YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)

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**Laws of Conversion and Circumcision**

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**Shiur #08:**

**The *Beit Din Le-Giyur* (2)**

**Which Parts of the Conversion Require a *Beit Din*?**

**Introduction**

 Last week, we began our discussion of the *beit din le-giyur*. The Talmud (*Yevamot* 47b) teaches that a conversion must be performed in front of a *beit din* of three *dayanim*. We noted that due to the comparison to other *batei din*, 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. Given that this *semikha* no longer exists, how is it possible to continue converting non-Jews?

 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 of "*shelichutayhu* *avdinan*" – they are doing their agency – the same is true regarding conversion. Others (R"i, cited by Ritva, *Yevamot* 46b, s.v. *dilma*; *Nemukei Yosef*, *Yevamot* 16a, s.v. *tanu rabannan*) suggest 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 sojourns with you, or whosoever may be among you, throughout your generations (*le-doroteikhem*)” (*Bemidbar* 15:14). Furthermore, some *Rishonim* (*Rashba, Yevamot* 46b, s.v. *dilma*) explain 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*.

 It is noteworthy that the Rambam 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*.

 This week, we will discuss which part of the conversion process (i.e. the *mila*, the *tevila*, and/or the *kabbalat* *mitzvot*) must be performed in the presence of three *dayanim*.

**The Talmud**

 Although the Talmud (*Yevamot* 46b) clearly requires that a conversion be performed in the presence of three *dayanim*, the *gemara* does not specify which segment of the conversion process requires a *beit din*. This question may be central to understanding the role of a *beit din le-giyur* in the conversion process, as well as the nature of each of the individual components of the conversion process.

 Numerous sources appear to indicate the presence of three *dayanim* for the *tevila*. For example, the Talmud (*Yevamot* 46b) teaches:

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, as they instructed him to remain there until the following day.

This passage, which clearly indicates that the presence of three *dayanim* is required, refers specifically to the immersion of the convert. Similarly, the Talmud interprets the *beraita*, which states, "And two Torah scholars stand over him [at the time of his immersion]," as actually referring to three scholars.

 However, the *Rishonim* note that another passage appears to omit the requirement of three *dayanim*. The *gemara* (ibid. 45b) teaches:

R. Chiyya bar Ami's slave immersed a certain gentile woman for the sake of having intimate relations [i.e., to purify her from her menstrual impurity]. R. Yosef said: I am able to render both her and her daughter fit [to marry into the congregation of Israel]. With regard to her, I can render her fit in accordance with the opinion of R. Asi, as R. Asi said: Didn't she immerse for the sake of purifying herself from her menstruation? And with regard to her daughter, she is the daughter of a gentile or slave who engaged in intercourse with a Jewish woman, and the lineage of the offspring [of such a union] is unflawed.

There was a certain man whom people would call “Son of the Aramean woman” [as they cast aspersions on the validity of his mother’s conversion. With regard to that case,] R. Asi said: Didn't she immerse for the sake of purifying herself from her menstruation? A similar incident is recounted: There was a certain man whom people would call “Son of an Aramean man.” R. Yehoshua ben Levi said: Didn't he immerse for the sake of purifying himself from his seminal emission?

This passage seems to imply that an immersion (*tevila*) for the sake of purification of a *nidda* suffices for conversion.

This story raises numerous questions relating to the intention (*kavana*) of the immersion for conversion, as well as whether it can be performed at night (when the immersion of a *nidda* is generally performed). For our purposes, the *gemara* also makes no mention of three *dayanim*, which were seemingly not present when this woman immersed. If so, in light of the sources cited above, how is this conversion valid? We will first present different approaches to understanding this passage in relation to others, and we will then summarize the halakhic views.

The Behag (*Hilkhot Mila* 8, p. 152) implies that this passage simply disagrees with the previously cited sources. He concludes that the *halakha* is in accordance with those passages that maintain that the *tevila* must be performed in from of three *dayanim*.

Most *Rishonim*, however, suggest different resolutions to the apparent contradiction between these sources.

The Rif (*Yevamot* 15b), for example, distinguishes between two halakhic levels of conversion – *le-chatchila* and *be-di'avad*. He notes the contradiction between the sources and writes:

This is not difficult. The statements of R. Asi and R. Yehoshua ben Levi refer to a *be-diavad* case, in which case we do not disqualify the child, since he [his father] immersed for the sake of purification from a seminal emission … And the statement of R. Yochanan refers to the optimal practice, as we do not treat him as a convert and permit him to marry a Jewish woman until he immerses in the presence of three [judges].

The Rif seems to maintain that although preferably, and in order to be permitted to marry, a convert must immerse in the presence of a *beit din*, *be-di'avad*, we still consider her immersion, and therefore her conversion, to be valid.

 Some *Rishonim* distinguish between different parts of the conversion process. For example, *Tosofot* (*Yevamot* 45b, s.v. *mi lo*; see also *Kiddushin* 62b s.v. *ger*) rules that only the *kabbalat mitzvot* must be performed in the presence of a *beit din*. Although the *tevila* should also preferably be in front of three *dayanim*, *be-di'avad*, the conversion is valid even if the convert immersed alone, in accordance with the *gemara* cited above. The Rosh (*Yevamot* 4:31) and Ran (*Kiddusin* 26a) concur.

Similarly, the Ramban (*Yevamot* 45b, s.v. *mi lo tavla*) explains that while *kabbalat mitzvot* must be performed in the presence of a *beit din*, if the convert then immerses alone, he is considered to be Jewish, but he may only marry a Jewish spouse if he immerses again in the presence of a *beit din*. The Ramban attributes this view to the Rif, cited above.

