

# May the Jewish Daughter of a Gentile Man Marry a Kohen?

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## Introduction

Jewish life in the United States is subject to two trends that seem to be pointing in opposite directions. The first is an astonishingly high intermarriage and assimilation rate,<sup>1</sup> so that the Orthodox community encounters families in their midst where the husband is not Jewish. The second phenomenon—pointing in the opposite direction—is the incredibly large number of *baalei teshuvah*, people who are returning to living a life committed to halacha.<sup>2</sup> This article examines one intersection of these two trends—whether the daughter of a relationship between a gentile man and a Jewish woman may marry a *kohen*. A *kohen* is differentiated from other Jews in that he may not marry a convert, a divorcee, or a *chalala*,<sup>3</sup> (the offspring of a *kohen* from a forbidden relationship).

This article is divided into four sections. The first section

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1. According to data from the National Jewish Population Survey of 2000–2001, 47% of Jews who married in the last five years married non-Jews, up from a readjusted intermarriage figure of 43% from the previous survey (1990). The overall intermarriage rate has grown tremendously over the past 30 years, from an average of 9% before 1965 to 52% in 1990.

2. NJPS data indicates that about 19% of Orthodox Jews in America were not raised Orthodox.

3. *Vayikra* 21:7.

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surveys the single talmudic source on this topic and the presentation of this topic in the *Rishonim*. The second section examines the codification of this halacha in the *Shulchan Aruch* and its many different commentators. The third section examines this issue as the matter is understood among the post-*Shulchan Aruch* commentators, codifiers, and responsa writers. The final section surveys contemporary halachic authorities on this issue and reflects on the differences between inreach and outreach, and between the land of Israel and the United States.

### I. The Talmudic Source and its Five Possible Explanations

The Gemara in *Yevamot* 44a-45b discusses at great length many different aspects of eligibility to marry. The Gemara reaches two separate conclusions to this topic that are somewhat at tension with one another, and this tension provides the basic framework for discussing this issue. On page 45a the Talmud recounts:

When R. Dimi came [from Palestine to Babylonia], he stated in the name of R. Yitzchak ben Avudimi in the name of Rabbeinu [R. Judah the Prince], "If an idolater or a slave had intercourse with the daughter of an Israelite, the child [born from such a union] is a *mamzer*."

R. Yehoshua ben Levi said: "The child is damaged (*mekulka*)." With respect to what? If we mean ineligible to marry anybody, R. Yehoshua ben Levi had previously stated that the child was legitimate! Rather, [the child is ineligible] to marry a *kohen*, for even all *Amoraim* who declare the child legitimate agree that it is *pagum* (impaired, unfit).<sup>4</sup> This is inferred *a fortiori* (*kal vachomer*)

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4. The word *pagum* can be understood in a number of different ways, from unfit to diminished or impaired to detested or distasteful (see *Sifri, Devarim* 320 for an instance of such, appearing in combination with the word *bazui*)

from the case of a widow. If in the case of a widow who was married to a *Kohen Gadol*—whose prohibition is not equally applicable to all—her son is impaired, how much more should the child of this woman [who had relations with an idolater or a slave] be tainted, where the prohibition is equally applicable to all.<sup>5</sup>

If the Talmud had ended its discussion here, one would have logically concluded that the daughter of a relationship between a gentile man and a Jewish woman is in fact *pagum* (unfit) to a *kohen*. But at the very end of its analysis, after discussing several personal inquiries directed toward various *Amoraim*, the Gemara reaches a different, formal conclusion—one which makes no mention of any stigma at all. It states:

R. Acha son of Rabbah said to Ravina: "Amemar once happened to be in our place and he declared [such a] child to be legitimate in the case of a married woman, as well as in that of an unmarried woman."

And the halacha is that (*vehilcheta*) if an idolater or a slave cohabited with the daughter of an Israelite, the child [born from such a union] is legitimate (*kasher*), both in the case of a married woman, and in that of an unmarried woman.

The Gemara concludes that when a gentile man has a sexual relationship with a Jewish woman, the child is *kasher*. The central question all the commentators and decisors face—and this question will pervade our entire analysis of this topic—is whether the first ruling of the Gemara in passing, that the child is *pagum* to a *kohen*, is overturned by the concluding statement, that by Jewish law the child of a gentile man and a Jewish woman is *kasher*. As we analyze the various positions, it will become extremely important to note how each commentator understands *pagum* to a *kohen*, either implicitly

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[contemptible]). These distinctions will soon become extremely important.

5. *Yevamot* 45a.

or explicitly.<sup>6</sup>

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6. While the passage in the Babylonian Talmud is ambiguous in its conclusion and employs the rare term *pagum*, the parallel text in the Talmud *Yerushalmi* (*Yevamot* 4:15 (6c)) makes no mention of the word *pagum* but instead uses the term *pasul* definitively in its place and explicitly rules that the child of such a relationship may not marry a *kohen*. It states:

Even though Rabbi Joshua rules that the offspring of a sexual relationship between a man and the sister of the woman [his late brother's wife] with whom he performed levirate separation is legitimate (*kasher*; i.e., fit to marry a Jewish woman), he admits that if the child were female, she would be *pesulah* and ineligible to marry a *kohen*. Even though Rabbi Simeon b. Judah rules that the offspring of a sexual relationship between a gentile or slave and a Jewish woman is legitimate (*kasher*), he admits that if the child were female, she would be ineligible (*pesulah*) to marry a *kohen*.

Many *Rishonim* simply ignore this *Yerushalmi*, and we will try to explain why that might be so. While the touchstone document of halacha is without a doubt the Babylonian Talmud – see Rif (*Eruvin* 27a), Rambam (in his introduction to *Mishneh Torah*), and Rosh (*Sanhedrin* 4:5) all of whom note that the basic doctrine of Jewish law is the supremacy of the Babylonian Talmud – what is the status of the Jerusalem Talmud? There are two distinct schools of thought. One view in the *Rishonim* and *Acharonim* posits that the Jerusalem Talmud is a central document of halacha, and one should seek to interpret the *Bavli* in light of the *Yerushalmi*. As Rabbi Joseph Karo writes (*Kesef Mishneh, Gerushin* 13:18), “Any way that we can interpret the *Bavli* to prevent it from arguing with the *Yerushalmi* is better, even if the explanation is a bit forced (קצת דחוק).” To recast this in a slightly stronger way, it is well-nigh impossible to determine the halacha, in this view, without a firm grasp of the *Yerushalmi*.

Anyone who regularly learns Rashba, Ritva, Rambam, or Rabbeinu Chananel sees that these *Rishonim* were clear masters of the *Yerushalmi* as well as the *Bavli*. Such does not seem to be the case for Rashi and his disciples, who make almost no use of the *Yerushalmi*. Indeed, a common methodological insight of the mainstream Ashkenazic commentators is that they make almost no use of the *Yerushalmi* (except, perhaps, Ra'aviyah). Mordechai, *Yereim*, *Semak*, et al. nearly never cite the *Yerushalmi*. (For an example of the approach of Tosafot, see *B.Berachot* 11b, s.v. *she-kevar niftar*, where Tosafot state in response to a difficulty presented by a *Yerushalmi*: “And Ri answers that we do not accept this *Yerushalmi* since our Talmud does not quote it.” According to Ri, sources not cited in “our Talmud” [the *Bavli*] are not binding.)

