

From the Rabbi's Desk
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Mishnah with a Twist [6]

We Accept Your Testimony, But What Can We Do... Insights into Mishnah Eduyot 8:3



Background to Our Story (What you need to know to better understand the story)

Mishna Eduyot

Eduyot (Testimonies) belongs to the fourth order, Nezikin (The Order of Damages) and presents case studies of legal disputes in Mishnaic times and the miscellaneous testimonies that illustrate various Sages and principles of halakha. It has eight chapters.

Rabban Yoĥanan ben Zakkai



Koren Talmud Bavli, The Noe Edition. Berakhot. Koren publishers Jerusalem. Page 186.

Nasi of the Sanhedrin following the destruction of the Temple, Rabban Yoĥanan ben Zakkai was among the greatest leaders of Israel of any generation. A priest, Rabban Yoĥanan ben Zakkai was one of the youngest students of Hillel the Elder. He led Israel for many years of his long life. Prior to the destruction of the Temple he lived in Beror Ĥayil, afterwards he moved to the city of Arev.

Also see: https://en.wikipedia.org/wiki/Yohanan_ben_Zakkai

During the siege of Jerusalem in the Great Jewish Revolt he snuck out of the city in a coffin to negotiate with Vespasian, whom he predicted would become Emperor. He was granted three wishes and through one he re-established the Sanhedrin and founded a new center of Jewish law in Yavneh after the destruction of Jerusalem in 70 CE.

After the destruction of the temple of Jerusalem and its sacrificial altars he led the Council of Yavne (70-90 CE), from which Rabbinic Judaism emerged. Under his leadership the council replaced animal sacrifice with prayer, a practice that continues in today's worship services.

Leviticus 21

¹ The Lord said to Moses: Speak to the priests, the sons of Aaron, and say to them:

⁷ They shall not marry a woman defiled by harlotry, nor shall they marry one divorced from her husband. For they are holy to their God ⁸ and you must treat them as holy, since they offer the food of your God; they shall be holy to you, for I the Lord who sanctify you am holy. ⁹ When the daughter of a priest defiles herself through harlotry, it is her father whom she defiles; she shall be put to the fire.

¹⁰ The priest who is exalted above his fellows, on whose head the anointing oil has been poured and who has been ordained to wear the vestments, shall not bare his head or rend his vestments. ¹¹ He shall not go in where there is any dead body; he shall not defile himself even for his father or mother. ¹² He shall not go outside the sanctuary and profane the sanctuary of his God, for upon him is the distinction of the anointing oil of his God, Mine the Lord's. ¹³ He may marry only a woman who is a virgin. ¹⁴ A widow, or a divorced woman, or one who is degraded by harlotry — such he may not marry. Only a virgin of his own kin may he take to wife — ¹⁵ that he may not profane his offspring among his kin, for I the Lord have sanctified him.

Mishna Kidushin, 4:1-8 - Lineage (יוחסין) in Judaism.

עשרה יוחסין עליו מבבבל, כהני, לויי, ישראלי, חללי, גרי, וחרורי, ממזרי, נתיני, שתוקי, ואסופי. כהני, לויי וישראל, מתרים לבא זה בזה. לויי, ישראלי, חללי, גרי וחרורי, מתרים לבא זה בזה. גרי וחרורי, ממזרי ונתיני שתוקי ואסופי, כלם מתרין לבא זה בזה:

There were **ten** categories of **lineage**, with varying restrictions on marriage, among the Jews who **ascended from Babylonia** to Eretz Yisrael with Ezra before the building of the Second Temple. They are as follows: **Priests; Levites; Israelites; priests disqualified due to flawed lineage [*halalim*]; converts, and emancipated slaves; *mamzerim*; Gibeonites**, i.e., the descendants of the Gibeonites who converted in the time of Joshua; **children of unknown paternity [*shetuki*]; and foundlings**. The mishna proceeds to detail their *halakhot*: With regard to **priests, Levites, and Israelites**, it is **permitted** for men and women in these categories **to marry one another**. With regard to **Levites** who are not priests, **Israelites, *halalim*, converts, and emancipated slaves**, it is **permitted** for men and women in these categories **to marry one another**. With regard to **converts, and emancipated slaves, *mamzerim*, and Gibeonites, children of unknown paternity [*shetuki*], and foundlings**, it is **permitted** for **all of** the men and women in these categories **to marry one another**.

