**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)**

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**Laws of Conversion and Circumcision**

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**The Time for *Brit Mila* (3)**

***Mila She-lo Bi-zmana***

***Brit Mila* After the Eight Day**

The Torah commands, in two places, that a child must be circumcised on the eight day (*Bereishit* 17:12 and *Vayikra* 12:3). However, at times the *brit mila* is not performed on the eighth day, *bi-zmanah*, either due to medical concerns or various conflicts with Shabbat. We will discuss these scenarios in future *shiurim.*

A *brit mila* performed after the eighth day is known as a *mila she-lo bi-zmanah*. In this case, the *brit mila* should be performed as soon as halakhically and medically possible. However, it may not be performed on Shabbat (*Shabbat* 132a).

This week, we will discuss whether one may delay a circumcision held after the eighth day, whether there are any practical or conceptual differences between a *mila bi-zmanah* and a *mila she-lo bi-zmanah*, and whether a *mila she-lo bi-zmanah* may be performed on Thursday or Friday, or on *yom tov sheini.*

**May One Delay a *Mila She-lo Bi-zmanah*?**

The Talmud (*Yevamot* 72a-b) records a debate regarding whether a circumcision performed after the eighth day must also be performed during the daytime.

A child whose appropriate time for circumcision has already passed … may be circumcised only during the day. R. Elazar bar Shimon says: If the circumcision is performed at its appropriate time, i.e., on the eighth day, he may be circumcised only during the day. However, if the circumcision is performed not at its appropriate time, he may be circumcised either during the day or at night…

They disagree with regard to the following: One sage holds that we expound the phrase “and on the day” [in the verse “And on the eighth day the flesh of his foreskin shall be circumcised” (*Vayikra* 12:3); the superfluous word “and” indicates that even if the child was not circumcised on the eighth day, the procedure must still be performed during the daytime]. And one sage holds that we do not expound the phrase “and on the day.”

The halakha follows the view that a circumcision performed after the eighth day must also be done during the daytime.

Once a *brit mila* has not been performed on time, i.e., on the eighth day, must it be performed on the first day possible? R. Yechezkel Landau (1713–1793), in *Noda Bi-Yehuda* (Mahadura Tinyana, *YD* 166) relates that he was asked the following question regarding a *mila she-lo bi-zmanah*: may a child’s circumcision, which was not held on the eighth day, be delayed until Erev Pesach, allowing the firstborn, who would usually fast, to eat at the festive meal?

R. Landau writes that delaying the *brit mila* would be highly inappropriate (*meguna*), as even though the circumcision has already been delayed, “every [subsequent] day is considered to be its time.” Interestingly, he adds that even if the child has not yet been circumcised, the local rabbi should prohibit performing the circumcision on Erev Pesach, in order that this behavior will not be repeated by others in the future.

In addition, he adds two other objections. First, delaying a circumcision until the day before Yom Tov may itself be problematic, as we will discuss below. Second, it is questionable whether the festive meal held after a circumcision permits the firstborn to eat on Erev Pesach (see *Magen Avraham* 470 and 559:11). He urges the parents to hold the circumcision without delay.

**The Nature and Scope of the Prohibition of Delaying a *Brit Mila She-lo Bi-zmanah***

As we discussed previously, the Rambam *(Hilkhot Mila* 1:1) rules that if the father does not circumcise his son, he violates the *mitzvat aseh* (positive commandment) of *brit mila*. If the child has not been circumcised, he assumes the responsibility of *brit mila* when he becomes an adult (i.e., 13 years old). Every day he delays the circumcision, he violates the positive commandment. If he dies uncircumcised, he incurs the *karet* punishment. The Ra’avad disagrees and insists that one incurs the *karet* punishment every day that he remains uncircumcised.

The Acharonim discuss the degree of urgency to which the *mila she-lo bi-zmanah* must be performed regarding several scenarios.

**1. Two Circumcisions on the Same Day**

The *Pitchei Teshuva (YD* 265:9), discusses the circumcision of two children on the same day. He writes that if both children were born on the same day, i.e. they are both subject to *mila* *bi-zmanah*, there is no reason to perform the circumcision of one child before the other. However, in order to avoid communal strife, the child who was born first is usually circumcised first.

However, what if one child’s circumcision is a *mila bi-zmanah* (the eighth day), and the second child’s *brit mila* has been delayed? He cites the *Yad Eliyahu* (41), who rules that the *mila bi-zmanah* should be performed first.