The *Rishonim*, in broad outline, take five different views of understanding the practical halacha derived from this talmudic discussion.

- One view is that the daughter of a gentile man and a Jewish woman may marry a *kohen*, as the conclusion of the talmudic source overrules the initial indication to the contrary.
- A second view is the exact opposite—even the conclusion of the talmudic source accepts that a woman whose father is a gentile may not marry a *kohen*.
- The third view is uncertain whether the first or second view above is correct and treats the matter as in doubt as a matter of Jewish law.
- The fourth view is that the Talmud uses the word *pagum* to denote that a woman whose father is a gentile is merely distasteful to a *kohen*, but not prohibited.
- The final view rules that when the Talmud concludes that the daughter of a sexual relationship between a gentile man and a Jewish woman is “kosher”, the Talmud means that the child is a proper gentile, but not a Jew.

The next section explains these five views.

#### A. The View of Rambam: The Daughter of a Gentile Man May Marry a *Kohen*

The Rambam only codifies the concluding line of the Gemara and maintains that a child whose father is a gentile is eligible to marry a *kohen*. He writes (*Hil. Issurei Biah* 15:3):

A gentile or a slave who has relations with a Jewish woman, the child is *kasher*, whether the woman was unmarried or married, whether they had relations forcibly or willingly.

The Rambam seems to insist that the accepted conclusion of the Gemara supersedes previous statements indicating stigma (*pegimah*) of any kind to this child. The plain wording of the final conclusion (*vehilcheta ...*) indicates that there is no stigma

of any type assigned to a child whose father is a gentile, and that this child is eligible to marry a *kohen*.<sup>7</sup> Indeed, according to the Rambam, no matter what was meant by "*pagum* to a *kohen*" in the context of the talmudic passage, it makes no difference as that ruling is ultimately rejected.

### **B. The View of Rosh: The Daughter of a Gentile Man May Not Marry a *Kohen***

The Rosh (*Yevamot* 4:30) maintains the exact opposite position. He writes:

The Talmud plainly stated earlier, "All *Amoraim* who declare the child legitimate agree that he is *pagum*. This is inferred *a fortiori* (*kal vachomer*) from the case of a widow..." And since that *kal vachomer* is not refuted, there is no one who disputes it. The Talmud did not explicitly state in its conclusion that the halacha is that such a child is *pagum* simply because it was not necessary to issue such a ruling, as it had stated above that all *Amoraim* who declare the child legitimate agree that he is *pagum*, with no one who disputes this. The only matter that the Talmud still needed to rule upon was that such a child—even the offspring of a married Jewish woman—is in fact permitted to marry into the congregation of Israel.

The Rosh assumes that the conclusion of the Gemara stating that the child is *kasher* is limited to mean that the child is not a

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7. This understanding of the Rambam is nearly universally accepted, although the *Mishneh Le-Melech* seems to argue that the Rambam accepts the view of the Rosh (discussed below). A close examination of both the language of the Rambam and the deep consensus among commentaries on the Rambam, from the *Beit Yosef* to the *Maggid Mishneh* to the *Haqshatot Maimoniot* to the *Migdal Oz* and many others, reveals that the *Mishneh Le-Melech's* position is not a correct understanding of the Rambam, and the simple understanding of the Rambam is the correct one, namely that the child is eligible to marry a *kohen* in the Rambam's view. The *Beit Yosef* quotes that view almost without any thought to the possibility that any other view could be correct. *Chinuch* 560 also adopts this view of the Rambam.

*manzer* and is considered Jewish. But everyone agrees, the Rosh says, that the child is in fact ineligible to marry a *kohen*. The statement that "all *Amoraim* who declare the child legitimate agree that he is *pagum*" was never meant to be superseded, and the *kal vachomer* advanced by the Gemara in support of that position creates an absolute obligation upon the child not to marry a *kohen*. In the Rosh's formulation, *pagum* is properly taken to be equivalent to *pasul*—unfit—and expresses a categorical prohibition against marrying a *kohen*. Indeed, the Jerusalem Talmud is clear that the word *pagum* is synonymous and interchangeable with *pasul*; this provides a clear support for the view of the Rosh. This approach seems to be the view of many *Geonim* as well.<sup>8</sup>

### C. The View of Rif: It is Uncertain if the Daughter of a Gentile May Marry a *Kohen*

The third view is that of the Rif.<sup>9</sup> The Rif quotes both sections of the talmudic discussion and says that some of his teachers ruled in accordance with the first part and some in accordance with the second. He then concludes:

But we are uncertain as to whether this woman is *pagum* or not, from the fact that we see the Gemara, after much give-and-take, rules that "the halacha is that if an idolater or a slave had cohabited with the daughter of an Israelite the child [born from such a union] is legitimate (*kasher*)," but it did not say that the child is *pagum*.

The Rif writes that because of the difficulties in interpreting the flow of the Gemara, his teachers are uncertain which view is correct and the matter remains as a *safek* (doubt).<sup>10</sup> Again,

8. See *Otzar Ha-Geonim* p. 106, in the name of *Ba'al Meitav* and *Bahag*.

9. *Yevamot* 15a in *Rif* pagination.

10. The view of the *Rif*, like the view of the Rambam, is subject to some controversy because the *Nemukei Yosef* apparently has a different textual edition (*girsa*) of the *Rif* and maintains that the *Rif* rules leniently on this

the tension seems to be between the Talmud's seemingly blanket conclusion that the child of a gentile man and Jewish woman is *kasher*, fully legitimate without any further limitation specified, and the Talmud's earlier assessment that the *Amoraim* who rule that such a child is allowed to marry a Jew agree nonetheless that she is not to marry a *kohen*. This ambiguity produces a ruling of doubt.

But how seriously are we to take that uncertainty? Although it might seem that we are dealing with a matter of doubt on a biblical law, which would require one to be strict in all instances and leave little room for flexibility, this may not be the only possible—or even likely—explanation. In fact, the doubt of the Rif can be cast in two fundamentally different ways, depending on whether one understands "*pagum* to a *kohen*" as categorically ineligible to marry a *kohen* or something else.