ואלו הם שתוקי, כל שהוא מכיר את אמו ואינו מכיר את אביו. אסופי, כל שנאסף מן השוק ואינו מכיר לא אביו ולא אמו. אבא שאול היה קורא לשתוקי, בדוקי:

And these are the last two categories: **A *shetuki*** is **any person who knows** the identity of **his mother but does not know** the identity of **his father**. **A foundling** is **anyone who was collected from the marketplace and doesn't know** the identity of his parents, **neither** that of **his father nor** that of **his mother**. These two categories are people whose status is uncertain; they may be *mamzerim*. **Abba Shaul would call a *shetuki* by the label of *beduki***.

כל האסורים לבא בקהל, מתרים לבא זה בזה. רבי יהודה אוסר. רבי אליעזר אומר, ודאן בודאן, מתר. ודאן בספקן, (וספקן בודאן), וספקן בספקן, אסור. ואלו הן הספקות, שתוקי, אסופי וכותי:

All those for whom it is prohibited to enter into the congregation, i.e., to marry a Jew of unflawed lineage, **are permitted to marry** into **each other's** families. **Rabbi Yehuda prohibits** them from marrying anyone other than those who share their specific flaw. **Rabbi Eliezer says:** It is **permitted** for **those** with **definite** flaws to marry **with those** with **definite** flaws. For example, it is permitted for *mamzerim* and Gibeonites to marry each other. By contrast, it is **prohibited** for **those** with **definite** flaws, such as *mamzerim*, to marry **with those** whose flaws result from **an uncertainty**, such as a child of unknown paternity [*shetuki*] and a foundling; **and** it is prohibited for **those** whose flaws result from **an uncertainty** to marry **with**

those with definite flaws; and it is prohibited for those whose flaws result from an uncertainty to marry with those whose flaws result from an uncertainty, such as a *shetuki* and a female *shetuki*. And these are the ones whose flaws result from an uncertainty: A *shetuki*, a foundling, and a Samaritan.

הנושא אשה כהנת צריך לבדק אחריה ארבע אמהות שהן שמנה, אמה ואם אמה, ואם אבי אמה ואמה, ואם אביה ואמה. לזיה וישראלית, מוסיפין עליהן עוד אחת:

A priest **who marries a woman** who is **the daughter of a priest must investigate with regard to her** background, i.e., he must check previous generations of her family tree from both the maternal and paternal sides, for **four mothers, which are eight**. How so? He investigates the lineage of **her mother, and the mother of her mother, and the mother of her mother's father, and her mother**, i.e., the mother of her mother's fathers' mother. **And** he also investigates the lineage of **the mother of her father, and her mother**, i.e., the mother of her father's mother, **and the mother of her father's father, and her mother** i.e., the mother of her father's father's mother. If he seeks to marry **a Levite woman or an Israelite woman, he adds to these** an investigation of mothers of **one additional** generation.

אין בודקין לא מן המזבח ולמעלה, ולא מן הדוכן ולמעלה, ולא מן סנהדרין ולמעלה. וכל שהחזקו אבותיו משוטרי הרבים וגבאי צדקה, משיאין לכהנה ואין צריך לבדק אחריהן. רבי יוסי אומר, אף מי שהיה חתום עד בערכי הישנה של צפורי. רבי חנינא בן אנטיגנוס אומר, אף מי שהיה מכתב באקטרטיא של מלך:

With regard to these investigations, **one need not investigate from the altar and above**. If his ancestors included a priest who served at the altar, one checks no further, as the court would have investigated his lineage before allowing him to participate in the Temple service. **Nor** do they check **from the platform, used by Levites for singing in the Temple, and above, nor from the Sanhedrin and above**, since only one whose lineage has been examined and who was found to be fit can be appointed to the Sanhedrin. **And** similarly, **anyone whose ancestors held public posts, and anyone whose ancestors were charity collectors, may marry into the priesthood, and there is no need to investigate their lineage**, since no one of flawed lineage would be appointed to those positions. **Rabbi Yosei says: Even the descendants of one who had signed as a witness in the old court [ba'arki] of Tzipori do not need to have their lineage investigated. Rabbi Hanina ben Antigonus says: Even the descendants of one who was written in the army list [be'isteratya] of the Jewish king do not need to have their lineage investigated.**

