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ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)

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**Laws of Conversion and Circumcision**

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**Shiur #10:**

**The *Brit Mila* of a Convert**

**Introduction**

 The Talmud (*Keritut* 9a) states that the Jewish People entered the covenant through three acts: *mila* (circumcision), *tevila* (immersion), and *haza’a* (the sprinkling of blood after offering a sacrifice). The rabbis debate whether in future generations, one who wishes to join the Jewish People must also perform all of these actions. Regarding the *haza’a* after offering a special *korban*, the *gemara* teaches:

If so, we should nowadays not receive any proselytes, since there are no sacrifices today? Said R. Acha ben Yaakov: It is written, “And if a stranger [convert] sojourn with you, or whosoever may be among you [throughout the generations]” (*Bamidbar* 15:14).

Furthermore, the Talmud relates that a convert should set aside money in order to purchase the obligatory sacrifice when the *Beit Ha-Mikdash* will be rebuilt. However, R. Shimon ben Zakkai abolished this practice, lest the money be used for other purposes.

 The *gemara* (*Yevamot* 46a) also cites a debate regarding whether it is absolutely necessary to perform both *mila* and *tevila*, or whether one of these acts may suffice, and if so, which one. The Talmud concludes that both R. Yehoshua and R. Eliezer maintain that *tevila* alone is sufficient, as the *imahot* (foremothers) immersed but were not circumcised. They disagree as to whether circumcision alone suffices. The Sages, however, disagree and maintain that “whether he immersed but was not circumcised or whether he was circumcised but did not immerse, he is not a convert until he is circumcised and he immerses.” This is the conclusion of the *gemara* as well.

 The Rambam (*Hilkhot Issurei Bi’ah* 13:1-4) summarizes this discussion:

The Jewish People entered the covenant [with God] through three acts: circumcision, immersion, and offering a sacrifice. Circumcision took place in Egypt [before the Pesach sacrifice], as the *pasuk* states (*Shemot* 12:48): "No uncircumcised person shall partake of it." Moshe our teacher circumcised [the people] … *Tevila* was performed in the desert before the Giving of the Torah, as the Torah states (*Shemot* 19:10): "Sanctify them today and tomorrow, and have them wash their garments." Sacrifices [were also offered then], as the *pasuk* (*Shemot* 24:5) states: "And he sent out the youth of the children of Israel and they brought burnt offerings." They offered them as agents of the entire Jewish People.

Similarly, for [all] future generations, when a gentile desires to enter into the covenant, take shelter under the wings of the Divine presence, and accept the yoke of the Torah, he must undergo circumcision, immersion, and the offering of a sacrifice. A woman [who converts] must undergo immersion and bring a sacrifice, as states: "As it is for you, so shall it be for the convert" (*Bamidbar* 15:15). Just as you [entered the covenant] with circumcision, immersion, and the offering of a sacrifice, so, too, for future generations, a convert must undergo circumcision, immersion, and must bring a sacrifice.

The Rambam rules, in accordance with the *gemara*, that both *mila* and *tevila* are essential components of the conversion process. The Talmud adds that a woman who wishes to convert must immerse, since she cannot be circumcised (*i efshar*).

 The next few *shiurim* will focus upon the role of *brit mila* in the process of conversion. We will discuss the function of *milat ha-ger* (the circumcision of a convert), the proper order of *mila* and *tevila*, whether there is any significance to *mila* without *tevila*, and whether the *brit mila* must be performed in the presence of a *bet din*. Furthermore, we will discuss whether and how a non-Jew who was previously circumcised, or one who cannot be circumcised due to physical or medical inability, may convert. Finally, we will relate to some of the practical aspects of this type of circumcision, including whether it may be performed under anesthesia.

**The Proper Order of the *Mila* and *Tevila***

 Must the *mila* and *tevila* be performed in a specific order? The Talmud (*Yevamot* 47b) teaches that after the *beit din* informs the convert of the difficulties and hardships entailed in joining the Jewish People, the convert accepts all that has been said, and "they circumcise him immediately … When he is healed [from the circumcision], they immerse him immediately … [and] once he has immersed and emerged, he is like a born Jew in every sense."

 Tosafot (ad loc. s.v. *matvilin*) explains that this passage implies that the *mila* is performed **before** the *tevila*. The Rambam (*Hilkhot Issurei Bi'ah* 14:5; see also *Hilkhot Mila* 1:7) concurs. Some *Rishonim* (see Rashba ad loc. and Ritva ad loc.) note that the *gemara* explicitly states that "they circumcise him immediately … so that we do not delay the performance of a mitzva." If it were possible to perform the *tevila* first and then circumcise the convert, that would certainly be preferable, but that is impossible.

 The Rashba explains that “since the *tevila* embodies the essence of the conversion, leaving the impurity of being not Jewish and entering into the sanctity of Israel, therefore it [the *tevila*] must be at the end.” Similarly, the Ritva writes that “when he is uncircumcised, the *tevila* does not work, as it is similar to one who immerses while still holding something impure (*tovel ve-sheretz be-yado*). Therefore, even after the fact, the *tevila* [performed in such an order] is invalid.”