One possibility is as we have already presented: we have a tension between two diametrically opposed feasible rulings on a matter of Torah law. Some take the term *pagum* as does the Rosh, to denote a categorical prohibition against marrying a *kohen* — *pagum* is equivalent to *pasul*. Furthermore, the halacha follows that restriction, namely that the daughter of a gentile and Jewess is forbidden to marry a *kohen*. Others, notwithstanding any particular meaning of the term *pagum*, maintain that the child in question is not *pagum* to a *kohen*, as the conclusion of the Gemara seems to indicate that the child is completely *kasher*. Uncertainty as to which of these vastly different views is correct produces a ruling of *safek*, doubt, on a very serious matter that is biblical in nature, and one must rule strictly in both directions. Thus, not only would the offspring of a gentile man and Jewish woman not be able to

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matter and maintains that the child is permitted to marry a *kohen*. Notwithstanding, our text of the *Rif*, and the consensus text of the *Rif* found among the *Rishonim*, is that the *Rif* leaves the matter in doubt and does not resolve it.



marry a *kohen*, but were such a child to (improperly) marry a *kohen*, their offspring would also be forbidden to come in contact with a corpse. In fact, were one to take this position to a logical extreme, one might even be inclined to rule that if the granddaughter of a gentile man and a Jewish woman through a son were to marry a *kohen*, they ought to divorce, no different from any case of a *chalalah* who marries a *kohen*.

Indeed, the Ramban, in his commentary to *Yevamot* and even more clearly in his *Sefer ha-Zechut* on the *Rif*, stakes out this position. He maintains that there is a genuine *safek* (doubt) as a matter of Torah law whether this child may marry a *kohen*. The Ramban spells out several permutations of the *din*, giving us a clear indication that he took this stricture put forward in the name of the *Rif* as the normative halacha. According to the Ramban, the daughter that results from a relationship between a gentile man and a Jewish woman is a *safek chalalah* as a matter of Jewish law, and the son that results from this type of relationship is a *safek chalal*,<sup>11</sup> and they are to be treated as a matter of Torah law as residing in that state of doubt, both for the male children and female children.<sup>12</sup>

The Ramban assumes that the status of *pagum le-kohen* is a Torah status forbidding marriage to a *kohen*, and the resulting child is not allowed to marry a *kohen* as a matter of doubtful Torah law. He is, however, one of the first to note that if such child does in fact marry a *kohen* in contravention of the directions given, the couple need not divorce since the matter remains in doubt, and once they are married they may stay

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11. Of course, one recognizes that this is not a classic case of *chalal*, as the child does not result from a sexually improper union involving a *kohen*.

12. Although this article will focus exclusively on the question of whether the daughter of a gentile man and Jewish woman may marry a *kohen*, according to the Ramban, if the son of such a union marries a Jewish woman and has a daughter, that daughter is also a *safek chalalah* and may not marry a *kohen*. Far-reaching permutations of the Ramban's view become apparent throughout the course of this article.

married.<sup>13</sup> A number of *Acharonim* explain that indeed according to this view of the severity of the underlying doubt, they ought to divorce, but were the courts to force them to do so, the problem of coerced divorce (*get meuseh*) might arise, so we have no choice but to allow them to stay married.<sup>14</sup>

#### D. The View of *Yam Shel Shlomo*: The Daughter of a Gentile Man is Merely Discouraged from Marrying a *Kohen*

Tosafot<sup>15</sup> imply, and the *Yam Shel Shlomo* states, that the word *pagum* (which the Rosh insists means *pasul* and which the Rambam rejects as not halachically normative) in fact means distasteful, rather than invalid. In this view, one would say that the daughter of such a relationship is discouraged from marrying a *kohen*, rather than prohibited from doing so. In fact, Tosafot seem to insist that this exact point is a dispute among the *Amoraim*, some of whom understand *pagum* to mean *pasul* but not a *mamzer*, as opposed to R. Yehoshua ben Levi who uses the terms *pagum* and *mekulka* interchangeably, and that is the view which Tosafot seem to adopt *lehalacha*.<sup>16</sup>

In both his commentary to *Yevamot* (4:38) and his volume of responsa,<sup>17</sup> *Yam Shel Shlomo* maintains that the halacha is clear that the daughter of a gentile man who marries a Jewish woman is eligible to marry a *kohen*. The basic argument of the *Yam Shel Shlomo* is that the *kal vachomer* put forward in the initial part of the Gemara is ultimately not persuasive because the Gemara itself provides a refutation for the *kal vachomer*. This position is made even clearer by noting that it is conceptually impossible to label this child a *chalal* or *chalalah*

13. Why this is so will be explained below.

14. See *Pitchei Teshuvah, Even HaEzer* 4:3.

15. *Yevamot* 77a, s.v. *R. Yochanan amar kesherah*.

16. As noted *infra*, Ramo adopts this view.

17. *Responsum* 18. In some editions, 17.

because the essential characteristic of *chalal* children is that they themselves derive from a prohibited sexual relationship between a *kohen* and one prohibited to marry a *kohen*.<sup>18</sup> The prohibited sexual relationship between a Jew and a gentile, though status-oriented, seems not to be related to the prohibitions of a *kohen* at all. Thus the application of the term *chalal* or *chalalah* in this case seems incorrect. According to the *Yam Shel Shlomo*, *pagum* merely means distasteful or unattractive, and the statement in the Gemara that "all these *Amoraim* who declare the child legitimate agree that he is *pagum*" only means distasteful to the *kohen*, and not prohibited. After quoting the Rosh, he writes:

But I say that I, too, see no room for doubt in this matter. Yet to me the opposite conclusion seems correct, that such a child is permitted to marry a *kohen*. I am surprised by the *kal vachomer* cited by the Rosh, for it certainly had been refuted: in the beginning of the passage, the Talmud attempted to derive *a fortiori* from the case of a widow that the offspring of a woman who has a relationship with a man in violation of a negative commandment [whose punishment is lashes rather than death] is considered *pagum*, but was refuted by the argument that one cannot draw a conclusion from the case of a widow who marries a High Priest, for she herself becomes profaned [and ineligible to all priests], etc. ... Furthermore, from the fact that we are only attempting to derive [through this *kal vachomer*] that the daughter of a Jewish woman and gentile man is to be considered ineligible to marry a *kohen*, but were the child male, he would not invalidate either his wife or children as a *chalal* would, because the status of *chalal* results only from relationships where the individual himself is forbidden to marry a *kohen*, then the

18. Thus, for example, the daughter of a marriage between a *kohen* and a divorcee is a *chalalah*, and the child from a relationship between a *kohen* and a *Chalutzah* (levirate widow) is a *chalalah miderabanan*.

*kal vachomer* is refuted by this very logic, for we can argue that the case of male offspring proves it invalid: in the case of the widow and High Priest, the resultant male offspring is considered to be a *chalal* forever. But a gentile or slave does not render his son a *chalal*, even as their prohibition is equally applicable to all. Rather, one has no alternative but to conclude that since the status of *chalal* results only from relationships where the individual himself is forbidden to marry a *kohen*, then she [the female offspring of a Jewish woman and a gentile man or slave] is not even considered to be *pagum* [i.e., forbidden to marry a *kohen*]. Thus we cannot infer a prohibition *a fortiori* from the case of a widow and High Priest, as that case contains a stricture [i.e., that the offspring is considered a *chalal*] inapplicable to our case.

