**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 Connection between a Father and his Offspring**

In [Ancient] Israel – as opposed to the laws of other nations in the Ancient Near East – it was not bond between 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 my father 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 made paternal attribution of offspring fundamentally dependent upon the legal connection between the couple that gives birth to them. The divergence between the law in Israel and the law of other nations is also evident in later periods as demonstrated by contrasting Jewish law (Halakha) to 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; according to this, one who is born out of wedlock is considered ‘illegitimate,’ and is not recognized as the son of the biological father. By contrast, 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 even this basic halakhic principle has its exceptions. The Mishnah determines that offspring that are born to a man from a woman are attributed to him, regardless of whether or not the couple is married, and even if the woman is forbidden in marriage to the man.[[3]](#footnote-3) An exception to this rule is the offspring born to a man from a woman that cannot be married to him at all – i.e. a ‘Canaanite’ (non-Jewish) slave or a gentile woman.[[4]](#footnote-4) In such a case, the offspring is not attributed to the father.

On the basis of this Mishnah, Maimonides formulates the following 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; the father does not concern us.”[[5]](#footnote-5) The Shulhan Arukh rules this principle as law.[[6]](#footnote-6)

The question of paternal attribution can influence the framework of obligations and rights that generally prevail between a father and his offspring[[7]](#footnote-7)—among them, the father’s obligation to support his offspring. Halakhic decisors discuss this issue, debating whether a father’s obligation to provide child support is contingent on his legal relationship to his offspring or not. In this article, we will seek to understand Rabbi Uziel’s decisions on this matter which was brought before him for a ruling. We will examine his decisions in their own right, as well as in comparison to the decisions of others, whether they be decisors with whom he was in direct contact—their rulings respnding to his decisions—or decisors that dealt with this issue independently of him.

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 1938, when he was presiding as Chief Rabbi of Tel Aviv-Jaffa and the settlements. The question was referred to him by Rabbi Haim Yehuda Leib Auerbach,[[8]](#footnote-9) the founder and dean of the kabbalistic yeshiva, Sha’ar Shamayim. Alongside his Torah functions, it seems that Rabbi Auerbach had other areas of expertise. The following was printed on his business card:[[9]](#footnote-10)

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-11)

**Addressee for all types of legal questions**

**and expert in the regional government court...[[11]](#footnote-12)**

I would like to suggest that Rabbi Auerbach turned to Rabbi Uziel in response to an actual case in which he was representing a man in the (British mandatory) government court; this was not just a request for a theoretical ruling. 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 are involved in a legal dispute related to 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-13) In principle, the adjudication of child support would be subject to the regional court and to the principles of international law since it is possible that the child is not associated with 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 was 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 statement 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 interesting to read Rabbi Uziel’s reasoning and response in light of this assumption.

Rabbi Auerbach sent Rabbi Uziel a responsum that he wrote about the obligation of a father to provide child support for his son born to a gentile woman. Rabbi Auerbach links the attribution of a child born of a Jewish father and a gentile mother to the obligation for child support—ruling that (legal) nullification of attribution also nullifies the obligation of child support.[[13]](#footnote-14) This tract inspired Rabbi Uziel to take the bull by the horns. He sent 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 a father’s obligation to provide child support for a child born to a gentile woman. These responsa were published in *Mishpetei Uziel* 2:60-62 and 7:4. Alongside these published responsa, there are also unpublished responsa and drafts located in the Tel Aviv municipal archives.[[14]](#footnote-15)

In what follows, I will seek to understand Rabbi Uziel’s approach to the question of a father’s obligation to provide child support for a child born of a gentile woman. Towards this end, I will analyze his published responsa as well as those responsa stored in the Tel Aviv archives, contrasting his position 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 on this matter was clearly determined. Nonetheless, in his responsum to Rabbi Auerbach,[[15]](#footnote-16) Rabbi Uziel thought it appropriate to deliberate over the law’s foundations.[[16]](#footnote-17) Based on his understanding of the underlying principles of this law (the relationship of the son of a Jewish man and a gentile woman) he determines the question of the obligation to child support.[[17]](#footnote-19) 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 our presentation of Rabbi Uziel’s conclusions about the question of relationship.

According to Rabbi Uziel, the maternal attribution of the son of a Jewish man and a gentile woman is not meant as a safeguard against assimilation—a means of separating a Jewish man from a gentile woman and the children. Rather it is every instance where a couple cannot legally marry, the child’s (legal) identity follows the mother (Rabbi Uziel bases this on the Babylonian and Jerusalem Talmuds and Maimonides). Rabbi Uziel’s ruling—that the attribution of children is a consequence of the possibility of marriage (or lack thereof) and not a safeguard against assimilation—allows for the father to be obligated in child support of a child born to a gentile woman. The obligation of child support perforce creates a bond between a father and his children. Had the Torah 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 on 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-9)
9. Y. and R. Eliyahu, *Ha-Torah ha-Misamahat* (Beit El: Sefriat Beit El, 1998), p. 16. [↑](#footnote-ref-10)
10. According to Rabbi Auerbach’s family, *Responsa of Rilbah* was never published. [↑](#footnote-ref-11)
11. Emphasis in the original. [↑](#footnote-ref-12)
12. E. Vitta, *The Conflict of Laws in Matters of Personal Status Palestine* (Tel Aviv:S. Bursi, Ltd., 1947), pp. 227-234. [↑](#footnote-ref-13)
13. I have not succeeded in locating 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-14)
14. Tel Aviv municipal archives document 8-1077 and 8-081. [↑](#footnote-ref-15)
15. 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)
16. In the responsa that will be discussed 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 they learned the Jewish law as ruled by Maimonides (Hilkhot Isurei Biah112:9-10), 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 only refers to a Jew that has sexual relations with a Cuthite in public, and in a case where it is clear that he is doing so out of “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 receive 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 belongs to the category of sins that entail a desecration of the divine name, which has no atonement until the time of his death” (ibid., pp. 245-246). [↑](#footnote-ref-17)
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-19)