, p.210.

8. The Religion of Israel, University of Chicago Press, Chicago, 1960, p.301. There are some who consider the Book of Ruth to have been a protest against the actions of Ezra.

9. “Conversion According to Halacha,” in Responsa of the Va'ad Halacha of the Rabbinical Assembly of Israel, Vol.3 5748-5749, Jerusalem, p.59ff (Hebrew). See also J.Tigay, op cit, Excursus 21, p.477ff.

10. Ezra (9:12) seems to base this on the Torah's command “You shall not intermarry with them: do not give your daughters to their sons or take their daughters for your sons” (Deuteronomy 7:3) although the original context referred specifically to the Canaanites who had long ceased to exist. Ezra was indeed a scribe in the sense of an interpreter of the sacred text. In this case his interpretation and application were actually an innovation.

11. See Shaye J.D. Cohen, From the Maccabees to the Mishnah, Philadelphia, 1987, p.21, p.50-59.

3. Rabbinic Sources

In rabbinic sources, from the Mishnah to modern Teshuvot, the question of establishing Jewish identity has been dealt with both directly and indirectly. The following are several issues that have a bearing on our question:

a. ESTABLISHING ONE'S IDENTITY AS A KOHEN

Middot 5:4 continues the practice cited above in the book of Ezra of examining the fitness of priests to serve in the priesthood.

לְשֵׁבֶת הַנְּזִיטָה, שֶׁם הִיְתָה סִנְהֶדְרֵי גְדוּלָה שֶׁל יִשְׂרָאֵל יּוֹשְׁבֵת וְדָנָה אֶת הַכֹּהֲנָה, וְכֵהֵן שֶׁנִּמְצָא בּוֹ פְסוּל, לּוֹבֵשׁ שְׁחוּרִים וּמִתְעַטֵּף שְׁחוּרִים, וְיוֹצֵא וְהוֹלֵךְ לוֹ. וְשֵׁלָא נִמְצָא בּוֹ פְסוּל, לּוֹבֵשׁ לְבָנִים וּמִתְעַטֵּף לְבָנִים, נִכְנָס וּמִשְׁמֵשׁ עִם אֶחָיו הַכֹּהֲנִים. וְיוֹם טוֹב הָיָה עוֹשִׂים, שֵׁלָא נִמְצָא פְסוּל בְּזֵרְעוֹ שֶׁל אֶהְרֹן הַכֹּהֵן, וְכֵן הָיוּ אֹמְרִים, בְּרוּךְ הַמָּקוֹם בְּרוּךְ הוּא, שֵׁלָא נִמְצָא פְסוּל בְּזֵרְעוֹ שֶׁל אֶהְרֹן. וְכֵן הוּא, שֶׁבְחָר בְּאַהֲרֹן וּבְבָנָיו לְעִמּוּד לְשֵׁרֵת לְפָנֵי ה' בְּבֵית קֹדְשֵׁי הַקְּדוֹשִׁים:

The great Sanhedrin convened in the Hall of Hewn Stones and judged matters concerning the priesthood. A priest in whom a flaw was found would don black clothing, wrap himself in black and depart, going on his way. One in whom no flaw was found would don white clothing, wrap himself in white and go and serve in the Temple with his fellow priests. They would make a celebration since no flaw had been found in the offspring of Aaron the priest. Thus would they say, "Blessed is the Almighty, blessed is He in that no flaw had been found in the offspring of Aaron the priest. Blessed is He who chose Aaron and his sons to serve before the Lord in the Holy of Holies.

The sanctity ascribed to the priesthood and the fact that the Torah gives kohanim rights and privileges denied to others, including presiding at the Temple's sacrificial service, resulted in the practice of scrutinizing a kohen's claim to his special status lest a *zar* - זר - a lay person - eat holy items (Leviticus 22:10-16; Exodus 29:33) or offer incense, which is forbidden in the Torah and was said to lead to that person's death (Numbers 17:5). This intense scrutiny was restricted to kohanim.

How their fitness was determined is discussed in Ketubot 2:7-8.

