**The Rulings of Rabbi Uziel Concerning a Father’s Obligation to Provide Child Support (*Mezonot*) for his Child Born to a Gentile Woman**

**1) Introduction – The Principle of Legal Accountability of a Father to his Offspring**

In [Ancient] Israel – as opposed to the laws of other nations in the Ancient Near East – it was not the accountability of marriage between the parents that established the legal status of the child, but rather the bond between the child and his father... It is likely that in this fashion, the Biblical lawmaker tried to prevent the existence of [legally] fatherless children, disconnected from the family framework and stripped of the rights of children and inheritors.[[1]](#footnote-1)

So asserts Yosef Fleishman in his study. From his conclusions there it is implied that, in general, Biblical law relates offspring to their fathers according to a natural-biological approach. This is in contrast to the legal approach of the Ancient Near East that makes the association of offspring to their father fundamentally dependent upon the legal connection between the couple that gives them birth. The divergence between the law in Israel and the law of other nations is also found in later periods via a comparison of Jewish law (halakha) and the position of Roman law.

Roman law and its derivative continental law traditions define the parental relationship – the relationship between parents and their children – based upon the ‘legal family’ axiom; and according to it, one who is born outside of the marriage framework is considered ‘illegitimate, and is not recognized as the son of the biological father. As opposed to this, Hebrew law generally adopts a natural-biological approach, and determines fatherhood and motherhood according to the biological connection between parents and their offspring – even it they are not married.[[2]](#footnote-2)

Yet it appears that are exceptions even regarding this basic directive: The Mishnah determines that offspring that are born to a man from a woman are related to the man even if the couple is not married, and even if the woman is forbidden in marriage to the man.[[3]](#footnote-3) An exception to this rule is the offspring that is born to a man from a woman that cannot be married to him at all – a ‘Canaanite’ slave or a gentile woman.[[4]](#footnote-4) In such a case, the offspring is not related to the father.

In light of the Mishnah, Maimonides formulates an axiom: “This is the general rule – a child that [is born to] a slave or a gentile or a bondwoman or is from the daughter of a gentile is like its mother, and we do not concern ourselves about the father.”[[5]](#footnote-5) And this is decided upon as the law in Shulhan Arukh.[[6]](#footnote-6)

It is probable that the question of relationship has an influence upon the framework of obligations and rights that generally exists between a father and his offspring[[7]](#footnote-7) – and among them, the obligation upon the father for their support. The question of whether the obligation of a father to give child support to his offspring does not exist when the child is not (legally) related to his father or whether this obligation remains in place and is not dependent upon the relationship, is discussed by the legal decisors. In this article, we will seek to understand the decisions of Rabbi Uziel in this matter which was placed in front of him. We will examine his decisions on their own, as well as in comparison to the decisions of others – whether they were decisors with which he was in direct contact and responded to his decisions, or whether they were decisors that dealt with this issue independently of Rabbi Uziel.

Rabbi Ben-Tzion Meir Hai Uziel was born in Jerusalem in Sivan 5640 (1880) to his father Rabbi Yosef Rafael Uziel – the head of the rabbinical court of Jerusalem – and his mother, Sarah Hazan, a descendant of a pedigreed rabbinic family. He served as a rabbi in four different positions: Chief Sage (*hakham bashi*) of the community of Jaffa and its environs – alongside the Chief Rabbi of Jaffa and the settlements, Rabbi Avaraham Yitzhak ha-Kohen Kook (1912-1921); Chief Rabbi of Salonika (1921-1923); Chief Sephardic Rabbi of Tel Aviv-Jaffa (1923-1939); and until his death, “*Rishon le-Tzion*,” Chief Rabbi of the Land of Israel – and afterwards of the State of Israel – alongside Rabbi Yitzhak Isaac ha-Levi Hertzog (1939-1953).

Rabbi Uziel was approached about this issue in the year 1938, at the time that he presided as Chief Rabbi of Tel Aviv-Jaffa and the settlements. The question was referred to him by Rabbi Haim Yehuda Leib Auerbach,[[8]](#footnote-8) the founder and dean of the kabbalistic yeshiva, Sha’ar Shamayim. Alongside his Torah functions, he had – from what it appears – other areas of expertise. The following was printed on his business card:[[9]](#footnote-9)

Rabbi Haim Yeuda Leib Auerbach

Rabbinic Judge and Legal Instructor in the Holy City of Jerusalem

and Rabbi in the Nahalat Tzadok Neighborhood and its Environs (near Sha’arei Chesed)

and Dean of Sha’ar ha-Shamayim, Author of the Books, *Hakham Lev* and *Responsa of*

*Rilbah*[[10]](#footnote-10)