Thus, according to *Yam Shel Shlomo*, Jewish law does not prohibit the daughter of a gentile man from marrying a *kohen* but merely discourages it.

Working along these lines, one could put forward a completely different approach to the doubt of the *Rif*. According to this view, *pagum* is only a rabbinic law in the first place. As opposed to the laws of *chalal* and *chalalah*, here the prohibition for the child of a gentile man and Jewish woman is not a categorical Torah prohibition that touches all offspring, but a rabbinic injunction against such a child marrying a *kohen*, as in some way inappropriate. *Pagum*, in this approach, does not mean categorically *pasul*, but something lesser—despicable or distasteful—and a different term is used to indicate a rabbinic prohibition. This unique prohibition would apply differently to daughters than sons, and would not transmit a status of ineligibility for several generations. Furthermore, such a rabbinic rule would itself dictate that if such a child were to marry a *kohen* no divorce would be needed, as rabbinic rulings of this kind are only devised *ab initio* (*lechatchila*).<sup>19</sup>

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19. Many *Acharonim* also maintain that the *pegam* (flaw) is only

If *pagum* is understood to mean distasteful to marry, but of lesser severity than *pasul*, then the *safek* between the two possible rulings takes on a very different cast. Rather than uncertainty as to whether or not the Gemara is indicating a severe biblical status for the child of a gentile man and Jewish woman, our doubt is whether or not such a child has a lesser, distasteful status. Even the position that rules that such a child is *pasul* believes that the prohibition is not severe, and has a degree of leniency already built in. That would also explain why the son of a gentile or slave and a Jewish woman is not considered a *chalal*, according to this view, but only *pagum*.<sup>20</sup>

While no single *Rishon* sets out this position as clearly as the Ramban does his, nonetheless, many aspects of this explanation can be found among a variety of commentators, all seeming to indicate that *pagum* is something quite different from *pasul*. Included in this list, to varying degrees, are the Ritva, the Rashba, Rashi, and the Meiri, each of whom insists that *pagum* does not create the status of *chalal*, but rather something different and less severe.<sup>21</sup>

### E. The View of *Kitzur Piskei Tosafot*: The Daughter of a Gentile Man and a Jewish Woman is a Gentile

A novel approach to this topic is found in the name of Tosafot in *Kiddushin* 75b and cited explicitly in *Kitzur Piskei Tosafot* to *Kiddushin*, *Asarah Yuchasin*, no. 142. This view posits that the child resulting from a relationship between a gentile

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*miderabbanan*; see *Responsa of Rabbi Akiva Eiger*, No. 91; Commentary of *Beit Meir*, *Even HaEzer* 6:17; *Responsa Amudei Or* 3:8; *Responsa Beit Yitzchak*, *Even HaEzer* 26; and *Seridei Esh* 3:8.

20. See Meiri, *Yevamot* 45a and Ritva, *Yevamot* 45a. See also *Avnei Nezer* 16 and Ritva, *Yevamot* col. 251, n. 18 (in vol. 2 of the Mosad Ha-Rav Kook edition).

21. Ritva, Rashba, and Meiri on *Yevamot* 45a; Rashi ad loc., s.v. *bitah*. It is worth noting that there are at least seven distinct problems with the *kal vachomer* put forth by the Gemara in *Yevamot* 44b. See Ritva, *Yevamot* col. 251, n. 18 (in vol. 2 of the Mosad HaRav Kook edition).

man and a Jewish woman is valid (*kasher*) but a valid *gentile* and requires conversion before being considered Jewish. As noted by *Pitchei Teshuvah, Even HaEzer 4:1*, this view is rejected by nearly all halachic authorities and is generally not even factored into the halachic calculus at all.<sup>22</sup>

## II. The View of the Codes and Commentators

The *Tur* restates the halacha simply and straightforwardly in *Even HaEzer 4*:

If a gentile or a slave has relations with a *mamzeret*, the child is a *mamzer*, and if he has relations with a Jewish woman, the child is *kasher*, whether the woman was unmarried or married, but is *pagum* to a *kohen*.

There is no mention of a contrary view or of any doubt. The *Beit Yosef* in his commentary explains that the *Tur's* formulation is based on the understanding of the Rosh, the *Tur's* father. In this view, *pagum* is identical to *pasul*, and such a child is categorically forbidden to a *kohen*.

However, the picture becomes slightly complicated when we turn to the *Shulchan Aruch*. The *Shulchan Aruch*, although employing language similar to the *Tur*, in fact codifies several rules of *pagum* to a *kohen* in a way that increases our uncertainty as to which interpretation among the *Rishonim* the halacha follows. In *Shulchan Aruch Even HaEzer 4:5*, he writes:

If a Jew has relations with any of the above [prohibited] women, the status of the child follows the status of the mother. And if any of the above, except for a *mamzer*, has relations with a Jewish woman, the child is *kasher* to marry into the community, except that the child is *pagum* to a *kohen*.

22. Rif, Rambam, Rosh, Ramban, Meiri, Ritva, *Beit Shmuel*, *Chelkat Mechokek*, *Shach*, *Taz*, *Aruch Ha-Shulchan* and *Nodah Bi-Yehudah* all reject this view.

Somewhat in contrast, the next section in the *Shulchan Aruch Even HaEzer* (4:6) states:

If any one of these [prohibited individuals] converts and marries a Jewish man, or one such individual converts and marries a Jewish woman, the child follows the invalid parent. Thus, if an Ammonite or second-generation Egyptian convert marries a Jewish woman, the daughter is *kasher* even to a *kohen*...

Later in the same chapter, in *Even HaEzer* 4:19, the *Shulchan Aruch* states regarding a related case:

If a gentile or a slave has relations with a *mamzeret*, the child is a *mamzer*, and if he has relations with a Jewish woman, whether the woman was unmarried or married, the child is *kasher* but is *pagum* to a *kohen*.

So too in *Even HaEzer* 7:17, the *Shulchan Aruch* repeats this formulation:

If a gentile or a slave has relations with a Jewish woman, and she gives birth to a daughter as a result, that daughter is *pegumah* to a *kohen*.

Although the *Shulchan Aruch* seems to use language similar to the Gemara and the *Tur*, we know that his general approach is to consider the views of the Rambam, Rif and Rosh as he formulates the halacha, and that rather than simply borrowing the language of his predecessors, he regularly rephrases the rulings of the Gemara and other authorities in order to convey his unique understanding of the halacha. Careful readers of the *Shulchan Aruch* are attentive to his nuanced but consistent use of terms, and would be surprised to see the *Shulchan Aruch* use words such as *pasul* and *pagum* interchangeably. This leads one to suspect that they in fact have different meanings. The use, then, of the term *pagum* across these various contexts in *Even HaEzer* deserves careful attention.

Indeed, another use of the term *pagum* in the *Shulchan Aruch*

inclines one to distinguish it from *pasul*. In *Even HaEzer* 4:13, *Shulchan Aruch* writes:

Who is a *mamzer*? Any child resulting from any of the forbidden sexual relationships, whether they be punished by execution at the hands of the court or by *karet* (divine excision), except for a child born to a woman [who had intercourse while] still in a menstrual state, who, though *pagum*, is not a *mamzer*, even rabbinically.

