

law marriage is not recognized a common law marriage with two sisters is legal.

Chapter 6

A couple got married .after several years the marriage broke up. The couple got a civil divorce ;but not a Get -a Jewish divorce. The woman began dating a man who had recently

converted. Soon she found out that she was pregnant from her boyfriend. The new couple want to contract a Jewish marriage . Are thy permitted? Is the baby a mamzer-illegitimate since the woman never received a Get a Jewish divorce before she got pregnant?

The woman contends that since she had a civil divorce she considered herself single. She saw nothing wrong in dating and getting pregnant from an other man.

Response

The woman's first marriage should be annulled. If it is annulled then *ab initio* she never was married at the time she got pregnant. Consequently, the child is not a *mamzer*-illegitimate.

Furthermore, her boy friend is a convert. A convert undertakes to observe all the laws of the Torah. One of these laws is not to have sex with a married woman. True, the woman had a civil divorce, but she still was married according to Jewish law. The convert thus violated a very cardinal principle of Judaism that is mentioned in the Ten Commandments. Consequently his conversion is annulled. He was not Jewish at the time his girl friend got pregnant from him. Jewish law states that the only time a married

woman gets pregnant from a man not her husband effects the child is only if the man is also Jewish. However if her boyfriend's status is changed to non Jew the child is not a mazer. Aruch Hashulchon 4 :13,14,15.

Furthermore even if one questions the fact that we disqualify the conversion of the boy friend, the following facts exist.

True she had intimate relationship with her boy friend. However who can testify that she did not have intimate relation ship with another man who was never Jewish ?

She is not believed that she had no relations with an other man, other than her boy friend when such testimony would cause her child to be branded a mamzer-illegitimate. A mamzer can not marry a Jewish woman. His descendants likewise are branded.

Furthermore , the woman argues that she did not know that it was wrong to have intimate relations with her boy friend since she had a civil divorce. Is someone ignorant of Jewish law considered a wilful violator? Jewish law dictates that someone ignorant of Jewish law is considered a shoggeg or even an onus. They are deemed as one who unwittingly violates or is forced , they are not punished . Taz Yoreh Dayoh 99:5 Aruch Hashulchon Even Hoazer 13:29: Rambam laws of Mamrim 3:3

Why should this case be different from the case that a married woman is raped. Her assailant threatens to kill her if she resists. She gets pregnant from her rapist ,who happens to be Jewish. The law is that the woman in order to save her life is permitted to get raped.

In this case the child is not a mamzer for the following reasons. Who says that she got pregnant from the rapist? True she sex with him. However she always has sex with her husband. There exists more times she had sex with her husband than with the rapists. We then follow the majority of times that she has sex . Thus we say she got pregnant from her husband.

However , what happens in the case of a married Jewish woman who is insane and is institutionalized. While in the mental hospital she gets pregnant from an other inmate. is the child a mamzer?

When the woman gets better her husband is permitted to take her back. The law is that if a woman is unfaithful she loses her husband as well as not being permitted to marry her boy friend.

However that law explicitly states that the woman's infidelity must be wilful. The actions of a person in a mental institution can not be deemed as wilful. They lack mental capacity. They are deemed as a married Jewish woman who is dead drunk and some one has sex with them while they are in that state. Or a married Jewish woman fast asleep some one has sex with them . That woman has not committed infidelity. Otzer Haposkim Even Hoazer 11: 3-7

The dispensation that is favorable for the mother likewise is favorable for the child. The child is not a mamzer. Aruch Hashulchon Even Hoazer 17: 90, 91 .

The Pischei Tsvah Even Hoazer 178 cites the Mahrik who had a similar question. The married Jewish woman argued that she thought it was permitted to have sex . He ruled against the woman. She was not permitted to return to her husband . True , she was ignorant of the law forbidding a married woman from having sex with an other man other than her husband . However, she was fully aware that she was unfaithful. This is moral law every human knows.

However, in our case the woman is divorced civilly. She was not being unfaithful. Her marriage no longer existed, to her mind. She certainly did not wilfully commit infidelity. However unfortunately the Law is that even in cases that the married woman is forced onus in Hebrew . Or is mistaken shogeg in Hebrew the child is a mazer-illegitimate. Aruch Hashulchon Even Hoazer 4:4. . However thsi is true only if

the woman previously had an Halachic marriage. When we annul her previous marriage she was not married when she was raped and got pregnant. Or else when she was in the mental institution and got pregnant. Or else when she mistakenly believed that it was ok to have sex and get pregnant once she was civilly divorced

In summary: The law is that she can marry her boy friend. We will annul her marriage and in that way save her child from being branded a mamzer -illegitimate.