ז וְכֵן שְׁנֵי אֲנָשִׁים זֶה אֹמֵר כִּיִּנְי אֲנִי וְזֶה אֹמֵר כִּיִּנְי אֲנִי, אֵינָן נֶאֱמָנִין. וְכִיִּזְמוּן שֶׁהֵן מְעִידִין זֶה אֶת זֶה, הָרִי אֵלָיו נֶאֱמָנִין:

ח רַבִּי יְהוּדָה אֹמֵר, אֵין מַעְלִין לְכַהֲנָה עַל פִּי עַד אֶחָד. אָמַר רַבִּי אֶלְעָזָר, אֵימַתִּי בְּמָקוֹם שֵׁשׁ עוֹרְרִין. אָבָל בְּמָקוֹם שֶׁאֵין עוֹרְרִין, מַעְלִין לְכַהֲנָה עַל פִּי עַד אֶחָד. רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אֹמֵר מִשּׁוּם רַבִּי שְׁמַעוֹן בֶּן הַסֵּגוּ, מַעְלִין לְכַהֲנָה עַל פִּי עַד אֶחָד:

In the case of two men, each of whom says, "I am a kohen," they are not believed. If they give testimony for each other, they are believed. R. Judah says: One is not

granted the status of a kohen on the basis on the testimony of one witness. Rabbi Elazar says: When is this? Where there are those who question it, but if there are none who question it, one is granted the status of a kohen on the basis on one witness. Rabban Shimon b.Gamliel says in the name of R. Shimon the son of the Chief of the Priests: one is granted the status of a kohen on the basis on one witness.

Even in the case of proving one's fitness to serve as a priest, where a thorough investigation was made, leniency was shown in that one witness was sufficient as long as there were none who questioned it. See Ketubot 24a and the discussion in 25b where the rabbis were lenient in regard to lesser things (eating terumah) but not in regard to marriage. Sometimes there was even a presumption of fitness - דוּזְקָה - such as when the priest has been regularly performing certain priestly duties.

b. DETERMINING FITNESS FOR MARRIAGE

Kiddushin 4:4 contains the requirement in regard to marriage to check a woman's genealogy back several generations.¹²

ד הנושא אשה כהנת, צריך לבדוק אחריה ארבע אמהות שהן שמונה, אמה ואם אמה, ואם אבי אמה ואמה, ואם אביה ואמה, ואם אבי אביה ואמה. לוייה וישראלית, מוסיפין עליהן עוד אחת:

One who is marrying a woman of priestly descent must investigate her family back through four generations of females, that is eight women: her mother, her mother's mother, her mother's father's mother and her mother, her father's mother and her mother, her father's father's mother and her mother. Levites and Israelites add one more generation.

The subject of the case, i.e., the man who wishes to marry a woman, is not specified. Therefore this mishnah has been understood in two different ways: either that the reference is to a Kohen who wishes to marry a woman or that it refers to all men.¹³ In either case, what is being checked is the woman's fitness to be married to this individual, either in regard to her priestly or Levitical descent or mamzerut.

The following Mishnah (Kiddushin 4:5) further states that there were limitations to these examinations:

אין בודקין לא מן המזבח ולמעלה, ולא מן הדוכן ולמעלה, ולא מן סנהדרין ולמעלה.
We make no investigation from the altar and upwards, from the dais and upwards, nor from the Sanhedrin and upwards.

That is, if it was found that in the family ancestry of the woman being investigated there was a priest who had served in the Temple, or a Levite who sang in the Temple, or a

12. This was probably the source of the Israeli rabbinate's new requirement for marriage.

13. See Albeck's note on page 414 of his edition of the Mishnah. See also Lieberman's discussion in his Tosefta Kifshuta Kiddushin page 974.

member of the Sanhedrin, there was no need to investigate further through the entire number of generations specified above.¹⁴

In the Talmud (Kiddushin 76a) the question is asked: Why investigate the mother and not the father? The answer is that questions of birth and background frequently come up in discussions and quarrels among men, but not among women. In other words, the examination is not required when it is assumed that if any problem existed it would already have been known.

The discussion in the Talmud (76b) of the mishnah (4:4) offers several possibilities concerning the origins of this mishnah:

1. The mishnah is the view of one teacher, R.Meir, while the opinion of the majority of Sages is **חכמים אומרים כל משפחות בחזקת כשרות הן עומדות**

All families stand in the presumption of fitness.