**Addressee for all types of legal questions**

**and expert in the regional government court...[[11]](#footnote-11)**

I would like to suggest that Rabbi Auerbach turned to Rabbi Uziel in response to an actual case, wherein a man stood in front of the (British mandatory) government court, and not just to request a decision about a theoretical legal case. This supposition is strengthened in light of Section 55 of the King’s Order in Council for the land of Israel, which promulgates that when people of different religious communities combine with regards to the law of personal status, each side may make a request to the Head of the Supreme Court that he determine the court in which the case will be judged – if he finds it appropriate, he will avail himself of the assistance of advisers from the various communities involved in the matter.[[12]](#footnote-12) In principle, the adjudication of the child support of children would be in the regional court and effected by principles of international law, since it is possible that the child not be connected to any religion (Judaism goes according to the mother and Islam according to the father). It is possible, however, that the judges investigated the personal status of each of the sides; and as a result, there would be room for the clarification of Jewish law regarding the issue of the child of a mixed marriage. If so, Rabbi Uziel was aware that his words would be brought in front of the (mandatory) court as the opinion of an expert in Hebrew law. As far as I am concerned, it is of interest to read the responsa and reasoning of Rabbi Uziel that will be brought below, in light of this assumption.

Rabbi Auerbach sent Rabbi Uziel a responsum that he wrote about the topic of the obligation of a father to child support for his son born to a gentile woman. In his writing, he connects the relationship of the child born from a Jewish father and a gentile mother together with the obligation for child support, and decides that (legal) nullification of the relationship also nullifies the obligation of child support.[[13]](#footnote-13) This tract stimulated Rabbi Uziel to take the bull by the horns on the question involved; and in response to it, he wrote several responsa to Rabbi Auerbach and other rabbis dealing with two matters: the relationship of the children of a mixed marriage to their parents; and the obligation of a father to child support for a child born to a gentile woman. These responsa were published in *Mishpetei Uziel* 2:60-62 and 7:4. However, alongside these published responsa, there are also unpublished responsa and drafts located at the Tel Aviv munincipal archives.[[14]](#footnote-14)

In the below, I would like to understand the approach of Rabbi Uziel to the question of the obligation of the father in child support for his son born of a gentile woman based upon the analysis of his published responsa as well as those responsa that remained hidden in the Tel Aviv archives. This will be done, while contrasting the position staked out in his decisions on this issue with the decisions of others.

**2) The (Legal) Relationship of the Son of a Jewish Man and a Gentile Woman**

As mentioned above, the law was clearly determined regarding the question of relationship; but Rabbi Uziel nonetheless found it appropriate to deliberate over its foundations[[15]](#footnote-15) in his responsum to Rabbi Auerbach.[[16]](#footnote-16) It is on the basis of his understanding of the foundations of the law concerning the relationship of the son of a Jewish man and a gentile woman that he determines the question of the obligation to child support.[[17]](#footnote-17) Our main interest in this article is regarding the decisions that deal directly with the obligation for child support, and hence we will be brief in the presentation of Rabbi Uziel’s conclusions about the question of relationship.

According to the opinion of Rabbi Uziel, the relationship of the son of a Jewish man and a gentile woman follows the mother not because of a fence against assimilation which seeks to separate the Jewish man from the gentile woman and the children, but rather because in every instance where a couple cannot be married, the child’s (legal) identity follows the mother (he bases his words upon the Babylonian and Jerusalem Talmuds and upon the words of Maimonides). The determination that the relationship of the children is an outgrowth of the possibility of marriage (or lack thereof) and not a fence against assimilation allows for the father to be obligated in child support of his child born to a gentile woman. This is because the obligation of child support perforce causes a connection between the father and the children, and if the Torah had wanted to completely separate the father from his child, the obligation of child support would have adversely impacted upon the Torah’s teaching.

