

## Chapter 2

Can a man whose name is Cohen have a Halchic Jewish marriage with a proselyte a covertee?

There was a man named Cohen whose wife had undergone a Reform conversion and had a Reform marriage. The man's

parents threw him out of the house and disowned him. He approached me to help him out. A Kohen is not permitted to marry a proselyte.

I wanted to have an Orthodox conversion and rely on the decision of Rav Tzvi Hoffman in Melamed Lehoel who ruled in a similar circumstance in Germany 100 -125 years ago not to have an Hallachic marriage. According to Rambam Issure Biah 15:2 one is in violation of a forbidden relationship lav only if there exists an Hallachic marriage . When one lives absent a

Halachic marriage there exists no violation.

I proposed my solution to Rav Moshe Feinstein. Rav Moshe Feinstein shot this solution down . True , there exists no violation according to Rambam Issrei Biah 15:2 . However Rambam explicitly forbids Pilegish -Common Law Marriages. Rambam Isurei Biah 12:1 Aruch Hashulchon Even Hoaser chapter 26:1 -10. See my book 10 chapter 12 on the internet for a full discussion of position of Rambam and the whole question of

Common Law marriages in Jewish law.

Rav Feinstein instead advised the following. How do we know this man is really a Kohen? His name is no proof. He or his father or grandfather could have adopted the name Cohen on Ellis Island when immigrants adopted new names. Just like Kohn became Kerry so too why can't Kerry become Cohen?

Rav Moshe Feinstein inquired if this man was observant? Was he a Sabbath observer? Did he attend

synagogue?

My reply was no. Then Rav Moshe Feinstein inquired the same questions about his father. I replied that I would inquire.

The man replied “of course my father is religious. When he finishes work on a Friday night even after it is dark my father always has wine to make kiddush. If he has no wine he will go to a bar to purchase wine Friday night after all stores are closed. My father likewise never goes to synagogue.”

When I presented this answer to Rav Moshe Feinstein he assured me that we found a solution. This man's father is not a Kohen and neither is he. In order to be a Kohen one must present evidence that he is a Kohen. Absent evidence by default he reverts back to the status of all Jews . He is an Israelite not a Kohen. Only one who is a Shomer shabbos and attends synagogue or at least his father is a Shomer Shabbot-observes the Sabbath laws and attends synagogue will we assume that he is a Kohen.

In this case both him and his father did not attend synagogue, They never were given the first aliya . They never were presented with the honor of redeeming the first born male -pidyon haben. So there exists no circumstantial evidence of kohanei chazaka. In Talmudic days kohanim had pedigree documentation that they were from the seed of Aaron Kohanim. We no longer have such documentation as testimony. Today we rely only on circumstantial testimony that one is a kohen from what I previously wrote.

Such presumption must be affirmatively alleged and substantiated by one practicing the religion as above described. Absent positive proof the default position is that the man is not a Kohen.

This strategy is similar to what Rav Moshe Feinstein alleged that one must prove that an Halchic marriage occurred. Witnesses must testify before the Rabbinical court the precise Hebrew date and place

where the Hallchic marriage occurred. If such testimony is absent by default there exists no Hallachic marriage. See my book 10 about annulments on the internet for a detailed explanation with all citations. See also my book 11 in Hebrew and book 12 volume 2 in English about annulments on the internet .

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agunah

By moshe siselsender

Rav Mohe Feinstein advised to have this non Jewish woman immediately go to the Mikvah and have a conversion. Immediately after to have a Hallachic marriage .

Rav Moshe Feinstein advised to write on the conversion papers and on the ksubbah Kone not Cohen.

Rav Moshe Feinstein opposed waiting any period of time as is done by many Orthodox Rabbis to test if the prospective convert will observe Orthodox Jewish practice.

Rav Moshe Feinstein's reason was that this couple were living together as husband and wife. For a Jewish man to live with a woman not Jewish is a Biblical

violation according to Rambam.  
Issure Biah 12.

According to Bach on Tur Even Hoaser chapter 16 : 1 it is a Rabbinical violation. Aruch Hashulchon Even Hoaser 16:2 writes if one has a common law marriage with a non Jewish partner there exists a Biblical violation even according to Tur. Once they are married there will be no violation. The couple are instructed to observe thaharot hamishpocho for the woman to go to the mikvah

12 days following her having a period.

