YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)

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

**Laws of Conversion and Circumcision**

**Rav David Brofsky**

**Shiur #09:**

**The *Beit Din Le-Giyur* (3)**

**The Role of the *Beit Din Le-Giyur***

**Introduction**

 Last week, we continued our study of the *beit din le-giyur* and discussed 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*.

 We noted that while some sources (*Yevamot* 46b) appear to indicate the presence of three *dayanim* for the *tevila*, other passages (ibid. 45b) make no mention of the presence of three *dayanim*.

 The *Rishonim* debate this topic at length. Some (Behag, Rambam) require that three *dayanim* be present for all parts of the conversion process, while others (Tosafot, Rosh, Ran) rule that *bedi'avad*, even if the *tevila* was performed without a *beit din*, the conversion is valid. 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).

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

This week, we will attempt to understand the role and function of the *beit din* in the conversion process. We will address three aspects of the *beit din's* involvement in the conversion process: First, to what extent does a *beit din le*-*giyur* function like other *batei din*? Second, does the *beit din* actually effect the conversion, or does the non-Jew convert in the presence of a *beit din*? Finally, who does the *beit din* represent in the conversion process?

**The *Beit Din Le-Giyur* in Contrast to Other *Batei Din***

As we noted in previous *shiurim*, the Talmud (*Yevamot* 47b) teaches that a conversion must be performed in front of a *beit din* of three *dayanim*:

R. Chiyya bar Abba said that R. Yochanan said: A convert requires a court of three to preside over conversion, because “judgment” (*mishpat*) is written with regard to him.

The *gemara* derives this from the verse: “And one judgment shall be both for you and for the convert that sojourns with you” (*Bamidbar* 15:16). Just as legal judgments require a court of three judges, so does *giyur*.

 The comparison of a *beit din le-giyur* to other *batei din*, however, is somewhat problematic. While a *beit din* is usually appointed to investigate or to settle a dispute between two people, what is the role of the conversion court?

 R.Yitzchak Ha-Levi Herzog (1888 –1959), the first Ashkenazic Chief Rabbi of the State of Israel, articulated this questions as follows:

What does "*mishpat*" have to do with this? Are there claims from a litigant, or a ruling? … Rather, as soon as he emerges from immersing [in the *mikveh*], he is a Jew regarding all matters. If so, what type of "*mishpat*" is there here? … Rather, the "*mishpat*" in this context teaches that it must be performed in the presence of three. (*She'elah Be-Dvar Gerut, Mazkeret, Kovetz Torani Le-Zekher Ha-Rav Herzog*, 5722, p. 50)

R. Herzog's observation highlights what appears to be a fundamental difference between the *beit din*'s role in conversion as opposed to other cases.

This point may yield an important practical ramification. In May 2008, R. Avraham Sherman, along with two other *dayanim* of the High Rabbinical Court of the Chief Rabbinate, ruled that all conversions performed by R. Chaim Druckman and his National Conversion Court since 1999 are retroactively annulled. Among his arguments, R. Sherman insisted that one *beit din* may review and even overturn the ruling of another *beit din le-giyur* (see *Techumin* 31, "*Bedika Chozeret shel Giyur Be-Veit Din Acher*"). Numerous rabbis and *dayanim* disagreed, including R. Yisrael Rosen (*Techumin* 31) and R. Yaakov Epstein ([*Chevel Nachalato*](https://he.wikisource.org/wiki/%D7%97%D7%91%D7%9C_%D7%A0%D7%97%D7%9C%D7%AA%D7%95_%D7%97_%D7%9B%D7%94) 8:25). They argued that since a *beit din le-giyur* does not review the claims of different parties and does not "judge," there is no room for another *beit din* to challenge or reverse the ruling of a *beit din le-giyur*.

While R. Herzog highlights the problem, the nature of the *beit din le-giyur* remains unclear. What is the role of the *beit din* during the conversion?

**The Role of the *Beit Din Le-Giyur***

 The *Acharonim* grapple with the question of whether the *beit din le-giyur* functions like other *batei din*, with the authority to rule and effect a change of personal status, or whether the presence of the *beit din* enables the convert himself to convert in its presence. In other words, does the *beit din* convert the non-Jew, or does the non-Jew convert himself in the presence of a *beit din*? (See, for example, *Kovetz* *Shiurim*, *Ketubot* 33.) As we shall see, this may have wide-ranging halakhic and philosophical ramifications; we will first address a few of the more technical, legal issues.

