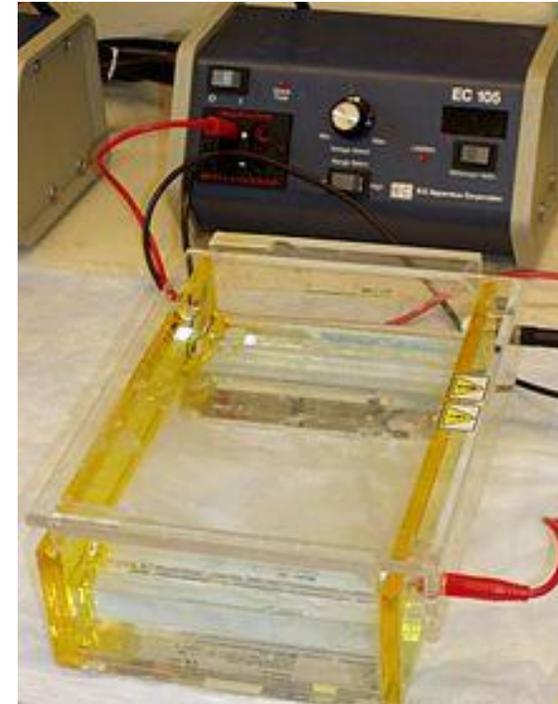


# Jerusalem Science Contest

## החידון המדע הירושלמי

### DNA based Paternity Identification as applied within Judaism



# DNA as a tool in the Halacha decision process

Based upon this essay

## [Blood Tests and DNA - Part 2](#)

by Rabbi Chaim Jachter

22 Shvat 5767 February 10, 2006



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Taken from: <https://www.sephardicteaneck.org/our-rabbi.html>

# Four rulings regarding the admissibility of DNA testing into the halacha decision process

## ➤ Rav Ovadia Yosef

Non-recognition of the evidence value of DNA testing



## ➤ Rav Shlomo Dichovsky

Quantifying the evidence value of DNA testing



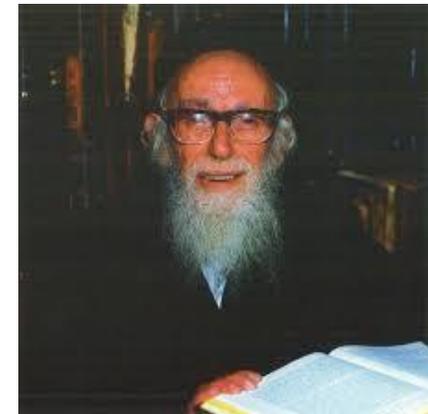
## ➤ Rav Yosef Shalom Eliashiv

Performing DNA testing to solve a personal doubt



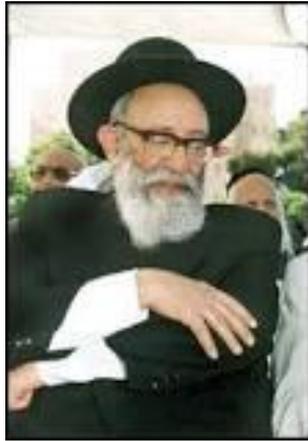
## ➤ Rav Shlomo Zalman Auerbach

DNA paternity ID as a hospital's administrative tool.



# Halacha Ruling #1 – Non-recognition of the evidence value of DNA testing

Rav Ovadia Yosef and the Israeli Rabbinic Court of Appeals, 1986



Rav Yosef Kapach



Rabbi Ovadia Yosef



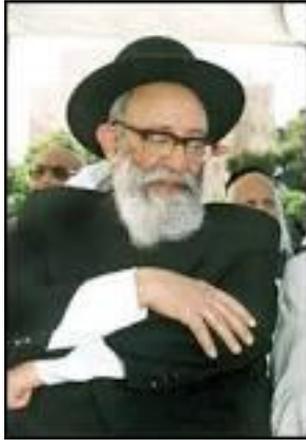
Rav Yitzchak Kulitz

## **The Case – Israel Rabbinic Court of Appeals, 1986**

1. Unmarried couple separated.
2. After separation woman gives birth.
3. Male ex-partner claims paternity; mother denies paternity of male ex-partner.
4. Male ex-partner demands DNA testing to prove his paternity; mother refuses to be tested.  
District Bet Din rules male ex-partner to be father. **Rationale: Mother's refusal to be tested proves male ex-partner's paternity.**
5. Rabbinic Court of Appeals overturns decision of District Bet Din – paternity of male ex-partner is not established.
6. **Rabbinic Court of Appeals rationale: Results of DNA testing are not acceptable evidence in paternity court decisions.**