2. The mishnah concerns a case where there is a rumor that there is a blemish. Otherwise no investigation is necessary.

3. The Sages too would agree that if there is a dispute, there should be an investigation.

Thus despite the words of the Mishnah, in the Talmud there is agreement that according to the Sages one need not investigate every woman before marriage. Only in special cases where there is reason to suspect a problem, and even then not through all the degrees mentioned if other factors show her fitness.

The Rambam in Isurei Biah 19:17 cites the rule in Kiddushin 76b above and states:

כל המשפחות בחזקת כשרות ומתר לישא מהן לכתחלה

All families stand in the presumption of fitness and may enter into marriage from the very beginning.

He adds that if there is something that would lead to suspicion concerning their fitness, including lack of proper *middot*, one should avoid them, and if there is testimony against them, one should investigate back “10 mothers” (19:18).

In his commentary to this Mishnah the Rambam states very clearly:

וכל זה צריך במשפחה שקרא עליה ערער והוא שיאמרו שנים שמשפחה פלונית יש בה פסול, אבל המשפחות שאינן חשודות אינו צריך לבדוק לפי שכלל הוא אצלנו כל משפחות בחזקת כשרות עומדות.

All of this applies only in the case of a family whose status has been questioned in that two people have said that this family is unfit, but in the case of a family that is not suspect, there is no need to examine them since we accept the general rule that all families stand in the presumption of fitness.

Siftei Kohen to Shulhan Arukh Even Ezer 2:2 repeats this - **כל המשפחות בחזקת כשרות ומתר לישא מהן לכתחלה**

14. See also Pesahim 3b

All families stand in the presumption of fitness and are permitted from the very beginning.

He qualifies this by adding that this is so only when the family is known, otherwise we suspect them.

Bartinura to Kiddushin 4:4 explains that the only time one must investigate a family's fitness is when someone has questioned it. Otherwise not, since כל המשפחות בחזקת כשרות הן.

All families stand in the presumption of fitness.

It should be stated that all of these cases concern 'fitness' and not 'Jewishness.' One could be Jewish and yet not 'fit' for marriage because of mamzerut or other questions. Jewishness does not seem to be the question. Nevertheless the general rule כל המשפחות בחזקת כשרות הן.

All families stand in the presumption of fitness has been understood to mean that their Jewishness is not questioned unless there is reason to do so.

This is the stance of R.Ovadia Yosef in יביע אומר חלק ז - אה"ע ס מן א:ז. There he brings together many sources discussing the question of believing one who says he or she is Jewish and comes to the conclusion that when it is said in the Mishnah that witnesses are needed for marriage it refers to questions of fitness - yuhasin - regarding the priesthood - but that regarding marriage in general this is not needed. Rather we rely on the fact that the Sages said that:

כל המשפחות בחזקת כשרות הן

וכן מעשים בכל יום שנשיאין אשה בכל מקום אף על פי שאין מכירים אותו ומחזקים אותו בחזקת ישראל כשר.

All families stand in the presumption of fitness. It happens daily that we permit a man to marry a woman even though we do not know him and we hold him in the presumption of being a proper Israelite.

This statement, the presumption of fitness of all families, has thus become a basic principle in determining Jewish identity.

c. JEWISH IDENTITY OF A FOUNDLING CHILD

A case directly related to establishing Jewish identity is found in the Mishnah Makhshirin 2:7 and discussed in the Talmud. It concerns the identity of an abandoned child.

The Mishnah states (Makhshirin 2:7):

ז מצא ביה תינוק משלך, אם רב נכרים, נכרי. ואם רב ישראל, ישראל. מִחֲצָה לְמִחֲצָה, יִשְׂרָאֵל. רַבִּי יְהוֹנָדָה אֹמֵר, הוֹלְכִין אַחֵר רַב הַמְשָׁלִיכִין:

When an abandoned child is found, if the majority population there is gentile, the

child is considered gentile, if Israelite, [the child is] considered an Israelite. If the numbers are equal, the child is considered an Israelite. R.Judah says: We decide according to the identity of the majority of those who abandon [children].