Seemingly, a *beit din le-giyur* may be viewed as similar to one of numerous models of a *beit din*. A classic *bet din* – which is empowered to adjudicate monetary matters, issue rulings, enforce them, and even to impose penalties (*kenasot*) – is comprised of three *dayanim* who are "*semukhim*" (i.e., ordained by means of an unbroken chain of tradition and authority dating back to the time of Moshe and Yehoshua). These *batei din* issue rulings and create legal obligations. Alternatively, some *batei din* function more like witnesses; a person performs a halakhic act in its presence, effecting a halakhic change of status. A *beit din* for *chalitza* may function in this manner.

R. Betzalel Zolty (1920 – 1982), former Chief Rabbi of Jerusalem, suggests that this question may be subject to a debate among the *Rishonim* (*Be-Dinei Kabbalat Gerim, Torah She-Be'al Peh* 13). He suggests that the view of Tosafot that although the *tevila* was not performed in the presence of the *beit din*, as long as they are certain that the person immersed in the *mikveh*, "it is as if they [the *beit din*] was standing there" (Tosafot, *Yevamot* 48b, s.v. *mi*) maintains that the convert "converts" with the *beit din's* approval, and it therefore is not necessary to immerse in front the of the *beit din*. Similarly, Rabbeinu Meir (cited by Rosh, *Yevamot* 6:31), who claims that, *mi-de'oraita*, a convert may immerse at night, may also espouse this view. Although *batei din* do not usually convene at night, since in this case the *beit din* is not convening to issue a ruling, it may convene at night. However, those who maintain that all aspects of the conversion process must be performed in the presence of a *beit din* understand that the *beit din* rules and creates the new personal status. R. [Asher Weiss](https://www.torahbase.org/geirus-matan-torah-5771/) (*Parashat Naso*, 5768) argues that the *beit din le-giyur* does not effect a conversion; rather, the non-Jew converts in the *beit din's* presence.

R. Shaul Yisraeli (see below) suggests that these sources imply the opposite. On the one hand, the opinion which insists that all aspects of the conversion be performed in the presence of the *beit din* understands that the non-Jew himself performs the conversion in the presence of the *beit din*. On the other hand, if *beit din* rules and effects the new status, that may occur at the moment of *kabbalat ha*-*mitzvot*; the *beit din* must then ascertain that the *brit mila* and *tevila* are properly performed, but they need not be done in the presence of a *beit din*.

It is important to note that these approaches point to fundamentally different approaches to the conversion process. According to the first approach, *beit din* ultimately decides whether or not to effect a new personal status and perform the conversion. This position is strongly endorsed by R. Elazar Menachem Shakh in his *Avi Ezri* (*Hilkhot Melakhim*). The second approach, in contrast, implies that the non-Jew himself converts in the presence and with the permission of *beit din*. The validity of the conversion, however, may be dependent upon whether the convert is a proper candidate, and not upon the decision of the *beit din*. This may impact upon the necessity, definition and depth of *kabbalat mitzvot*.

**Who Does the *Beit Din* Represent? Different Understanding of Conversion**

 R. Shaul Yisraeli (1909 –1995), in his *Chavot Binyamin* (2:7), asserts that the *beit din* takes an active role in the conversion process:

Clearly, the foundation of conversion, its first condition, is that the Jewish People agree to accept him to their community. This is expressed by the *beit* *din*, who, representing the nation of Israel, decide to accept him and inform him of some of the *mitzvot*, and he accepts them in their presence.

The *beit din*, according to R. Yisraeli, functions as an "acceptance committee" for the Jewish people. Furthermore, according to this approach, *kabbalat mitzvot* is not itself part of the conversion. Rather, it is a means of convincing the *dayanim* to approve and then perform the conversion. This approach is also espoused by R. Yisrael Rosen (*Techumin* 35).

 R. Tzvi Schachter (*Ginat Egoz* 33) disagrees and suggests that the *beit* *din le-giyur* functions in a manner similar to a *beit din* for *chalitza*. He explains that a *beit din le-giyur* serves "*le-kiyum ha-davar*" and that the *beit din le-giyur* represents the *Shekhina*. The convert comes before the *beit din*, which represents God, and enters into a covenant, similar to the covenant the Jewish people forged at Har Sinai with God.

 These two approaches may correspond to the approaches developed above. On the one hand, it may be the *beit din*, as the representatives or gate-keepers of the Jewish people, which rules as to whether the non-Jew may convert. On the other hand, it may be that the convert himself comes before the *beit din*, representation the *Shekhina*, and enters into a covenant with God, thereby joining the Jewish People.

 As mentioned above, these approaches may have wide implications regarding how we understand the requirement of *kabbalat ha-mitzvot* and the ability of one *beit din* to challenge the conversions of another.

 Next week, we will begin our study of the laws of circumcision for a convert.