 Finally, other *Rishonim* maintain that the *tevila* must indeed be performed in the presence of a *beit din*, and they offer different interpretations of the passage indicating that a *beit din* is not required.

 The Ritva (*Yevamot* 45b, s.v. *mi lo*) and the *Nemukei Yosef* (ibid. 15b, s.v. *mi lo*) explain that although the woman in this case mistakenly immersed with the intention to be pure from *tumat nidda*, a *beit din* was indeed present. Alternatively, *Tosafot* (ibid.) cites an opinion that maintains that although a *beit din* of three is required for *tevila*, "since it is apparent to all that she immersed, it is as if [the *dayanim*] were standing there." This opinion requires a *beit din* for all parts of the conversion process, but immersion done with the *beit din's* absolute knowledge is considered to be have been performed in the presence of the *beit din*. This approach has far reaching ramifications, which we will address in a different context.

 The Rambam (*Hilhot Issurei Bi'ah* 13:7) also requires that the *tevila* and the *kabbalat mitzvot* be performed in the presence of a *beit din*. However, he interprets the *gemara* in a different manner, explaining that the *gemara* refers to a case in which a person is attempting to prove that he converted. The *gemara* states that if she is known to immerse in a *mikveh*, even if she cannot bring proof that she was converted, she is considered to be Jewish. However, before marrying a Jewish spouse, she must first immerse again in a *mikveh* in the presence of three *dayanim*.

**Does *Brit Mila* Require a *Beit Din*?**

As the *Beit Yosef* (YD 268) notes, the Talmud never explicitly discusses whether a convert's *brit mila* must be performed in the presence of a *beit din*. The *Tur* (YD 268) writes that *mila* requires a *beit din* of three *dayanim*, and this view is found in the *Nemukei Yosef* (ibid. 15b) as well.

Some distinguish between *tevila* and *mila*. The Meiri, for example, cites a view that maintains that although if the immersion is not performed in the presence of a *beit din* the conversion is still valid *be-di'avad*, the *brit mila* must be formed in front of three *dayanim*. Alternatively, R. Yishayahu ben Elijah di Trani (Italy, 13th-14th century), known as the Riaz (cited by the *Shiltei Giborim*, *Yevamot* 15b), maintains that while the *tevila* must be performed in the presence of a *beit din*, the *brit mila* is valid if done in from of only two. The Bach (YD 268) insists that some *Rishonim*, including the Rif and Rambam (*Hilkhot Issurei Bi'ah* 13:6), maintain that there is no requirement at all to perform the *brit mila* in the presence of a *beit din*.

***Mila* and *Tevila* in the Presence of a *Beit Din*: Summary**

In summary, we cited the following opinions:

* Behag: The entire conversion process must be performed in the presence of a *beit din*. This appears to be the view of the Rambam as well. *Tosafot* cite a view that accepts this approach but maintains that the *beit din's* "knowledge" of the *tevila* suffices.
* Tosafot, Rosh, Ran: Preferably, the entire conversion process should be performed in the presence of a *beit din*. *Be-di'avad*, if the *tevila* was done without a *beit din*, the conversion is valid. In that case, the Ramban (Rif) requires that the convert immerse in the presence of a *beit din* before marrying.
* In addition, we noted that some distinguish between *mila* and *tevila*, either accepting *tevila* performed alone (Riaz) or *mila* performed without a *beit din* (an opinion cited by the Meiri).
* The Rif appears to maintain that *be-di'avad*, the entire conversion is valid even if not performed in front of a *beit din*. Incidentally, the Mordechai (*Yevamot* 36) cites the Ri bar Yom Tov and Rabbeinu Simcha, who explain that *mi-de'oraita*, a conversion may be performed in the presence of once *dayan mumcheh*, whereas *mi-derabbanan*, it must be performed in the presence of three.

**The Practical *Halakha***

 In practice, the *mila*, *tevila*, and *kabbalat mitzvot* are performed in from of a *beit din*. The *Shulchan Arukh* (YD 268:3) writes, however:

All matters of the convert, from informing them of the *mitzvot* and their acceptance of them, the circumcision, and the immersion, must be in the presence of three who are fit to judge, and during the day. But *be-di’avad*, if he was circumcised or immersed at night or in front of two (Rema: or in front of [the convert’s] relatives [which is invalid]), or even if he did not immerse with the intention of conversion, but rather a man immersed for a seminal emission or a woman immersed to become ritually pure after menstruating, they are still converts, and he is permitted to [marry] an Israelite woman. This all applies to the immersion and the circumcision; it does not apply to *kabbalat ha-mitzvot,* which invalidates [the conversion] unless it was performed during the day and in front of three [judges].

However, the Rif and the Rambam maintain that even *be-di’avad*, immersion or circumcision before two [witnesses] or at night prevents [conversion], and [marrying] an Israelite woman is forbidden. But, if he married an Israelite woman and she has borne him a son, we do not invalidate him [the son].

The *Shulchan Arukh* first cites the lenient position of the *Tosafot* and Rosh, which validates a conversion in which the *tevila* was not performed in the presence of a *beit din*; he then cites the stricter view of the Rambam (and Rif).

Although some *Acharonim* (*Perach Mateh Aharon* 52; *Sefer Nehar Mitzrayim*, *Hilkhot Gerim* 13) suggest that the *Shulchan Arukh* rules in accordance with the second view – that of the Rambam and Rif – most *Acharonim* assume that when the *Shulchan Arukh* cites two views in this manner, the *halakha* is in accordance with the first view.

In practice, although many *batei din* are lenient with regard to a circumcision or *hatafat dam brit* that was not performed in from of a *beit din*, such as when the *mila* was performed *le-shem mitzva* and not *le-shem giyur*, they are generally stricter regarding the *tevila*.