Since at that time (2nd-4th centuries C.E.) there were many localities in the land of Israel where Jews and Gentiles lived together, there was no assurance that a foundling child was Jewish. On the other hand, the child might well be Jewish. Therefore the decision was made that if such a child is found in a town where the majority are Jews, the child is considered Jewish; if the majority are gentile, the child is considered gentile, if the population is half and half, the child is Jewish (Ket. 15b).

Although the Sages might have required a *giyyur l'humrah* in order to eliminate all doubt, they did not. Since there was absolutely no physical or biological proof of the child's Jewishness, there was always a possibility that the child was not of Jewish parentage, yet once this decision was made, such a child and that child's descendants were not questioned, but accepted as Jews for all purposes.

A reasonable assumption of Jewishness can be made even where there is no actual proof, taking into account the demographic reality but inclining toward declaring the child Jewish where there is nothing specific that would disprove it.

d. ACCEPTING JEWISH IDENTITY WITHOUT REQUIRING PROOF

A discussion of "Jewish identity" is found in Pesahim 3b in an anecdote that has serious halakhic consequences in later literature. Following the discussion of a priest whose pedigree was investigated and found to be blemished (see Middot 5:4 cited above), the Talmud relates the following story:

ההוא ארמאה דהוה סליק ואכיל פסחים בירושלים אמר כתיב כל בן נכר לא יאכל בו כל ערל לא יאכל בו ואנא הא קאכילנא משופרי שופרי אמר ליה רבי יהודה בן בתירא מי קא ספו לך מאליה אמר ליה לא כי סלקת להתם אימא להו ספו לי מאליה כי סליק אמר להו מאליה ספו לי אמרו ליה אליה לגבוה סלקא אמרו ליה מאן אמר לך הכי אמר להו רבי יהודה בן בתירא אמרו מאי האי דקמן בדקו בתריה ואשכחוהו דארמאה הוא וקטלוהו

There was an Aramean who would go and eat of the Pascal lambs in Jerusalem He said, "It is written, "No foreigner shall eat of it" (Exodus 12:43) "No uncircumcised person may eat of it" (Exodus 12:48) but I eat from the very best part of it!" Rabbi Judah b. Betayra said to him, "Did they give you the fat-tail?" He replied, "no." [He told him] "When you go there, tell them, 'Give me the fat-tail.'" When he went he said to them, "Give me the fat-tail." They said to him, "The fat-tail belongs to the Most High! Who told you to say this?" He said to them, "Rabbi Judah b. Betayra." They wondered, "What is this we have here?" They investigated and discovered that he was an Amamean and they killed him.

Who killed him and under what authority is not discussed nor is this germane to our discussion. Even the historical accuracy of this tale is unimportant. What is relevant and what is frequently referred to in later halakhic sources is the clear implication that no

attempt was made to check the Jewish identity of those who ate the Pesah in the Temple. One who claimed to be an Israelite - in this case not by a verbal declaration but by his action - was accepted automatically without further investigation. It would seem that indeed “trust was the default position.” Only when there was reason to doubt the individual’s Jewishness was an investigation undertaken and action taken against him.

Although this story belongs more to the realm of *aggadah* than *halakhah*, medieval sources used this story as the basis for halakhic rulings.

The Maggid Mishneh (Vidal of Toloso 14th century Spain) to Rambam Mishneh Torah Kedusha Isurei Biah 13:10 writes:

כל אדם שאומר ישראל אני אין בודקין אחריו.

We do not investigate any person who says, “I am an Israelite.”

He specifically bases his ruling on the story cited above in Pesahim 3b. Since no one checked the Jewishness of those coming to eat the Pesah, we infer that “If one says ‘I am an Israelite,’ we do not investigate him.”

Tosafot to Yebamot 47a - **במוחזק** - again on the basis of the story in Pesahim 3b - reiterates that if one claims to be a Jew, he is believed. Tosafot qualifies this ruling to apply to a place where most people are Jews, but Tosafot’s conclusion is that most people who come to us:

בתורת יהדות ישראל הם

are considered to be within the definition of Israelites.

Medieval sources accept the story in the Talmud as creating a principle that one who presents him/herself as a Jew is accepted with no further investigation unless there is cause to be suspicious.

e. THE RELIABILITY OF TESTIMONY ONE GIVES ABOUT ONESELF

Another issue that has bearing on our question is the question of when an individual is to be believed or not in regard to his or her status. When do we take a person’s word without requiring further proof?