R. Avraham Dov Ber Kahana Shapiro (1870–1943), in *Devar Avraham* (1:33), disagrees. He notes that when performing a circumcision on the eighth day, one should preferably perform the mitzva as soon as possible, due to the principle of *zerizin makdimin le-mitzvot*. However, after the eighth day, for every moment which he delays performing a *mila she-lo bi-zmanah,* he violates the *mitzvat aseh*. Therefore, the performance of a *mila she-lo bi-zmanah* is **more** urgent and should be performed before a *mila bi-zmanah*. Furthermore, it should not be delayed even in order to wait for invited guests to arrive.

**2. *Pidyon Ha-ben* and *Brit Mila* on Erev Shabbat**

The Rema (*OC* 249) rules that one may hold a festive meal in honor of a *brit mila* or a *pidyon ha-ben* on Erev Shabbat. The *Magen Avraham* (ibid. 5) writes that if the *pidyon ha-ben* has been delayed, the festive meal should not be held on Friday. However, the meal celebrating a *mila she-lo bi-zmanah* may be held on Erev Shabbat, as “every moment is considered to be its time.” The *Mishna Berura* ibid. 12 disagrees and rules in accordance with the *Nishmat Avraham*, who maintains the even the meal celebrating a delayed *pidyon ha-ben* may be held on Friday. The *Magen Avraham*’s opinion is further discussed by R. Natan Gestetner (1912-2010) in *Le-horot Natan* (YD 6:90).

The *Magen Avraham* appears to agree with the *Devar Avraham*, cited above.

**3. *Biur Chametz* and *Brit Mila***

The *Shulchan Arukh (OC* 444:7) discusses a case in which a person has left his home on the 14th of Nissan in order to perform a mitzva, such as to circumcise his son, without first searching for and disposing of his *chametz*. He rules that if he does not have time to return to his home and destroy the *chametz*, he should nullify the *chametz* in his heart (*bitul chametz*) and tend to the mitzva.

What if the person realizes that he has not disposed of his *chametz* after midday, at which point he may no longer nullify his *chametz*? Should he return home and destroy the *chametz* to avoid violating the positive mitzva of “*tashbitu,*” to eliminate *chametz* from one’s domain? In this case, the *Magen Avraham* (ibid. 29) rules that it is better to return home and destroy the *chametz*, even if the *brit mila* will be delayed, because *tashbitu* is a commandment which one violates every moment, unlike *brit mila*.

Some Acharonim note that the *Magen Avraham* appears to contradict what he writes previously regarding holding a festive meal for a delayed *brit mila* on Erev Shabbat. The *Mishna Berura (Shaar Ha-tziyun* 24) explains that although the obligation to perform a *mila she-lo bi-zmanah* exists at “each and every moment,” the commandment to destroy *chametz* on the 14th of Nissan cannot be performed later, unlike *mila* which may still be performed the next day. Alternatively, some explain that in the first instance, the *Magen Avraham* does not mean to claim that the obligation to perform a delayed *mila* applies at “each and every moment,” but rather, that it is like a *mila bi-zmanah* to the extent that it justifies holding a festive meal on Erev Shabbat.

We delineated above two understandings of the obligation of *mila she-lo* *bi-zmanah*. Some assume the obligation to circumcise a child after the eighth day is fundamentally no different than the mitzva to circumcise a child on the eighth day. Others insist that the obligation of *mila she-lo bi-zmanah* is more pressing, and while the obligation of *mila bi-zmanah* lasts for the entire eighth day, afterwards, at each moment, one is obligated to perform the *mila*.

However, some Acharonim challenge these interpretations.

R. Chaim Soloveitchik (*Haggadat Roshei Yeshivat Volozhin*, pg. 162) also disagrees with the *Devar Avraham*. He insists that while when the child becomes an adult, “each and every moment” that he remains an “*arel*” he violates the positive commandment, the father’s only obligation is to ensure that his son is circumcised, and he does not violate the commandment of *mila* at “each and every moment.” He therefore rules that the *mila bi-zmanah* should be performed before the *mila she-lo bi-zmanah*, in accordance with the authorities cited above. See also R. Chanoch Zundel Grossberg, *Kovetz Ma’ayan* 4.