בת חלל זכר, פסולה מן הכהנה לעולם. ישראל שנשא חללה, בתו כשרה לכהנה. חלל שנשא בת ישראל, בתו פסולה לכהנה. רבי יהודה אומר, בת גר זכר כבת חלל זכר:

The daughter of a male *halal* is unfit to marry into the priesthood forever. In other words, all daughters of male descendants of a *halal* are prohibited from marrying priests, as they have the status of *halalot*. If there was **an Israelite who married a *halala*, his daughter is fit to marry into the priesthood**, whereas if there was a ***halal* who married a Jewish woman, his daughter is unfit to marry into the priesthood**. **Rabbi Yehuda says: The daughter of a male convert is like the daughter of a male *halal***, and she is also prohibited from marrying into the priesthood.

רבי אליעזר בן יעקב אומר, ישראל שנשא גיורת, בתו כשרה לכהנה. וגר שנשא בת ישראל, בתו כשרה לכהנה. אבל גר שנשא גיורת, בתו פסולה לכהנה. אחד גר ואחד עבדים משחררים, אפלו עד עשרה דורות, עד שתהא אמו מישראל. רבי יוסי אומר, אף גר שנשא גיורת, בתו כשרה לכהנה:

Rabbi Eliezer ben Ya'akov disagrees and says: If there was **an Israelite who married a female convert, his daughter is fit to marry into the priesthood, and** similarly if there was **a convert who married a Jewish woman, his daughter is fit to marry into the priesthood**. **But** if there was a male **convert who**

married a female **convert**, **his daughter is unfit to marry into the priesthood.** With regard to **both converts and emancipated Canaanite slaves**, their daughters are unfit to marry into the priesthood **even up to ten generations.** This *halakha* applies to the offspring **until his mother is born Jewish. Rabbi Yosei says: Even** if there was a male **convert who married** a female **convert, his daughter is fit to marry into the priesthood.**

האומר, בני זה ממזר, אינו נאמן. ואפלו שניהם אומרים על העבר שבמעיה ממזר הוא, אינם נאמנים. רבי יהודה אומר, נאמנים:

One who says: This son of mine is a mamzer, e.g., if he claims that the son was born to one forbidden to him by a prohibition that carries the punishment of *karet*, **he is not deemed credible** to render him a *mamzer*. **And even if both of them**, the father and the mother, **admit that a fetus in her womb is a mamzer, they are not deemed credible. Rabbi Yehuda says: They are deemed credible.**

? What do you think about the concept of lineage?

? Can you think of societies or communities where the concept of lineage is still relevant today?

Bonus ? Can you think of something, not unlike the concept of lineage, that would be very important for you, and irrelevant to the people around you?

The Text: Mishnah Eduyot 8:3

העיד רבי יהושע ורבי יהודה בן בתירא על אלמנת עסה, שהיא כשרה לכהנה, שהעסה כשרה לטמא ולטהר, לרחק ולקרב. אמר רבן שמעון בן גמליאל, קבלנו עדותכם, אבל מה נעשה, שגזר רבי יוחנן בן זכאי שלא להושיב בתי דינין על כן. הפהנים שומעים לכם לרחק, אבל לא לקרב:

Rabbi Joshua and Rabbi Judah ben Bathyra testified concerning the widow of [a man belonging to] a family of doubtful lineage (an *issa*), that she was fit to marry into the priesthood, [And that those of] a family of doubtful lineage are fit to declare who was unclean and who clean, who was to be put away and who was to be brought near.

Rabban Gamaliel said: we accept your testimony, but what can we do since Rabban Yochanan ben Zakkai ordained that courts should not be commissioned for this purpose? The priests would listen to you concerning those who might be put away but not concerning those who might be brought near!