Here, the term *pagum* seems to clearly indicate one whom it is distasteful but not forbidden to marry. From this particular source, one is inclined to say that the use of *pagum* throughout the *Shulchan Aruch* means distasteful to marry, and *pagum* to a *kohen* means distasteful for a *kohen* to marry but not prohibited for him to marry. And just as the child of a *niddah* is *pagum* but not *pasul*, so too the daughter of a gentile man and Jewish woman is *pagum* but not categorically forbidden to a *kohen*.

The view of the Ramo is important to note. Ramo is silent on this question in the *Shulchan Aruch*, but in his responsa he clearly sides with the view of the *Yam Shel Shlomo* and accepts that the child that results from a sexual relationship between a gentile man and a Jewish woman is not *pasul* or forbidden to marry a *kohen*, but only discouraged [*pagum umekulka*] from doing so.<sup>23</sup> The Ramo, one could claim, does not think he is adopting a position inconsistent with the language of the *Shulchan Aruch*, but is instead doing so based on the view that the *Shulchan Aruch's* use of the word *pagum* does not in fact mean ineligible to marry a *kohen* but only distasteful to a *kohen*. Nowhere in the *Shulchan Aruch* is it clear according to this view that such a child may not marry a *kohen*. That would also explain why the Ramo in his glosses does not stop to disagree with the formulation found in the *Shulchan Aruch*.<sup>24</sup>

23. See *Responsa of the Ramo*, No. 18; see also Nos. 61 and 69.

24. See also *Darkei Moshe* on *Tur*, *Even HaEzer* 7, as well as the notes to *id.* published in the Machon Yerushalayim edition of the *Tur* which state clearly that Ramo adopts the view of the *Yam Shel Shlomo*.



Although none actually mention this explicitly or present the entire range of views in a single source, the commentators on the *Shulchan Aruch* fall into the similar categories of views as the *Rishonim* above.

The *Levush*, for instance, maintains across the board that *pagum* means *pasul*, and that even in the case of a man who has a sexual relationship with a woman who is a *niddah* where the resulting child is *pagum* but not a *mamzer*, the *Shulchan Aruch* means to say that the resulting child is in fact ineligible to marry a *kohen*. In this line of reasoning, the halacha follows the Rosh's understanding of the Gemara and his conception of *pagum*, although it is extended far beyond our original context. The view of the *Levush*, while providing a consistent explanation for the rulings of the *Shulchan Aruch*, presents great difficulty. Almost all other halachic authorities maintain that the term *pagum* used in *Even HaEzer* 4:13 in reference to the child of a relationship with a woman who is a *niddah* is to be understood merely as being distasteful but not actually forbidden to marry a *kohen*; the *Levush* is alone in insisting that such a child is prohibited to a *kohen*. Indeed the Rosh and *Tur* make no such explicit claim.

A view closer to that of the Rosh seems to be taken by the *Shach*, *Yoreh Deah* 268:11. There the *Shulchan Aruch* is discussing the requirements of conversion, and that although acceptance of the commandments (*kabbalat hamitzvot*) must take place before a *beit din* of three fit judges (*dayanim*) during the daytime, *a posteriori* (*bedeavad*), circumcision and immersion in a *mikvah* need not. The *Shach* applies that distinction to our case. If *kabbalat hamitzvot* does not take place in front of the three *dayanim*, the convert is still considered a non-Jew and the daughter he has with a Jewish woman is ineligible to marry a *kohen*, whereas if only the immersion in a *mikvah* or circumcision does not take place in front of a *beit din*, the child is *kasher*. The use of the term *kasher* by the *Shach* could be reasonably understood as the functional opposite of *pagum*, which according to the *Shach* would mean that he

maintains that the child of a relationship between a non-Jewish man and a Jewish woman is *pasul*, rather than *pagum*, to a *kohen*.

However, if [one who immersed or was circumcised without three fit *dayanim* or at night] married a Jewish woman [a resultant child is not *pasul*]<sup>25</sup>—even though we accept the view that the offspring of the sexual relationship between a non-Jewish man and a Jewish woman is *kasher*, [the immersion/circumcision without three proper *dayanim* or at night] would nonetheless make a difference as to whether such a child would be *kasher* to a *kohen*, as opposed to the child of a non-Jew (as discussed in *EH* 7). Alternatively, it could make a difference as to whether such a child is considered a first-born to be redeemed (above, *Yoreh Deah* 65:18).<sup>25</sup>

Other commentators on the *Shulchan Aruch* seem to differentiate *pagum* from *pasul*. They draw their interpretation of the term *pagum* as applied to the child of a gentile man and Jewish woman from the *Shulchan Aruch's* use of such a label in the case of *niddah*. In their understanding, the term *pagum* to a *kohen* denotes the same type of abiding distaste as a relationship between the child of an improper sexual relationship with a *niddah* and a *kohen*—but such a marriage, though not ideal, is ultimately valid in the eyes of halacha. Indeed, according to a number of these authorities, we would perform such marriages and not treat that status as one of generating formal, firm halachic prohibition.<sup>26</sup> This understanding of the word *pagum* is clearly stated by the *Chelkat Mechokek* in *Even HaEzer* 7:26:

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25. This view is also adopted by the *Baer Ha-Golah*, *Even HaEzer* 4:10.

26. Thus, throughout this article, in the absence of an indication in a post-*Shulchan Aruch* work that the term *pagum* explicitly means *pasul*, I will continue to render the term as *pagum*, because there is an uncertainty as to whether the term ought to be properly translated as distasteful or as ineligible.

From the word *pagum*, it appears that only as an ideal (*lechatchila*) she should not marry a *kohen*, but she is not really a *chalalah* in actuality; see *Maharshah* 17.<sup>27</sup>

The *Beit Shmuel* in his commentary *Even HaEzer* 4:2 adopts the view of uncertainty, *safek*, as to whether this child may marry a *kohen*, but seems to do so as a stricture to accommodate all views when possible and not an absolute requirement due to a severe biblical mandate. He writes:

As a matter of normative Jewish law, it appears that she should not after the fact be required to divorce the *kohen* if she marries one, since the Rambam maintains that she is permitted to marry a *kohen*, and according to the Rif and Ramban she would not be required to divorce after the fact.