***Mila She-lo Bi-zmanah* on Thursday and Friday**

R. Shimon ben Tzemach Duran (1361–1444) cites (*Tashbetz* 1:21) the following passage from the Talmud (*Shabbat* 19a):

The Sages taught: One may not set sail on a ship fewer than three days before Shabbat. In what case is this statement said? In a case where he set sail for a voluntary matter; however, if he sailed for a matter involving a mitzva, he may well do so.

The Talmud teaches that one should not set sail three days before Shabbat. The Rishonim offer different reasons from this prohibition. For example, Rabbeinu Chananel maintains that this is included in the violation of traveling beyond Shabbat limits (*techum*). The Rif suggests that during the first few days of a travel, a person experiences discomfort (seasickness), which would disrupt one’s *oneg Shabbat* (enjoyment of the Sabbath). R. Zerachya Ha-Levi (*Baal Ha-maor*), suggests that one should not embark on a journey so close to Shabbat because it will inevitably lead to desecration of the Shabbat.

The *Tashbetz*, based upon this *gemara*, writes:

From here I prohibit circumcising a convert on Thursday, in order that the third day after his circumcision should not fall on Shabbat and he will need to violate the Sabbath … and this is also the case regarding a child who was ill and recovered [that he should not be circumcised] on Thursday.

The *Tashbetz* rules that a *mila she-lo bi-zmanah* should not be performed on Thursday. R. Yosef Karo cites this passage in his emendations to the *Beit Yosef, Bedek Ha-bayit*.

A number of Acharonim (see Shakh *YD* 262:18) note that the Talmud states explicitly that one may embark on a journey, even immediately before Shabbat, for the sake of a mitzva. If so, in this case, the child’s circumcision should set aside the prohibition of entering a potentially dangerous situation three days before Shabbat. Some (*Chatam Sofer, Shabbat* 137; *Rishon Le-Tziyon, YD* 266) explain that the Gemara only permits embarking on a journey before Shabbat if the mitzva cannot be performed later. However, if the mitzva can be performed at another time, one should not embark on a journey three days before Shabbat. Therefore, in our case, since the circumcision may be performed after the Shabbat, it would be prohibited to perform a *mila she-lo bi-zmanah* on Thursday or Friday.

The *Taz* (*OC* 262:3) cites *Bedek Ha-Bayit* and adds that since the child would experience discomfort on Shabbat, any *mila she-lo bi-zmanah* should not be performed on Friday either. The Shakh (*YD* 262:18), however, rejects the *Tashbetz* and rules that a *mila she-lo bi-zmanah* may be performed on a Thursday or Friday. This is the ruling of the *Mishna Berura* (331:33) as well.

In practice, although R. Ovadya Yosef (*Yabia Omer, YD* 5:23) rules in accordance with the Tashbetz, it appears that common custom is to perform a *mila she-lo bi-zmanah* on Thursday or Friday (*Otzar Ha-brit* 9:6:26–27).

***Mila She-lo Bi-zmanah* on *Yom Tov Sheini***

As mentioned above, a *mila* *she-lo bi-zmanah* is not performed on Shabbat or Yom Tov. The Rambam (*Hilkhot Yom Tov* 1:15) rules that it is also not held on the two days of Rosh Hashana, implying that on *yom tov sheini* of Pesach, Sukkot and Shavuot, a *mila she-lo bi-zmanah* would be performed. The Rosh (*Teshuvot* 26:5) disagrees and rules that a *mila she-lo bi-zmanah* does not set aside *yom tov sheini*.

The *Shulchan Arukh (YD* 266:8) rules in accordance with the Rosh, and therefore in his view a *mila she-lo bi-zmanah* does not set aside *yom tov sheini*. The Shakh (8) disagrees and rules in accordance with the Rambam.

Interestingly, R. Yechezkel Landau, in *Noda Bi-Yehuda (OC* 30, cited in *Pitchei Teshuva* 7) writes that in a case in which there is a doubt whether *yom tov* *sheini* falls on the seventh or eighth day, or on the eighth or ninth day, the circumcision should be performed. He argues that in this case, there is a *sefek* *sefeika* (a double doubt): there is a doubt whether today is the eighth day or not, and another doubt whether today is even Yom Tov at all. The *Chatam Sofer* (2:250) agrees, but due to a different reason. He argues that one may be lenient because the biblical mitzva of *mila* should not be set aside due to a doubt as to whether to violate the rabbinic custom to observe *yom tov sheini*; he is strict regarding the second day of Rosh Hashana.