Commentary by Rabbi Joshua Kulp

This mishnah deals with a person who is called “*issa*” or “*dough*”, meaning that his lineage is “mixed up” like dough. This is a man from a potentially priestly family that may have been “contaminated” by intermarrying with unfit priests, or “*halalim*”. A “*halal*” is the child of a mother who should not have been married to a priest, such as a divorcee. A woman who should not have been married to a priest but nevertheless

does so becomes a “halalah”. The fact that “halalim” may have married into this family casts in doubt the status of all subsequent generations. We should note again that lineage was an extremely important issue in Talmudic society, as it was in most of the ancient world. Lineage was especially important to the priestly elite, who could lose their status by not preserving the “purity” of their line.

Rabbi Joshua and Rabbi Judah ben Bathyra testify that a widow of an “issa” is fit to marry into the priesthood. Since an “issa” is only a case of doubtful lineage, and we are not sure that there really were “halalim” in the family, the ruling is not stringent. Note that if we were sure that this widow had been married to a “halal” she would subsequently be forbidden to marry a priest. Furthermore, if this was a divorcee, there would be no issue since no divorcee can marry a priest. The only issue arises with the widow of an issa.

In their second testimony Rabbi Joshua and Rabbi Judah ben Bathyra testify that the people of such a family are able to declare the status of the women among them: which women are “unclean” and therefore unable to marry priests, and which are “clean” and therefore able to marry priests. In other words, although this family itself has had a shadow cast upon its lineage, the members of the family are relied on to testify with regards to the status of the women within their family.

Rabban Gamaliel responds that although this testimony is legally and logically acceptable, and he agrees that the family itself is fit to sort out its own lineage, Rabban Yochanan ben Zakkai, the famous Sage who survived the destruction of the Second Temple, already decreed that the courts should not allow the widow of an “issa” to marry a priest.


Although Rabban Yochanan ben Zakai agreed that this was permitted by law, the priests are stringent in this matter and would not allow the court to permit them to marry such a woman. As we saw in the previous mishnah, many Jews were much more stringent in manners of lineage than the law required. Here Rabban Yochanan ben Zakai teaches an important principle: if the people are going to be so strict, the court should not make rulings that they in any case will ignore. This would cheapen the authority of the court by putting it into blatant conflict with the people.

Rabbi Joshua Kulp earned his undergraduate degree at the University of Michigan and his PhD in Talmud at Bar-Ilan University. In 2023, Kulp received semikhah from Rabbi Dr. Ethan Tucker, President and Rosh Yeshiva of Hadar, as a member of Hadar's first cohort of rabbinical students. Kulp is especially known for his commentary on the Haggadah. Kulp was one of the founders of the Conservative Yeshiva, where he is (as of 2022) a member of the faculty and senior scholar. He also coordinates the online Mishnah Yomit and Daf Shevui projects through the Fuchsberg Jerusalem Center, the congregational organization for Conservative Judaism.



Explaining the Story - What is going on in our story? (Explain the sequence of events)

Comprehension and Analysis Questions

Bonus  Why did Rabbi Joshua and Rabbi Judah ben Bathyra testify concerning the widow of [a man belonging to] a family of doubtful lineage (an issa), that she was fit to marry into the priesthood?

Answer 1 _____

Answer 2 _____

? What did Rabbi Joshua and Rabbi Judah ben Bathyra add by testifying that those of a family of doubtful lineage *are fit to declare who was unclean and who clean, who was to be put away and who was to be brought near?*

Bonus ? What did Rabban Gamliel think about the intellectual and moral integrity of Rabbi Joshua and Rabbi Judah ben Bathyra?

Bonus ? Why did Rabban Yochanan ben Zakkai ordain that courts should not be meeting for the purpose of allowing an *issa* widow to marry into the priesthood?

“The Twist” – Or the Lessons We Can Learn from This Text.

! If the people you lead will blatantly ignore your opinion, don't cheapen your authority by trying to force it (ineffectively) on them.



What do you do when you are in a position of authority, and you know the people you try to influence won't buy into what you are trying to "sell" them?

Rabban Yochanan ben Zakkai faced this situation 2000 years ago, when considering the status of the widow of [a man belonging to] a family of doubtful lineage (an *issa*). When Rabban Yochanan ben Zakkai realized that the people who needed to buy into his potential decision were not going to, he decided to let go of it, to avoid cheapening his authority and the authority of the court, which were critical for the success of the many projects he had at hand.