# Halacha Ruling #1 – Non-recognition of the evidence value of DNA testing

## Rav Ovadia Yosef and the Israeli Rabbinic Court of Appeals, 1986



Rav Yosef Kapach



Rabbi Ovadia Yosef



Rav Yitzchak Kulitz

**Dayanim reasoning for the Rabbinic Court of Appeals rationale:**

**DNA test are not acceptable as legal evidence for a court paternity decision.**

IRCA rationale: Inferred from Talmud NOT offering DNA evidence as possible evidence option.

**Rabbi Jachter comment:** If the Talmud decided to allow any other theoretical evidence of paternity, it would have constructed an absurd theoretical possibility (such as the 'flying camel' of Makot 5a).

**Rabbi Weiner's response to Rabbi Jachter:** "Flying Camel" was NOT theoretical. Per Rashi on Makkot 5a, "Flying Camel" was nothing more than colloquial for a very speedy (and probably expensive) transportation service similar to flying the supersonic Concorde as opposed to a regular commercial airliner. The Talmud is saying that we don't consider unconventional techniques, even if they exist. But conventional methods are considered. Is DNA ID conventional? In 1986? Now?

# Halacha Ruling #2 – Quantifying the evidence value of DNA testing



Rav Shlomo Dichovsky, Ashdod District Rabbinic Bet Din, 1982

## **The Case**

1. Couple divorced; a “Get” properly executed for halachik divorce.
2. Subsequent to divorce, ex-husband sues for exemption from child support. Claim: he is not father of their two children.
3. Bet Din orders DNA testing (99.6% accuracy in 1982) to evidence paternity.
4. DNA results: Positive DNA of ex-husband’s paternity of only one of the children.
5. **The issues:**
  1. **Must the ex-husband pay child support for the child with negative DNA identification?**
  2. **Is the children with negative DNA identification a “mamzer”?**

## **Rav Dichovsky’s decisions and rationales**

**Decision #1: The ex-husband is exempt from paying child support for the child with negative DNA ID.**

Rationale: Although there is a legal assumption (using “Rov” - majority) that the ex-husband is the child’s father, the high accuracy of the DNA testing is sufficient to contradict the “Rov” and produce a doubt. Payment of child support cannot be enforced in a case of doubtful liability.

**Decision #2: The child with negative DNA ID is NOT a “mamzer” (or a “doubtful mamzer”).**

Rationale: The accuracy of DNA testing is not sufficiently high enough to contradict the child’s legitimacy based upon the “Rov”. The child also does NOT have the status of “doubtful mamzer”.

# Halacha Ruling #2 – Quantifying the evidence value of DNA testing



Rav Shlomo Dichovsky, Ashdod District Rabbinic Bet Din, 1982

## **The Case**

1. Couple divorced; a “Get” properly executed for halachik divorce.
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5. **The issues:**
  1. **Must the ex-husband pay child support for the child with negative DNA identification?**
  2. **Is the children with negative DNA identification a “mamzer”?**

## **The accompanying Dayanim decisions and rationales**

**Decision #1: The ex-husband is liable to pay child support for the child with negative DNA ID.**

Rationale: The DNA ID testing is not admissible as evidence as it does not positively prove that the child is not of the ex-husband.

**Decision #2: The child with negative DNA ID is NOT a “mamzer” (or a “doubtful mamzer”).**

Rationale: Same as rationale to decision #1

## Halacha Ruling #3 – DNA testing to solve a personal doubt, date unknown



### Rav Yosef Shalom Elyashiv

#### **The Inquiry**

1. During pregnancy, a married woman claims (to friends) that her husband is not the father of her unborn child.
2. Years after the child's birth, the woman's husband asked Rav Elyashiv whether DNA testing should be performed to establish paternity.