1. Y. Fleishman, *Horim ve-Yeladim be-Mishpetei ha-Mizrah ha-Kadum ou-beMishpat ha-Mikra* (Jerusalem, 1999), pp. 55-56. [↑](#footnote-ref-1)
2. M. Halperin, “*Horut Biologit ve-Horut Geniti,”* *Parshat ha-Shavua* *– Israel Ministry of Justice*, 204 (2004). [↑](#footnote-ref-2)
3. Kiddushin 3:12, t Kiddushin 68a; “*av*” (first entry), *Encyclopedia Talmudit,* 1. [↑](#footnote-ref-3)
4. Kiddushin 3:12, t Kiddushin 68b. [↑](#footnote-ref-4)
5. Maimonides, Mishneh Torah, Hilkhot Isurei Biah15:4. [↑](#footnote-ref-5)
6. Shulhan Arukh, Even ha-Ezer 8:5. [↑](#footnote-ref-6)
7. For the specifics of the framework of respective obligation, see “*av*,” *Encyclopedia Talmudit,* 1; Tur, Even ha-Ezer 13; Y. T. Gilat, *Relations between Parents and Children in Hebrew Law* (Ph.D diss., Bar Ilan University, 1994 [Hebrew]). [↑](#footnote-ref-7)
8. Auerbach (Jaffa, 1887-Jerusalem, 1954) was the author of the book, *Hacham Lev*, and the father of Rabbi Shlomo Zalman Auerbach.. Rabbi Auerbach corresponded with Rabbi Uziel about other issues, see *Mishpetei Uziel* (Jerusalem, 1995-2004) 2:52,53; 4:33,35: 6:Appendix 3; 7:5,85,104. Rabbi Uziel also corresponded with the sons of Rabbi Auerbach – with Rabbi Eliezer (*M. Uziel* 9:3) and with Rabbi Shlomo Zalman (*M. Uziel* 3:36; 8:29). Further correspondence between the two concerning a present given by a husband to his wife (1 Shevat, 5698) and concerning a woman requiring levirate marriage (*yibum*) from a levirate husband who demands a portion of her inheritance (27 Sivan, 5698) are found in the Tel Aviv municipal archive. [↑](#footnote-ref-8)
9. Y. and R. Eliyahu, *Ha-Torah ha-Misamahat* (Beit El: Sefriat Beit El, 1998), p. 16. [↑](#footnote-ref-9)
10. According to Rabbi Auerbach’s family, *Responsa of Rilbah* was never published. [↑](#footnote-ref-10)
11. Emphasis in the original. [↑](#footnote-ref-11)
12. E. Vitta, *The Conflict of Laws in Matters of Personal Status Palestine* (Tel Aviv:S. Bursi, Ltd., 1947), pp. 227-234. [↑](#footnote-ref-12)
13. I have not been able to locate Rabbi Auerbach’s responsum – not among his writings and not among the documents from the Tel Aviv municipal archives that I will cite below. Hence, we can only learn about his position from Rabbi’s Uziel’s references to it. [↑](#footnote-ref-13)
14. Tel Aviv municipal archives document 8-1077 and 8-081. [↑](#footnote-ref-14)
15. In the responsa that will be dealt with here, Rabbi Uziel does not generally express his opinion about the prohibition of sexual relations between a Jewish man and a gentile woman and its stringency, but rather about the reality as it was presented to him in the question, and about its implications. He reveals his opinion about this in other places; for example in *M. Uziel* 7:68 “Concerning a Jew that has Sexual Relations with a Cuthite.” In that responsum, Rabbi Uziel relates to the law legislated by the Nazis, according to which a Jew that comes into contact with a Christian is castrated, and if he has sexual relations with her, he is killed. The Nazis legislated this law after the Jewish law determined by Maimonides (Hilkhot Isurei Biah112:9-10) became known to them, whereby if a Jew has sexual relations with a Cuthite woman, the Cuthite is killed, “because a disaster befell a Jew through her as [is the case] with an animal.” From there, they deduced that a Jew can “fulfill his animal desires with any Christian woman, and then kill the Christian woman that listens to him” (*M. Uziel* 7:68, p. 245). Rabbi Uziel proves in this responsa that this law is only said about a Jew that has sexual relations with a Cuthite in public, and that it is recognizable that he is doing so from “heresy to rebel against the Torah of Israel” (ibid.). In this case, the punishment of the man is also excision according to the words of the tradition. While dealing with the question of the stringency of the sin, Rabbi Uziel writes, “Behold, you have learned that one who has intercourse with a Cuthite is as if he marries idolatry... Even though this son does not get the death penalty from the court, let it not be light in your eyes; as there is a loss in it that does not exist in any of the sexual prohibitions like it – as the child from a [typical] sexual prohibition is considered his child in all matters and is considered a Jew, even though he is *mamzer* (the offspring of a forbidden union); but the child from a Cuthite is not his son... and this is from the category of sins that bring with them a desecration of the divine name, which has no atonement until the time of his death” (ibid., pp. 245-246). [↑](#footnote-ref-15)
16. Tel Aviv archives 8-1081 ; *M. Uziel* 2 :60. The section that deals with relationship is identical in both documents. The responsa is dated 2 Chesvan, 1938 and – according to its dating – is the first in the context of their correspondence about the topic. [↑](#footnote-ref-16)
17. I have spoken about the approach of Rabbi Uziel to understand the foundations of the law as the basis for decision-making in another place – see N. Sat, *The Methodology in the Decisions of the Rishon le-Tzion, Rabbi Ben-Tzion Meir Hai Uziel Concerning Family Law* (Ph.D diss., Bar Ilan University, 1995-2008), pp. 290-293 (Hebrew). [↑](#footnote-ref-17)