He then adds, "See *Responsa of Maharshah*, No. 17 and *Shulchan Aruch, Even HaEzer*, end of chapter 7." (A similar view is put forth by the *Chelkat Mechokek* in *Even HaEzer* 4:3, also noting that if they marry, a divorce is not required.) *Beit Shmuel's* disagreement with the view of the Rosh (who rules that such a child may certainly not marry a *kohen*) is made clear in his comments on *Even HaEzer* 4:4, where he states:

[T]hus the Rosh's position is difficult (*tzarich iyun*), for how could he have ruled that the child of a gentile or

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27. *Chelkat Mechokek* reinforces this understanding of the halacha with his comments (*Even HaEzer* 4:3), on the words, "except that the child is *pagum le-kehunah*":

Like every non-Jew who has sexual relations with a Jewish woman, as stated below, *Even HaEzer* 4:19. The Talmud (*Yevamot* 45a) derives a *fortiori* from the case of a widow that her daughter is forbidden (*pesulah*) to marry a *kohen* and is considered a *chalalah*. However, some (*Rif; Maggid Mishneh, Hil. Issurei Biah* 15[3], citing Ramban) disagree and rule that this is only a ruling of doubt (*safek*) and thus if a daughter from such a relationship marries a *kohen*, they need not divorce and the child is considered a *safek chalal*.

Admittedly, the use of the term *safek chalal* is somewhat at tension with the wording of the *Chelkat Mechokek* in *Even HaEzer* 7:26.

slave who has a sexual relationship with a Jewish woman is considered *pagum* for a *kohen* based on the logical reasoning (*kal vachomer*) derived from a widow who lives with a High Priest—this may be refuted by pointing to an Ammonite convert who has a sexual relationship with a Jewish woman, where such conduct is sinful (*she-pogem be-viato ve-yesh aveirah be-viato*) but the offspring is nonetheless permitted to marry a *kohen*...

It seems clear from this *Beit Shmuel* that he ultimately rejects the view of the Rosh. The point of the *Beit Shmuel* is hard to rebut. Since a sexual relationship between an Ammonite convert or a second-generation Egyptian convert and a Jewish woman violates Jewish law, one ought to say that the resultant child is also *pagum* to a *kohen*. The fact that the *Shulchan Aruch* does not do so is a clear indication that the view of the Rosh is rejected by the *Shulchan Aruch*, who must understand *pagum* to mean something other than *pasul*. Tosafot (*Yevamot* 77a, s.v. *R. Yochanan amar kesherah*) adopt that view.<sup>28</sup>

This understanding of the halacha is rejected by the *Baer Heitev*, *Even HaEzer* 4:5, who dismisses the view of the *Beit Shmuel*, stating:

*Even though the sexual relationship was sinful, the daughter is nevertheless permitted to marry a kohen – One need not ask that according to the ruling of Shulchan Aruch here, that in the case of an Ammonite convert who has a sexual relationship with a Jewish woman, their daughter is permitted to marry even a kohen—then the kal vachomer is thus refuted, for we infer that the child of a gentile or slave who has a sexual relationship with a Jewish woman is pagum to a kohen a fortiori from the case of a widow who was married to a Kohen Gadol where the prohibition is not equally applicable to all, [yet] her son is impaired, how*

28. *Baer Heitev*, *Even HaEzer* 4:5 responds to this, but as *Pitchei Teshuvah* (4:4) notes, his response is not cogent.

much more should the child of this woman [where the prohibition is equally applicable to all] be considered *pagum*. After all, one can respond by saying that the case of the Ammonite convert provides proof to the contrary: she is distasteful because she had this sinful sexual relationship, but the resultant daughter is nonetheless permitted to marry a *kohen*, as Tosafot asked in *Yevamot* (77a) without resolving the question. But if [the *kal vachomer* is refuted], why did *Shulchan Aruch* rule that the daughter of a gentile man and Jewish woman is *pagum* to a *kohen*? One may answer that we may infer a different *kal vachomer* from the case of a widow who was married to a *Kohen Gadol*: in that case, the marriage takes effect yet the resultant child is *pagum*, how much more should the child of a gentile or slave, where no marriage is effected, be considered *pagum*—and that *kal vachomer* is never refuted. It is for this reason that the *Bach* wrote that the case [of an Ammonite convert] bears no similarity to the case of a gentile or slave who has a sexual relationship with a Jewish woman, where the resultant daughter is considered *pagum* because no marriage takes effect; but *Bach* did not write that she has that status because of the *kal vachomer* inference from the case of a widow [married to a *Kohen Gadol*].<sup>29</sup> Certainly he was not unaware of the question posed by Tosafot, thus his intent was as I have written. Know that upon careful investigation this must be the proper understanding, and the *Beit Shmuel* is incorrect.

This stands in contrast to the view of the *Pitchei Teshuvah*, who seems to be genuinely uncertain which view is correct. The *Pitchei Teshuvah* (*Even HaEzer* 4:3) writes:

But here, where we are unsure as to whom the halacha follows, we do not force them to divorce, for if the

29. Where the underlying reasoning is as the Talmud lays out, because the prohibition is not applicable to all.

halacha indeed follows the lenient view, then the divorce is invalid due to coercion. That is why the Ramban specified that we do not force them to divorce, but did not in fact write that he ought not to divorce her, to indicate specifically that coercion should not be employed.

The *Pitchei Teshuvah* maintains, in defense of the position of the Ramban, that we are dealing with a serious doubt on a matter of biblical law (*safek deoraita*), and that the couple ought to divorce. It is only based on a technicality that we cannot force them to do so. However, if a *kohen* were to approach his rabbi and ask whether or not he should divorce such woman, the correct answer would be that it is proper for him to divorce her. Indeed, the *Pitchei Teshuvah* in 4:5 makes clear that he argues with the *Beit Shmuel*. In fact *Baer Ha-Golah* goes even further in his commentary (*Even HaEzer* 4:10) and states that if a *kohen* marries such a woman, he must divorce her.

### III. The View of Acharonim

The *Aruch Ha-Shulchan* in *Even HaEzer* 7:35 adopts a formulation somewhat reminiscent of the *Chelkat Mechokek*. He notes that there is a dispute among the *Rishonim* about this matter and he notes that the term *pegam* is only *lechatchila*. After summarizing the views of the *Rishonim*, he adds:

The view of the Ramban [that the *pesul* of this child applies to both men and women and is a biblical status] is a solitary view and is not to be accepted as the normative view within the halacha.

What does this mean? If the halacha is not in accordance with the Ramban, then this matter can only be a matter of doubt on a rabbinic rule. *Pagum* is a different term than *pasul*, and the reason the underlying halacha is different is because we are dealing with a rabbinic decree—one whose very existence is disputed by many *Rishonim*, at that.

Rabbi Menachem Azaryah (רמ"ע) da Fano (Rama Mipano) in his *Responsa*, No. 124, adopts the view that the *pegam* is only a

*pegam miderabbanan* and the term *pegam* denotes only a *lechatchila* prohibition of a rabbinic nature, and not only that he does not have to divorce her, but of course that this is somewhat analogous to the prohibition of a *bat niddah* marrying somebody, which is that the *pegam* merely notes something distasteful. The Rama Mipano is quoted by many others and can be readily understood as saying that a *kohen* marrying this person is no more problematic than a regular Jew marrying the daughter of a woman who had a sexual relationship while she was a *niddah*.