**The issue: Should DNA testing be performed to settle a personal held paternity doubt in the absence of any legal challenge, civil or religious?**

#### **Rav Elyashiv's decision (Rabbical psak halacha) and rationale**

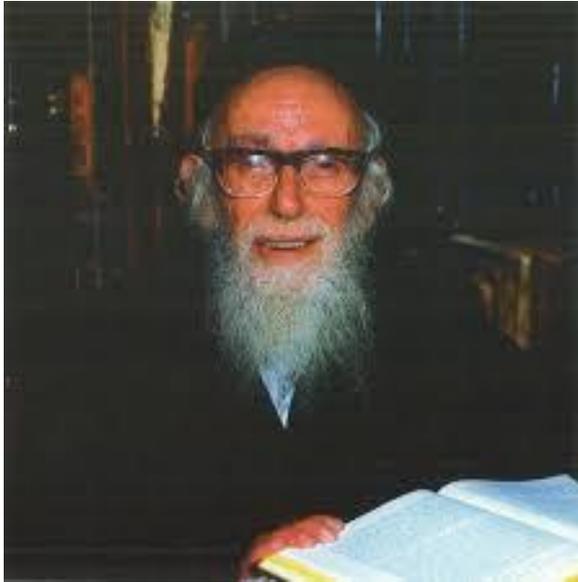
**Decision #1: No. Do not perform DNA testing for the purpose of settling a personal doubt unrelated to a legal challenge.**

Rationale: Years of the child's acceptance as the legitimate offspring of the husband produces an assumption "Chazaka" of legitimacy. In this case, Jewish law would deem it inappropriate to collect information whose results could upset the assumption of legitimacy and wreak havoc on the child's life.

#### **Inference from Rav Elyashiv's decision:**

**DNA evidence is admissible in court. It was for this reason that Rav Elyashiv directed not to collect this evidence**

# Halacha Ruling #4 – DNA ID as a Hospital’s administrative tool



## Rav Shlomo Zalman Auerbach

### **The Inquiry**

1. Two babies confused at birth.
2. The hospital administration asked Rav Auerbach and Rav Eliezer Waldenberg whether they could performed DNA testing to ID the children to the parents.

### **Rav Auerbach’s (and Rav Waldenberg’s) decision (psak halacha) and rationale**

**Decision #1: Yes. Perform the DNA ID.**

Rationale: DNA paternity identification used administratively by hospitals is permitted.

### **Additional from Rav Auerbach’s decision:**

Rav Waldenberg previous disallowed DNA ID for use as evidence in court. It appears that, as functional court evidence, DNA is not admissible. However, as an administrative tool to solve a technical uncertainty, DNA ID results are acceptable.

Dr. Abraham S. Abraham quotes Rav Auerbach as saying that DNA testing has gained enough popular worldwide acceptance so as to give it legitimate evidential reliability in a Bet Din

Rav Eliezer Waldenberg, the “Tzitz Eliezer”



# Summary

- 1) What can we in fact prove from DNA testing? When markers match, one can argue a positive identification. But if the markers don't match, can we say with complete confidence that the relationship does not exist?
- 2) What is the reliability and accuracy of the DNA testing results?
- 3) How does information from DNA testing relate to the application of legal mechanisms such as Rov and Chazaka?
- 4) Are there societal reasons that may affect our decision to pursue or not pursue DNA testing in certain cases such as mamzerut?
- 5) Is the acceptability of DNA evidence in a Bet Din related to or affected by its acceptance in courtrooms belonging to the surrounding secular world?
- 6) Are the DNA testing results being submitted as evidence in a Bet Din in response to a legal challenge or are they being used to solve a personal dilemma unrelated to a court case?
- 7) Differentiate between an inquiry of a Rav for a "psak halacha" versus a claim in Bet Din defending or opposing a claim.