This is discussed Kiddushin 4:10-11:

י מי שיצא הוא ואשתו למדינת תים וכא הוא ואשתו ובניו ואמר, אשה שיצאת עמי למדינת תים הרי היא זו ואלו בניה, אינו צריך להביא ראיה לא על האשה ולא על הבנים. מתה ואלו בניה, מביא ראיה על הבנים ואינו מביא ראיה על האשה:

יא אשה נשאתי במדינת תים הרי היא זו ואלו בניה, מביא ראיה על האשה ואינו צריך להביא ראיה על הבנים. מתה ואלו בניה, צריך להביא ראיה על האשה ועל הבנים:

10. A man and his wife went to a far off land and they returned with children, and he said, “This is my wife who went with me to a far off land and these are her children.” He need bring no proof regarding either the wife or the children. [If he says] She died and these are her children,” he must bring proof concerning the children, but not concerning the wife.

11."I married a woman in a far off land and this is she and these are her children," he must bring proof concerning the woman but not concerning the children. "She died and these are her children," he must bring proof concerning the woman and her children.

To what exactly is he testifying? That she is his wife, that they are her or his children? That she is מיוחסת? (so Albeck). See Talmud Kid.80a. This is also discussed in T. Kid.5:6-8:

מי שיצא הוא ואשתו למדינת הים ובא הוא ואשתו ובניו ואמר אשה שיצתה עמי למדה"י הרי היא זו ואלו בניה אין צריך להביא ראיה לא על האשה ולא על הבנים מתה ואלו בניה [מביא] ראיה על הבנים ואין צריך להביא ראיה על האשה נאמנת אשה שתאמר אלו בני ואשה שנשאתי במדה"י הרי היא זו ואלו בניה צריך להביא ראיה על האשה ואין צריך להביא ראיה על הבנים נאמנת אשה שתאמר אלו בני

A man who goes to a far off land with a woman and children and says that she is his wife and that these are her children need bring no proof concerning the wife or the children. [If he testifies] that she died and these are her children, he must bring proof concerning the children but not concerning the wife. If a woman testifies that these are her children she is believed and she need not bring proof concerning the children. A woman is believed when she says, "These are my children."

Ketubot 2:5 relates to a similar matter.

ה האשה שאמרה אשת איש הייתי וגרושה אני נאמנת, שהפה שאסר הוא הפה שהתיר. ואם יש עדים שהיתה אשת איש והיא אומרת גרושה אני אינה נאמנת. אמרה נשבית וטהורה אני נאמנת, שהפה שאסר הוא הפה שהתיר. ואם יש עדים שנשפית והיא אומרת טהורה אני אינה נאמנת. ואם משנשאת באו עדים, הרי זו לא תצא:

If a woman says, "I was married and I am divorced," she is believed, for the mouth that forbade is the mouth that permits. But if there are witnesses that she was married and she says, "I am divorced," she is not believed. If she says, "I was taken captive but I am pure," she is believed for the mouth that forbade is the mouth that permits. But if there are witnesses that she was taken captive and she says, "I am pure" she is not believed. But if the witnesses came after she had married, she does not leave (her marriage).

When the matter would not have been known had she not said it, she is believed. But otherwise she is not believed and must prove it. The principle here - known as *miggo* is: הפה שאסר הוא הפה שהתיר.

The mouth that forbade is the mouth that permits. Since there would have been no problem had the person not made an admission, we assume that what that individual says subsequently is to be believed and accepted.

The Talmud (Ketubot 22a) brings a *bereita* that if a woman says "I am married" and then says "I am not married" she is believed. The Gemara explains that this is when she can

give a plausible explanation for what she said. If not, she is not believed. (See other instances of being believed or not in the Mishnah there). See also T. Kid. 2:2. In Y. Ketubot 2:5 (26c), however, a case is recorded in which R. Yohanan accepted the testimony of such a woman even though it would have been possible to bring witnesses from another location.

Obviously the Sages in these cases were taking a lenient position, not demanding witnesses and proof in many cases where they might have done so. In the case where witnesses came after she had already married, they permitted her to remain married without requiring that she bring proof. The consequences of their not doing so were considered worse than taking the risk of believing her.