True, we do not know if they will observe taharot hamishpocho . But we rectify what is within our power. The man after the woman's conversion And Halal marriage are not in violation what is glaringly apparent . If the couple will observe the laws of niddah family purity laws or not is not apparent .Nor is it within our control. Even if they do not observe the conversion is valid . The woman is deemed a

Jewess who fails to observe. See Aruch Hashulchon Yoreh Dahoh. 268:8. Rambam Isyrei Biah 13:14-17 cites evidence for above ruling that the non observant convert or converttee are deemed Jewish from two instances in the Bible. Both Samson's wife Dalia and King Solomon's wife the Egyptian princess following their conversion ceased to observe Jewish law. The Talmud cites both instances as evidence that once they become Jewish their non observance later has no effect. Rambam Isurei Biah 13:14-17 However at the time of

conversion they must not take exception to any law that they will not observe. Once they accept to observe 100 % what they later do has no effect. We are not mind readers nor do we possess a divining ball and know the future . We grant every one the benefit of the doubt that they will observe.

They are shoggegin not wilful. One who does not know what the law is is considered Shoggeg not wilful. One who does not know or was not raised Orthodox Jewish is considered tinak shenishbah bain

hoakum. Their violation carries no punishment from heaven . Rambam Mamrim chapter 3:3. . Aruch Hashulchon Even Hoeser 13:29.

In addition the woman was pregnant . Her child when born will be considered Jewish. See Aruch Hashulchon Yoreh Dayoh 268:11; 267:85.

Because the couple do not observe certain laws is no excuse that they should not observe what they agree to observe . See Rambam Nesias Kapayim 15:6 “ We do not tell one who is not observant observe nothing since you are not observant.”

This is the attitude that Orthodox Rabbis must adopt. Making hallachik Judaism user friendly using the available loopholes and not driving Jews to the Reform Conservatives or to join the church-

all in the name of religion - using the Chumrah of the week -strict observance divorced from Halalcha Jewish law. One must possess common sense .One is forbidden to rule on any part of Jewish law if one does not possess common sense.

Rav Piekarski's famous words "beware of the Orthodox ignoramuses . Orthodox ignoramuses will bury Judaism . Not Reform or Conservatives , but Orthodox ignoramuses."

Another facet another face  
another side of the same ignorance  
clothed in the garments of religion  
is the following:

A young man age 38  
abandoned his wife and children for  
a young non Jewish woman . The  
man gave his Jewish wife a Get a  
Jewish divorce. The civil court  
approved the terms of property  
settlement and child support and  
has approved a civil divorce. The  
final decree has not been mailed  
because of a back log in the court  
system.

The young man presently is living with his non Jewish girl friend whom he plans to wed once she converts with an Orthodox Jewish conversion and the final divorce decree comes through.

However , his x wife is suing him in court to prevent him from seeing his children since he is not married and this is against Jewish law to have a common law marriage .

To add to his difficulties his father is apposed to the relationship even if the girl converts. He has not

spoken to his father for over a year. His father contacted the synagogue where he prays to have him thrown out . The synagogue complied.

When I contacted the father and explained that if he maintains his attitude he will lose his son . His son will marry the girl regardless if he approves or not. The father began to scream at me and threatened me . He held me for half an hour on the phone listing the sins of his son.

The greatest sin is that the son refuses to listen to him . He told me that he no longer considers his son as family. He has disowned him.

I pointed out that his son was an adult and had a right to lead his own life with out interference. For that I received another threat if I helped his son. He told me that he would make life miserable for his son until he bowed down and accepted his rule and dictates.

I was foolish that I gave his

father the benefit of the doubt that he was rational. I should have proceeded and help the son with out provoking a hornet's nest. When the son explained to me how his father is totally indifferent and instead of helping him is harming him in every way possible, I should have taken the son's word and leave the father alone. However , we learn from our mistakes. I wanted to improve the situation. And I performed a great service. I finally confronted the father and put him in his place. Perhaps he will get his senses back after one two three

years. When he senses that even strangers -myself- do not accept his attitudes and behavior. One can not fear doing the proper thing because of possible contingencies. We of course must plan for all contingencies. However dai letzoro beshato. We will proceed what is the normal path. We will deal with contingencies when they come along. We will cross the bridge when we get there.