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A DUBIOUS CONVERSION

QUESTION:

A woman came to me a year ago seeking instruction in Judaism with a view to being converted. I gave her the usual instruction. She is now ready for conversion. Her five-year-old son by her previous marriage is registered in our Religious School. It turns out she has been going with a Jewish man and wants to marry him.

However, her previous marriage is not legally dissolved. Four years ago, she sued her husband for divorce. During the course of litigation, he was stopped by a police officer for a traffic violation and pulled out a gun and shot the police officer. The officer survived, but her husband was apprehended and sentenced to 20 years in the Elgin, Illinois State Prison. Once in prison, his attorneys argued that as a prisoner he was unable to defend himself in court, that his civil liberties and constitutional rights were being violated, and the Courts subsequently refused to grant a divorce. Meanwhile, this woman is living with the man she has been going with because she seems to have no prospects of securing an early divorce.

Does Jewish Law cover any controversy such as I have described? What would this woman's status be? I would be interested in any advice and information you might have to offer. (Asked by Rabbi Richard C. Hertz, Detroit, Michigan.)

ANSWER:

THE SITUATION which is here described is certainly a miserable one. As you properly indicate, it is very hard to know how to act here in harmony with the spirit of the Jewish legal tradition. The Christian woman whom you are converting has been "living" with a Jewish man. She is not divorced from her Christian husband because he is in the penitentiary for what virtually amounts to a life term. She has failed, so far, to get a divorce from him because his lawyers insist that being in the penitentiary, he cannot adequately defend himself. We may therefore assume that she is not likely to get a divorce from him in the near future.

The question therefore amounts to this: Is there in Jewish law a possibility of our considering her virtually divorced or free, since it is impossible for her actually to get a divorce? If that is possible (to consider or declare her free) then should you continue the process of converting her and then marry her Jewishly to the man she has been "living" with?

There is a whole mess of complications involved here. First, what is the status of a non-Jewish marriage as a legal institution in Jewish law? Are we concerned with those relationships? The concern of Jewish law with a non-Jewish marriage begins when a married non-Jew is converted to Judaism. What is the status of her Gentile marriage, now that she has become a Jewess? Basically a convert is deemed to be "a newborn child" (*Yebamos* 97b) and therefore her previous relationships do not exist. This would surely apply to

her marriage relationships, since it applies even to her blood relationships. Theoretically these pre-Jewish relationships no longer exist for her and she would be permitted to marry a blood kin (of course, only if he converted and he, too, therefore would be "a newborn child"). However, this theoretical doctrine of the non-existence of a convert's previous relationships is not a practical fact in Jewish law because, as the Talmud says, (*Yebamos* 22a) if we permitted a convert to ignore these previous relationships, then the convert could say, "I left a religion of greater sanctity for one of lesser sanctity." Therefore we respect the validity of her non-Jewish marriage; she is a married woman.

It might also be mentioned that if this were a marriage between two Jews, i.e., a Jewish convict and his wife, there would be no way of voiding the marriage. If it were she who was confined (for example, in an insane asylum) there is in Jewish law a cumbersome method (consent of a hundred rabbis from three provinces) for *assigning* a divorce to her and thus freeing him to remarry. If the situation is in reverse and *he* is confined in an institution, there is no way of freeing her without his initiative. But as you know, traditional Jewish law is masculine oriented. As I have said, this is a Gentile marriage and, as far as Jewish practical law is concerned, Judaism respects its validity.

That being the case, according to traditional law the Jewish man may never marry her. In fact, even if she were never married to the convict and was an unmarried woman but lived with this Jewish man, he

would not be permitted to marry her (Mishnah, *Yebamos* II, 8, and *Shulchan Aruch, Even Hoezer* 11:5). In other words, a man who lives with a woman in adultery may not be permitted to marry her even when she becomes free to marry him. However, if he *does* marry her, there are many opinions in the law that he may keep her as his wife. At all events, even if she will be finally divorced from her convict husband, it is at least *dubious* in Jewish law whether he should marry her. But if you were lenient and did marry her to him, they could remain married.

However, all this is still a theoretical question. According to the laws of the state of Michigan, this woman is a married woman, and if you officiated at a marriage, you would be compounding the crime of bigamy; so the question here cannot possibly be whether when her conversion is completed you should marry them. The laws of Michigan prevent that. Your question therefore actually must be: Shall you continue the process of converting her?

As to that question, the following must be said. Most of our conversions in the Reform movement (and, in fact, most conversions today in all branches of Judaism) are for the purpose of marriage. This very intention of marriage actually makes the conversion dubious in the eyes of Jewish law. A conversion, to be valid, must be purely for the sake of the conversion and not for any type of personal benefit. That is why we in the Reform movement had declared in "The Report of Mixed Marriage and Intermarriage" that hereafter we fully accept a conversion made for the purpose of

marriage. However, according to traditional Jewish law, conversion for such a purpose has dubious standing.

Therefore we must come to the following conclusion: Since you cannot by Michigan law officiate at the marriage of this couple, and since even by Jewish law such a marriage is dubious, as has been mentioned above, then you are in fact converting this woman without the clear prospect of marriage. Therefore the conversion is traditionally, perhaps, more acceptable than many another conversion. We must, however, consider the fact that she is an unworthy woman, since "Children of Noah" are in duty bound to follow the laws of morality. On the other hand, since it is not alleged that she wantonly "lives" with other men too, she may be deemed to be a *pilegish*, and therefore not actually sinful.

Perhaps you should proceed with the conversion and see what the future will bring. The husband may die or he may finally consent to divorce her. When that happens, you will have to decide whether the traditional dubiety about such a marriage (of a couple which has lived together) is a dubiety which you feel bound to honor or not. But that is for the future. For the present, the conversion may well continue.