The view of the Gra is also worth noting. In his commentary on *Even HaEzer* 7:54, the Gra explains at enormous length why he is inclined to follow the view of the Rambam and think as the *Yam Shel Shlomo* does that this child is eligible to marry a *kohen* and just discouraged—but he concludes by saying that the bottom line is that we should follow the view of the Rosh, that this child is ineligible to marry a *kohen* at least as a matter of uncertainty.

The *Beit Meir*, *Even HaEzer* 4:4, focuses on what he thinks to be the central question: Is the underlying sexual relationship between a gentile man and a Jewish woman a violation of Torah law, in which case *pagum* could generate a Torah prohibition to marry a *kohen*, or is the underlying conduct only a rabbinic sin, in which case *pagum* would only indicate that marriage to a *kohen* is distasteful. He concludes that except in the case of a slave, the sexual relationship between the prohibited individual and a Jewish woman is not a Torah violation even according to the Rosh, and thus a *kohen* and the daughter of a rabbinically inappropriate relationship who is labeled as *pagum* need not divorce, and such cannot be a Torah-based status.

R. Akiva Eiger also adopts the view that the halacha is really like the view of the Rambam and the prohibition is only one *lechatchila*, and that a person whose mother is Jewish and

father is not Jewish may marry a *kohen*.<sup>30</sup>

An interesting example of this type of discussion is found in *Chelkat Yaakov, Even HaEzer* 32 where he discusses a related question: if a *kohen* marries a woman whose father was a gentile and they produce a son—is that son to be considered a *kohen*? After all, at the core of this question is whether this woman is, by the letter of the law, permitted to marry a *kohen* or not. If this woman is by Jewish law prohibited to marry a *kohen*, then this child is a *chalal* either biblically or rabbinically, and as such should not function as a *kohen*. The *Chelkat Yaakov* reviews the views among the *Rishonim* and concludes that the son born of the relationship between a woman whose father was a gentile and a *kohen* is a *kohen* and has what he calls a *chashash chalal*, but he says that the child ultimately is to be considered a *kohen*, indicating that the bottom-line halacha in this matter is that the *pesul* is not biblical, this woman is not a *chalalah*, and the resulting child is a *kohen*.

The exact opposite view to this question is taken by the *Minchat Yitzchak* 2:131 where he deals with this same question of the daughter of the sexual relationship between a non-Jew and a Jewish woman, who marries a *kohen*, and they have a

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30. See *Responsa of R. Akiva Eiger, Mahadura Kama*, No. 91. This has something to do with a lengthy discussion about whether casual intercourse between a Jew and a gentile, where the gentile is not one of the seven nations residing in the land of Israel and where no marriage is intended, violates Torah law or rabbinic law. The latter view is taken by Rabbi Akiva Eiger and others and represents a compromise as to whether the nature of the *pagam* is only for a slave or for others. In his *Novellae to Yevamot* 45a, R. Akiva Eiger writes:

Even according to those decisors who maintain that we rule as a matter of Jewish law that the child is *pagum* to a *kohen*, it is still possible to say that this prohibition is only rabbinic, as the *Yam Shel Shlomo* wrote. In my humble opinion it seems that this view is correct... One must therefore conclude that the main function of the *kal vachomer* is [to derive the *pagum* status] in the case of the slave, who is biblically prohibited to a Jewish woman. But for the gentile, the *kal vachomer* is meant only as a rabbinic association, that the Sages functionally equated a gentile and a slave.



child. Is that child a *kohen* or a *chalal* or a *safek kohen*? The *Minchat Yitzchak* concludes that this child is a *safek kohen* in accordance with the view of the Rif and Ramban, and he seems to indicate that this is a status of biblical origin, and this child is to be treated as a *safek kohen* biblically.

Among the more complete *teshuvot* on the topic is that of the *Seridei Esh*, 1:71 (in the new editions). He reviews the *Rishonim* and ultimately concludes that we should follow the view of the *Chelkat Mechokek*, that such a woman may not *lechatchila* marry a *kohen*, but if she does so may remain married, since the nature of the prohibition is rabbinic and there is a case of double-doubt—maybe this woman is allowed to marry a *kohen*, and maybe there is no obligation to divorce if they do marry. The *Seridei Esh* notes that there are ample grounds to take the view that even if this child is a daughter, she is permitted to marry a *kohen lechatchila*. He ultimately declines to take that step, but he lays out the grounds for contemplating that possibility.

#### IV. The Contemporary Halachic Issue: A *Kohen* Romantically Involved with the Daughter of a Gentile Man and Jewish Woman

The consensus as to the halacha is clear. Optimally the daughter of a gentile man and a Jewish woman should not marry a *kohen* and, of course, one should not become romantically involved with someone that one should not marry. However, in a situation where such a couple is already romantically involved, what is to be done?

Among contemporary halachic authorities this matter has generated a three-way dispute. All of them focus on the following question: A man and woman are already bonded together but not yet married according to Jewish law; they have now become religious and now they wish to be married according to Jewish law, but it turns out that the man is a *kohen* and the woman is the child of a relationship between a

gentile man and Jewish woman. Is it proper for a rabbi to perform the wedding?

The first authority to answer that question is the late Rav Moshe Feinstein z"l. Rav Moshe says that no rabbi should marry such a couple. The fact that they are not married already is an extremely important factor, because ultimately, since they are not married already this cannot be considered *im niseit lo tetze* (if they are already married they should not get divorced) as that category is limited to situations where they are already married according to halacha. Furthermore, he is of the view that according to many halachic authorities, a *kohen* is better off not being halachically married to a woman to whom it is prohibited for him to be married, rather than marry such a woman in a full Jewish marriage ceremony. So Rav Moshe takes the view that since ultimately this woman is forbidden *a priori* to marry a *kohen*, and the *a priori* prohibition applies even in a situation where they are living together but not married—the Rabbi should not perform such a wedding. Rav Moshe assumes that the halacha is as the *Chelkat Mechokek* put forward, that *im niseit lo tetze*, but this is not such a case because they are not yet married according to Jewish law.<sup>31</sup>

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31. *Iggerot Moshe EH 1:15*. For a detailed explanation of Rav Moshe's view, see *Iggerot Moshe, Even HaEzer 1:19*, s.v. *umah shelikshah*. I think Rabbi Feinstein's strict view here can be well explained in light of another relatively unique view of his. As explained above, the view of Tosafot (*Kiddushin 75b*) is that a child whose father is a gentile is a gentile, even if his mother is Jewish. Nearly all authorities categorically reject that view (as noted above). Such is not the view of Rabbi Feinstein. As he notes in *Dibrot Moshe* on *Yevamot 45a*, he is of the view that Tosafot maintain that only when the mother is herself an apostate is the child a gentile if the father is. Indeed, in *Iggerot Moshe, Even HaEzer 1:8*, Rabbi Feinstein accepts this view as a matter of reasonable doubt and rules that such a child requires a conversion. He states:

According to what I explained in my novellae in *Yevamot*, it is the view of Tosafot (*Kiddushin 75[a]*) that if the mother was a Jewess who apostatized, then the child has the status of a gentile like his father. This stands in contrast to others who think that according to Tosafot, in every case of a sexual relationship between a gentile man and a Jewish woman

A contrary answer is put forward in works by two Sefardic authorities, *Shemesh UMagen (Even HaEzer 3:58)* by Rabbi Shalom Messas, and *Shema Shelomoh (Even HaEzer 5:8)* by the current Chief Rabbi of Israel, Shlomo Amar. Both of these halachic authorities advance the following argument: In any situation in which the couple is already connected to each other—either because they are living together or they are engaged or have set out to plan a wedding, and certainly in a case where if one refuses to perform their marriage ceremony they will get married civilly anyway—that is considered a *post facto* situation (or maybe a *shaat hadechak kemo bedevavad* – an emergency situation similar to post facto) and it is proper to perform such a wedding based on a multi-sided situation of doubt: perhaps the halacha is like the Rambam that such a marriage is permitted; if the halacha is not like the Rambam, perhaps *pagum* means just “distasteful” and not “prohibited,” and since once the couple is connected and the halacha is “they need not get divorced,” it is appropriate for a Rabbi to perform such a wedding.<sup>32</sup>

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the child is a gentile as well, and for that reason, the latter-day authorities are of the view that one need not take this opinion of Tosafot into account (see *Pitchei Teshuvah, Even HaEzer 4:1*). Yet according to my explanation that the ruling of Tosafot is limited to an apostate Jewess, one certainly should account for their view, though now is not the time to elaborate. Therefore, in such a case, a full conversion before a *beit din* in accordance with all the laws of conversion is required.

Once one is inclined to rule like Tosafot that there are cases where a child born to a gentile man and a Jewish woman is actually a gentile, then it is even more so logical to insist that in all cases this child is (as a matter of Torah law) certainly ineligible to marry a *kohen*. On the other hand, those who reject Rabbi Feinstein's view on this matter with regard to the child of an apostate Jewess and a gentile (and nearly all authorities reject his view) ought to be more inclined to consider this child as never having been a gentile and at most only rabbinically ineligible to a *kohen*. It might also be the case that Rabbi Feinstein, on a practical level, solved these types of cases by insisting that (as a general proposition) a man from a secular family who claims he is a *kohen* actually is not; see *Iggerot Moshe EH 4:11(1), 4:12, 4:39*.

32. See also *Yachel Yisrael 96 & 97*, who adopts a similar view.

R. Ovadia Yosef, in the ninth and tenth volumes of *Yabia Omer* (*Even HaEzer* 9:7, 10:14), adopts a compromise view. His view is that there are two distinctly different doubts (*sefekot*) here. The first *safek* is the question of whether the daughter of a gentile man and a Jewish woman may marry a *kohen*, and the second *safek* revolves around whether a person is actually to be considered a *kohen* merely because he claims to be a *kohen*. According to Rav Ovadia, in particular cases there are doubts to the status of one as a *kohen*, and more generally there are vast halachic doubts as to whether *kohanim* in our current era really have the status of being actual *kohanim*. Together with the broad systemic doubts about whether this person is really ineligible to marry a *kohen*, it gives rise to a case of double doubt in such a situation, and halacha permits this woman to marry a *kohen*.<sup>33</sup>

At the end of his second responsum dealing with this matter (*Yabia Omer Even HaEzer* 10:14), Rav Ovadia Yosef directly makes reference to R. Feinstein's position, and after quoting R. Feinstein's view, he notes the following counter-concern: In response to R. Feinstein's concern that they will sin less if they are not married, he says,

In my opinion it appears that to the extent that we strive to accept people and arrange a marriage for them on the basis of those *poskim* who rule liberally, they too will see themselves as close to Judaism like every other Jew, and

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33. As a general matter, there is a dispute among *poskim* as to the status of all modern-day *kohanim*. *Maharsham* (EH 235) and others rule that all *Kohanim* nowadays are not clearly *kohanim*, as there is a general doubt on a Torah level as to everyone's status when claiming to be a *kohen*. So, too, others note that in a situation where a person claims to be a *kohen* but lacks valid proof of such according to Jewish law (such as testimony from witnesses who are themselves Orthodox Jews), the claim of being a *kohen* is discounted. Finally, one finds many contemporary *poskim* who aver that in an immodest generation such as ours, women who are not known to be sexually modest prior to marriage may be assumed to be ineligible to marry a *kohen* due to sexual misconduct with a gentile, and subsequently their children are not *kohanim*.

they will become meticulous in their observance of *taharat hamishpacha* (laws of family purity) and immersion in a *mikvah* and other matters of Judaism. But without this they will consider themselves distant from Judaism and will say in their hearts, "What good would it accomplish for us to keep the mitzvot of the Torah since we are already living in sin? And since we are lost, we are lost!" Thus it is better to rely on the authorities who permit this as a matter of halacha without any further strictures and bring them closer to God, Torah and mitzvot.

The concern Rabbi Ovadia Yosef articulates is not far fetched. There might well be situations of outreach where one of the first steps toward bringing people back into the fold occurs when the couple comes to get married. Nothing drives people away from Judaism faster than having their choice of a spouse rejected by their faith, and the rejection of their choice of a spouse by their rabbi may, in the end, drive them out of Orthodox Judaism. Thus, in an Orthodox society which views outreach as an important part of its mission and recognizes the need to bring people in to Torah and mitzvot regularly, Rabbi Ovadia Yosef's position offers grounds to be lenient.<sup>34</sup>

### Conclusion

As a matter of normative halacha, all modern *poskim* agree that a woman whose father is a gentile ought not to marry a *kohen* since the *Shulchan Aruch*, Ramo, and the normative commentators all agree that such conduct is at the least

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34. The compulsory nature of rabbinic authority in Israel, given the exclusive jurisdiction of the rabbinical courts in Israel governing matters of marriage, also increases one's sense that matters of doubt should be resolved leniently by the rabbinical courts of Israel, as it seems halachically problematic to compel anyone to follow one normative school of thought over another normative school of thought within the halachic tradition. Each has the right to seek out his own rabbinic guidance on matters in dispute, at least in the absence of a communal norm—which is certainly lacking in this case.

distasteful and, according to many, prohibited. So, too, certainly all *poskim* agree that such a woman should be told not to date *kohanim* and nearly all *poskim* also agree that if married, such a couple may stay married. Contemporary halachic authorities do not agree on whether, after a woman whose father is a gentile has already bonded to a male *kohen*,<sup>35</sup> but not yet married him in a halachic ceremony, it is proper to perform such a Jewish marriage. Some *poskim* rule that since they are not married yet, they should not marry. Others rule that since there are many doubts as to what the halacha really requires in such a case, in a situation where ruling strictly might drive this couple out of the Orthodox community and away from religious observance generally, it is proper for a rabbi to perform this wedding and bring this couple closer to Judaism.

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35. Either because they are engaged, living together or even civilly married.