YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**Laws of Conversion and Circumcision**

**Rav David Brofsky**

**Shiur #07:**

**The *Beit Din Le-Giyur* (1)**

**Introduction**

The Talmud (*Yevamot* 47b) teaches that a conversion must be performed in from of a *beit din* of three *dayanim*:

The Sages taught: [The verse states that Moshe charged the judges of a court:] "And judge righteously between a man and his brother, and the convert with him” (*Devarim* 1:16). From here [based on the mention of a convert in the context of judgment in a court], R. Yehuda said: A potential convert who converts in a court is a valid convert. However, if he converts in private, he is not a convert.

Similarly, the Talmud (ibid. 46b) relates:

Rabba said: There was an incident in the house of R. Chiyya bar Rabbi – and as R. Yosef teaches it, R. Oshaya bar Rabbi was also present, and as R. Safra teaches it, a third Sage, R. Oshaya, son of R. Chiyya, was also present – in which a convert came before him who was circumcised but had not immersed. He said to the convert: Remain here with us until tomorrow, and then we will immerse you.

Rabba said: Learn from this incident three principles: Learn from it that a convert requires a court of three [people to preside over the conversion]. And learn from it that one is not considered to be a convert until he has been both circumcised and immersed. And learn from it that the court may not immerse a convert at night.

The *gemara* asserts that a conversion must be performed in the presence of three. R. Yochanan explains that this is based on the fact that “judgment is written with regard to him," as the verse states: “And one judgment shall be both for you and for the convert that sojourns with you” (*Bamidbar* 15:16), and legal judgments require a court of three judges.

Although the Talmud clearly states that the conversion must be performed by a *beit* *din* of three *dayanim*, the *Rishonim* disagree as to which part of the conversion process (i.e. the *mila*, the *tevila* and/or the *kabbalat* *mitzvot*) must be performed in their presence.

Furthermore, based on a passage (*Yevamot* 45b) that implies that the immersion in the *mikveh* does not require the presence of a *beit din*, the Rif (*Yevamot* 15b) explains that while *le-khatchila* (preferably) the conversion should be held in front of three judges, and only in such a case may the convert marry another Jew, if the convert did immerse (i.e. convert) alone, his child is considered to be Jewish. The Rif's opinion was the topic of much discussion among the *Rishonim* and *Acharonim*.

The *Rishonim* debate numerous other fundamental questions regarding a *beit* *din le-giyur* (conversion *beit din*), including the necessary qualifications of conversion judges. In addition, we might question whether the *beit din* rules upon the conversion, as in other court cases, or whether they function as the quorum – as representatives of the Jewish People, in front of whom the non-Jew converts.

This week, we will discuss whether the *dayanim* of a *beit din le-giyur* must be *semukhin* – that is, if they must have received the unique rabbinic ordination passed from generation to generation from Moshe Rabbeinu.

***Giyur Be-Zman Ha-Zeh* – Modern Day Conversion**

The *gemara* (ibid. 46b) strongly implies that a conversion court is no different than other *batei din*. Due to this comparison, many *Rishonim* assume that a *beit din le-giyur* must be comprised of three *dayanim semukhin*, judges who have the original *semikha* passed from generation to generation beginning from Moshe Rabbeinu. Interestingly, however, the requirement that the *dayanim* of a conversion court have *semikha* does not appear in the Talmud. Furthermore, the Talmud records incidents of conversion long after the cessation of *semikha*. Given that this *semikha* no longer exists, how is it possible to continue converting non-Jews?