The position of the Jerusalem Bet Din of the Chief Rabbinate on these matters has been that regardless of the position of the Sages and earlier poskim, they do not believe anyone coming from Russia without specific proof. Rather they must see a birth certificate and that of the person's mother. In one case the court was satisfied with the Ketubah written by the father of his mother to his wife who was a convert, because the conversion had witnesses and seemed authentic.

In another case of a child who, during the Shoah, was given to a Christian to raise and then came to Israel and was educated in an Orthodox institution, the court was not willing to accept the testimony of the non-Jew that the child was Jewish and required the child to undergo a full conversion. These decisions were taken in full knowledge that the Talmudic precedents would have permitted them to rule otherwise.

There are cases in rabbinic literature when an individual's testimony about himself and his family is accepted with no need for further evidence.

f. THE JEWISH IDENTITY OF A CONVERT

A *bereita* cited in Yebamot 46b is based on the word אתך - *itkha* - 'with you' in Lev. 19:33 - "If a *ger* dwells with you," states:

תנו רבנן מי שבא ואמר גר אני יכול נקבלנו ת"ל אתך במוחזק לך

The Rabbis taught: If one comes and says "I am a convert," is he to be believed?

The verse says: "with you" - *only* if he is well known to you.

However if he has witnesses with him, he is always accepted, even if they did not witness the conversion. Thus:

**אמר רב ששת דאמרי שמענו שנתגייר בב"ד של פלוני סלקא דעתך אמינא לא ליהמנייהו
קא משמע**

Rav Sheshet said, "Where they state 'We heard that he converted at such and such a Bet Din' we might have thought that we are not to believe them, ['with you'] indicates that we do." (Yebamot 47a).

בארץ צריך להביא ראיה בחוץ לארץ אין צריך להביא ראיה דברי ר' יהודה וחכמים

אומרים בין בארץ בין בחוצה לארץ צריך להביא ראיה

R.Judah says that only in the land of Israel is proof needed, while the Sages say it is needed both in and outside the land.

In Sifra Kedoshim 8:1 only R.Judah's opinion is cited.

The matter hinges on the fact that there is benefit to being a Jew in the land of Israel but not outside it.

דאפילו בארץ מקבלים גרים דסלקא דעתך אמינא משום טיבותא דארץ ישראל קמגיירי והשתא נמי דליכא טיבותא איכא לקט שכחה ופאה ומעשר עני קא משמע לן

The expression "in your land" [If a proselyte sojourn...in your land Lev.19:33] is required to teach that proselytes may be accepted even in the Land of Israel. As it might have been assumed that there they become proselytes only on account of the prosperity of the Land of Israel, and at the present time also, when there is no prosperity, they might still be attracted by the gleanings, the forgotten sheaf, the corner and the poor man's tithe. Therefore this was taught. (Yebamot 47a)

The implication of this is that today when being a Jew can allow one to acquire citizenship in Israel and has other benefits, some proof of conversion (or of Jewishness) is needed.

In Masechet Gerim 4:5, on the other hand, we read that in the Land of Israel a convert who says that he is a convert is immediately accepted, whereas outside of Israel he needs to bring witnesses. This is explained as being because of the importance of the Land of Israel which "atones for sins.." The reason here is quite different from that in Yebamot above.

חביבה א"י שמכשרת גרים היה בא"י ואמר גר אני מקבלים אותו מיד ובחוצה לארץ אין מקבלין אותו אלא אם כן היו עדין עמו וחביבה א"י שהיא מכפרת על עונות ופשעים

The Land of Israel is precious because it certifies converts. If someone in the Land of Israel says, "I am a convert" we accept him immediately. Outside of the land we do not accept him unless he has witnesses. The Land of Israel is precious because it atones for all sins and transgressions.

In the Mishneh Torah, Hilkhos Kedusha Isurei Biah 13:7, the Rambam rules that witnesses must be brought to establish that one is a convert, but in 13:9 he states that if the convert fulfills the mitzvot, acting like a Jew, then even without witnesses he "is considered a righteous convert" - **אלו בחזקת גרי צדק** . In the same section cited the Rambam teaches that one who was not known to be a convert, who reveals that he is and that he was converted in a court, is believed because of *miggo*. However he limits this ruling to the Land of Israel at "that time" (i.e., when Jews were the majority) because **חזקת הכל שם בחזקת ישראל**..

For marriage, however, there must be witnesses or immersion. In 13:10 the Rambam rules that if one who was not known as a convert says "I was anon-Jew but converted,"

he is believed on the basis on *miggo*. Rabbenu Tam agrees with this. See Tosafot in Yebamot 47a to **במוחזק**.

Outside the land, the 'convert' would have to provide proof in order to marry a Jewess. The Maggid Mishneh explains that this is a *humrah* added by the Rambam since the cases cited in the Talmud were in Israel and furthermore since he was a convert, the rule *The Sages teach: all families stand in the presumption of fitness* (Kiddushin 76b) does not apply since as a convert he has no family!

The Shulhan Arukh, Yoreh Deah 268:10 follows the Rambam's opinions as stated above.

כותי או כותית שבא ואמר נתגיירתי בבית דינו של פלוני כראוי אינו נאמן לבא בקהל עד שיביא עדים ואם ראינום נוהגין כדרכי ישראל ועושים כל המצות הרי אלו בחזקת גרי צדק ואע"פ שאין שם עדים שמעידים בפני מי נתגיירו ואעפ"כ אם באו להתערב בישראל אין משיאין אותם עד שיביאו עדים או עד שיטבלו בפנינו הואיל והוחזקו עובד כוכבים אבל מי שבא ואמר שהוא עובד כוכבים ונתגייר בב"ד נאמן שהפה שאסר הוא הפה שהתיר וכתב הרמב"ם במה דברים אמורים בארץ ישראל ובאותן הימים שחזקת הכל שם בחזקת ישראל אבל בח"ל צריך להביא ראיה ואח"כ ישא ישראלית :

A male or female gentile who comes and states, "I was converted in the Bet Din of so-and-so officially," is not trusted to come into the community until bringing witnesses.

But if they are seen to be acting as Jews and performing all the mitzvot, then they are considered to be righteous proselytes even if there are no witnesses who can testify before whom they converted. Nevertheless if they want to become part of Israel, we do not marry them until they bring witnesses or until they undergo immersion before us since they are considered to be Gentiles. But one who comes and says that he was a Gentile and converted in a Bet Din is believed since the mouth that forbade is the mouth that permitted. And the Rambam wrote: What are we speaking about? When this is in the Land of Israel in these days since everyone there is considered to be Jewish. But in the Diaspora, one must bring proof and only afterwards marry a Jewish woman.

The question of accepting a convert's Jewishness was discussed at length by two Teshuvot of the CJLS in 1984, the majority opinion written by Rabbi Joel Roth, "Should the Kashrut of Conversions Be Investigated" and the minority opinion written by Rabbi David Novak, "A Teshuvah on the Subject of the Investigations of Conversions Today (Hebrew)." Although the argumentation in the two Teshuvot is different, the conclusion of both is that any couple coming to get married should be asked if they are Jewish or not and any conversion should be investigated. Neither delineated what proof was needed.

Concerning converts, the weight of opinion is that if someone who was thought to be a Jew reveals that he is a convert, he may be believed since he had no obligation to reveal that fact. Under certain circumstances, moreover, the Sages accept a convert's word even without witnesses to the actual conversion. The Rambam would accept someone without witnesses who has been living a Jewish, mitzvah-observant life. However in places where there was an advantage to be gained by being Jewish, proof was required, especially for purposes of marriage.

Summary

Based on the rabbinic sources cited, we may deduce the following concepts as a basis for our halakhic decision:

- a. Even in the case of proving fitness to serve as a priest, where a thorough investigation was made, leniency was shown in that one witness was sufficient as long as there were none who questioned it. Thus a more thorough investigation was made only when a question was raised. Sometimes there was even a presumption of fitness - הַזְקָה - such as when the priest has been regularly performing certain priestly duties.
- b. Regarding marriage there was a presumption of the fitness of all families - כל משפחות בחזקת כשרות הן עומדות - which became a basic principle in determining Jewish identity.
- c. In the case of a child of unknown identity, a reasonable assumption of Jewishness can be made even where there is no actual proof, taking into account the demographic reality. The sages inclined toward declaring the child Jewish where there is nothing specific that would disprove it.
- d. Medieval sources accept the story in the Talmud of a non-Jew who ate of the Pesah at the Temple since no one questioned his Jewishness, as creating a principle that one who presents him/herself as a Jew is accepted with no further investigation unless there is cause to be suspicious.
- e. In certain cases an individual's testimony about himself and his family may be accepted with no need for further evidence.
- f. Concerning converts, the weight of opinion is that if someone who was thought to be a Jew reveals that he is a convert, he may be believed since he had no obligation to reveal that fact. Under certain circumstances, moreover, the Sages accept a convert's word even without witnesses to the actual conversion. The Rambam would accept someone without witnesses who has been living a Jewish, mitzvah-observant, life. However in places where there was an advantage to be gained by being Jewish, proof was required, especially for purposes of marriage.

PSAK HALAKHAH

פסק הלכה

1. Based upon the principle that כל המשפחות בחזקת כשרות הן - "all families are considered to be fit" (Kiddushin 76b) which was taken to mean that בתורת יהדות ישראל הם - they are all considered to be within the definition of Israelites, all who claim to be Jews are under the presumption of Jewishness (Tosafot to Yebamot 47a, Ovadia Yosef). As has been stated, לאדם שאומר ישראל אני אין בודקין אחריו - One who says "I am a Jew" need not be investigated (Maggid Mishnah). Where one is part of a Jewish

community and has been living as a Jew there is no need to instigate an investigation into that person's Jewishness. We affirm that trust is the default position in these matters. Therefore we do not question one's Jewishness unless there is reason to be suspicious.

2. However, in view of the many difficulties cited above concerning Jewish identity today and in order to avoid singling out individuals, it is appropriate to determine anyone's eligibility for synagogue membership, religious school, burial and, especially marriage, for example, by asking for the person's Hebrew name and that of his/her father and mother. If it becomes obvious that the mother and the mother's mother were born Jewish, there should be no need for further questioning.¹⁵

3. If, however, the person or the family is not known to us or if there is reason to suspect that one is not Jewish, further investigation is needed. This can be done through questioning the individual, through testimony of those who know the person or knew the family, or, if available, documents that indicate a Jewish background. In many cases, especially concerning those coming from the former Soviet Union, it is understood that documentary evidence will be difficult to produce, and therefore we may rely on the evidence of friends or neighbors and on the impression made by the individual. Questioning is to be done in a sensitive way so as not to violate the honor due to human beings - *כבוד הבריות* - and not to shame the individual.

4. For matters that do not seriously affect *klal yisrael*, such as a visitor to a synagogue being granted an aliyah to the Torah or other synagogue honors, it is not necessary to investigate individuals who state that they are Jewish unless one knows that this is not so or has very good reason to suspect it.

5. Where a conversion is involved either of the individual or of that person's mother, because of variations of practice among streams of Judaism and among individual rabbis, one should investigate if the conversion included the rudimentary elements of immersion and, for a male, circumcision. If not, those should be performed in order to complete the conversion.¹⁶ If the mother's conversion was not valid, the individual will require a conversion, but if the individual was brought up as a Jew, it should be done as efficiently and discretely as possible within the requirements of halakhah. As stated in previous teshuvot on this matter, the rabbi must use great tact in approaching this issue, indicating that we are completing the process that was begun previously or adding the halakhic requirements to the individual's Jewish identity..

6. In places where there is a Bet Din, questions of Jewishness should be brought to the

15. I thank Rabbi Danny Nevins for this suggestion.

16. The CJLS has in the past adopted two contradictory positions on this. According to 022383B if the person has lived as a Jew for a period of years "we need not reevaluate the manner of his/her original conversion but will accept him/her as a member of the Jewish community." A teshuvah by David Novak in Proceedings of the CJLS 1980-5 pp.77-86 takes a different view and states that "these is no basis for accepting, even b'di'eved, converts who did not undergo specific tevilah for the sake of conversion." This teshuvah adopts the second position.

Bet Din, which is the final authority. Its decision concerning the Jewishness of a person is final and is acceptable throughout the Rabbinical Assembly. Where there is no Bet Din, the individual rabbi is the final authority. It is incumbent upon the Bet Din or the rabbi to exercise good judgment and common sense on these matters, relying on the halakhic principles cited above.