***Shelichutayhu Avdinan***

Some *Rishonim* (*Tosafot*, ad loc., s.v. *mishpat;* Ramban, *Sanhedrin* 3a) suggest that just as other areas of Jewish law are adjudicated by rabbinic judges who are not *semukhin*, based on the principle "*shelichutayhu* *avdinan*" – they are doing their agency – the same is true regarding conversion. This principle appears in the Talmud (*Gittin* 88b) regarding the ability of rabbinic judges to adjudicate certain areas of law:

Abaye found R. Yosef sitting in court as the judge and compelling husbands to give their wives bills of divorce. He said to him: But are we not ordinary people, not ordained judges (*dayanim semukhin*)? … R. Yosef said to him: We see ourselves as agents of the ordained judges in *Eretz Yisrael*, and we are performing our task as judges on the basis of their agency, just as is the case with regard to cases of admissions and loans [=monetary losses], which we attend to on the same basis. [The *gemara* asks:] If so, why is the halakhathat judges living outside *Eretz Yisrael* do not judge in cases of robbery and personal injury [=fines and penalties]? [When we perform our tasks as judges on the basis of their agency,] it is with regard to common matters [such as cases that pertain to the *halakhot* of admissions and loans, which arise frequently between people]. But with regard to uncommon matters [such as cases of robbery or personal injury], we do not perform our tasks as judges on the basis of their agency.

The Talmud concludes that although nowadays, ordinary judges may adjudicate cases of financial loss, certain cases, such as those involves fines and penalties, may not be adjudicated, as they are not "common." The *gemara* (*Sanhedrin* 3a) explains that common matters may be adjudicated by ordinary judges "so as not to lock the door in the face of potential borrowers."

Elsewhere (*Bava Kama* 80b), the *gemara* further limits the authority of a court of ordinary judges:

When we perform the agency of [the judges of *Eretz Yisrael*, we do so] only in a matter that is common and involves [payment for] a monetary loss. But in a matter that is common but does not involve [payment for] a monetary loss, or in an uncommon matter which does involve [payment for] a monetary loss, we do not perform the agency of [the judges of *Eretz Yisrael*].

Although the coercion of a *get* is a "common matter," regarding financial matters, the *gemara* concludes that ordinary judges may adjudicate only when the matter is "common" and involves "monetary loss."

The *Rishonim* question how this principle may be applies to conversion. First, is conversion a "common matter"? The Talmud (*Gittin* 85b) explicitly describes conversion as "uncommon." But the Ran (*Gittin* 88b, s.v. *ki*) explains that "bringing someone under the wings of the *Shekhina*, while not common, is preferable to a financial matter, which is common." In other words, conversion is so important that the rabbis extended their agency to this matter as well. (See also Sema, *Choshen Mishpat* 1:1.)

Second, the *Rishonim* ask how this principle can be extended to conversion, as "*shelichutayu avdinan*" appears to be a rabbinic enactment. Regarding financial matters, this enactment is supported by the principle of "*hefker beit din hefker*" – i.e. matters of ownership can be uprooted by the rabbis. Similarly, regarding marriage and divorce, the rabbis teach that "one who betroths [a woman] does so with the intention of the rabbis in mind, and they have the ability to invalidate the *kiddushin*" (see, for example, Ramban, Yevamot 46b).

However, if the authority of a court of ordinary judges to convert is based on a rabbinic edict, how are they authorized to convert non-Jews? This question led R. Yaakov Lorberbaum of Lissa (1760-1832), author of the *Netivot Ha-Mishpat* (1), to conclude that the principle of *shelichutayhu avdinan* is actually of Biblical origin and force. R. Aryeh Leib HaKohen Heller (1745–1812), in his *Ketzot Ha-Choshen* (34:1), appears to disagree with the *Netivot*, suggesting that the authority to convert may be based upon the rabbis' ability to "uproot a matter from the Torah" (*Yevamot* 90b).

Other *Rishonim* suggest that while the principle of "*shelichutayhu*" is considered to be rabbinic, there is a verse that enables ordinary judges to function as agents of prior *dayanim semukhin* when *semikha* is no longer extant. They derive this from a Talmudic passage (*Keritut* 9a) that explains that while a convert was obligated to bring a *korban* during the time of the *Beit Ha-Mikdash*, after the destruction of the Temple, the absence of this offering does not prevent future courts from performing conversions:

If that is so, then in our time, when there are no offerings, we not should have the ability to accept converts. R. Acha bar Yaakov says that the verse states: “And if a stranger sojourn with you, or whosoever may be among you, throughout your generations” (*Bemidbar* 15:14). [This teaches that converts may be accepted throughout the generations, even when there is no Temple and sacrificial offerings are therefore impossible.]

The Rambam (*Yevamot* 46b, s.v. *shemat*) asserts that "the Torah enables ordinary judges (*hedyotot*) to judge as agents of the [earlier] experts" when it comes to conversion.

Interestingly, the *Acharonim* question whether the notion of "*shelichutayu* *avdinan*" may, at times, lead us to conclude that a conversion performed in an inappropriate manner is invalid, as the *beit din* did not properly carry out the agency afforded them by the earlier courts. For example, R. Naftali Tzvi Yehuda Berlin (Netziv) suggests in his *Meshiv Davar* (2:46) that if a *beit din* disregards the instructions of *Chazal* and accepts a convert who does not accept upon himself all of the *mitzvot*, this may violate their mandate to accept converts and thereby undermine the validity of the conversion. Although the Netziv later rejects this assertion, R. Avraham Yitzchak Ha-Kohen Kook (*Daat Kohen* 150 and 152) accepts it and questions the validity of certain conversions based on this logic.

Similarly, R. Tzvi Pesach Frank (*Har Tzvi*, *Yoreh De’ah* 216) was asked regarding conversion performed in Argentina despite the communal edict forbidding the acceptance of converts. R. Frank suggests that since the conversion were performed against the will of the rabbinic establishment, the *batei din* that perform such conversions are not fulfilling the agency of previous *batei din*, and the conversions are therefore invalid. R. Bentzion Chai Uziel (*Piskei Uziel, She'elot Ha-Zman* 68), however, insists that each *beit din* was given the authority to function as the agents of prior *batei din*, and a community's enactment cannot undermine that agency.

R. Yitzcḥak Schmelkes (1828–1906), in his *Beit Yitzchak* (*Yoreh De’ah* 100:5), rejects the notion that we may challenge the agency of a *beit din*, and R. Moshe Feinstein (*Dibberot* *Moshe*, *Yevamot* 35) arrives at the same conclusion. They note that the Talmud's assertion that conversions performed for ulterior motives are valid after the fact appears to contradict the notion that an improper conversion may undermine the *beit din*'s agency.

***Le-Doroteikhem***

The R”i (see Ritva, *Yevamot* 46b, s.v. *dilma*; *Nemukei Yosef*, *Yevamot* 16a, s.v. *tanu rabannan*) suggests that when *dayanim semukhin* are no longer available, ordinary *dayanim* may perform conversions based on the verse cited by the *gemara*, “And if a stranger sojourn with you, or whosoever may be among you, throughout your generations (*le-doroteikhem*)” (*Bemidbar* 15:14).

Other *Rishonim* understand that this verse teaches that there is no requirement of *semukhin* at all. For example, the Rashba (*Yevamot* 46b, s.v. *dilma*) explains that "*le-doroteikhem*" teaches that although a conversion must be performed by a court of three, the three judges need not be *semukhin*, even in the times when there were *dayanim semukhin*.

The Rambam also appears to maintain that conversions may be performed by ordinary *dayanim*. Indeed, in a well-known passage regarding the "wives of Shimshon and Shlomo," the Rambam (*Hilkhot Issurei Bi'ah* 14:15) distinguishes between conversion performed by "*hedyotot*" and those performed by a regular *beit din*. Since both types of conversions are halakhically valid, we see that the Rambam does not require that conversion be performed by *dayanim* *semukhin*.

Although three ordinary *dayanim* suffice, the Talmud (*Yevamot* 46b) describes how the three "*talmidei chakhamim*" inform the convert of the *mitzvot* while he is immersed in the *mikveh*. This requirement appears in other *Rishonim* (Meiri, *Yevamot* 47b; *Tosafot R”i Ha-Zaken,* *Kiddushin* 62:2) as well. The Rambam omits the phrase "*talmidei chakhamim,*" as does the Shulchan Arukh (YD 268:2); the Rema adds the phrase "*talmidei chakhamim*." R. Moshe Feinstein (*Iggerot Moshe*, YD:159) rules that is it sufficient that one Torah scholar inform two others who join with him to form the *beit din* of the basic laws of conversion.

Next week, we will continue our discussion of the *beit din le-giyur*.