 The Ramban (ad loc. s.v. *nitrape*) disagrees with these *Rishonim* and insists that there is a different reason for delaying the *tevila*. The convert is first circumcised as a means of deterrence; thus, if he did immerse before being circumcised, the conversion is valid. Tosafot cites as a proof for this assertion another passage that teaches that when a pregnant woman converts, her son who is born thereafter is considered to be Jewish, and *tevila* is not required. Since the child is not circumcised until after he is born, clearly the order of the *mila* and *tevila* does not matter. (We will discuss this passage in a different *shiur*.)

 The Rema (YD 268:1) cites both views. The Shakh (2) rules that one who immersed before being his circumcision should immerse again.

 This debate may be rooted in a fundamental question regarding the circumcision of a convert: Is the *mila* a mere preparation for the *tevila*, such that it is the *tevila* that actually effects the conversion (Tosafot, Rambam, Rashba, Ritva)? Or are the *mila* and *tevila* both significant parts of the conversion process, such that it therefore may not matter which is performed first (Ramban)? This fundamental question may impact upon other halakhic issues, as we shall see.

**Do *Mila* and *Tevila* Require a *Beit Din*?**

 In a previous [*shiur*](https://www.etzion.org.il/en/shiur-08-beit-din-le-giyur-2-which-parts-conversion-require-beit-din), we discussed whether the *mila* and *tevila* must be performed in the presence of a *beit din*.

 We noted that the Behag and others insist that the entire conversion process must be performed in the presence of a *beit din*. On the other hand, numerous *Rishonim* – including the Tosafot, Ramban, Rosh, and Ran – rule that while the entire conversion process should preferably 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.

 We further noted that the Talmud never explicitly discusses whether a convert's *brit mila* must be performed in the presence of a *beit din* (*Beit Yosef*, YD 268). Although the *Tur* (YD 268; see also *Nemukei Yosef*, Yevamot. 15b) writes that *mila*requires a *beit din* of three *dayanim*, R. Yishayahu ben Elijah di Trani (Italy, 13th-14th century), known as the Riaz (cited by the *Shiltei Giborim*, [*Yevamot* 15b](https://www.sefaria.org/Yevamot.15b?lang=he-en&utm_source=sef_linker)), writes that the *brit mila* is valid if done in front 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*.

 We might suggest that if the *mila* is merely a preparation for the *tevila* (i.e., the removal of the status of "*arel*"), then we may understand why a *beit din* is not required. Interestingly, R. Soloveitchik relates to the different roles of *mila* and *tevila* from a philosophical perspective in his famous essay, *Kol Dodi Dofek* (n. 21). H explains the debate as follows:

‎The basic question of whether circumcision is a part of the conversion process or ‎merely ‎removes the convert from the status of being uncircumcised is dependent upon a dispute ‎among ‎the *Rishonim* as to whether a *bet din* need be present at the time of the ‎circumcision. From ‎the manner in which Maimonides formulates his opinion, we can deduce that ‎the presence of a ‎‎*bet din* is required only for the immersion. In line with ‎this, one could argue ‎that circumcision achieves nothing more than the removal of a legal bar to the ‎conversion (see ‎*Hilkhot Issurei Bi’ah* 13:6 and 14:5-6).‎

‎Tur and Shulchan Arukh note the necessity of the [formal] process of *bet din* ‎for ‎circumcision as well, and so it is explicitly stated in the novella of Ramban (*Yevamot* ‎‎45b). ‎If this is the case, our suggestion that Nahmanides views circumcision as simply the removal ‎of the ‎status of being uncircumcised is incorrect. The very fact that Nahmanides requires the ‎presence of ‎a *bet din* at the time of circumcision testifies that the act of circumcision is an ‎integral act of ‎conversion and therefore susceptible to the requirement for the presence of a *‎‎bet din*.

For this reason, halakha dictates that a convert who has been circumcised but has not ‎yet ‎immersed himself in a *mikveh*, or who has immersed himself and has not yet ‎been ‎circumcised, is not fully converted until he does both. Circumcision, which was given to ‎Abraham ‎the Hebrew, the father of Jewish fate, and which was fulfilled in Egypt prior to the ‎offering of the ‎Paschal sacrifice — the symbol of the redemption from Egypt — signifies the fateful ‎otherness of ‎the nation, its necessary isolation and uniqueness. Circumcision is a sign sculpted into ‎the very ‎physical being of the Jew. It is a constant, indelible sign between the God of the Jews and ‎His ‎people, one that cannot be erased. If the *Covenant of Fate* is not sealed in the flesh, then ‎the ‎singularity of peoplehood is absent and the gentile remains outside the bounds of the ‎Covenant of ‎Egypt.‎

Immersion in a *mikveh*, in contrast to circumcision, represents the integration of man into his ‎great ‎destiny and his entry into the *Covenant of Sinai*. The Jews were commanded to ‎immerse ‎themselves prior to the giving of the Torah at Sinai. Immersion purifies and elevates from ‎the ‎profane to the holy, from life as it is to a life filled with a sublime vision. When the convert ‎emerges ‎from the waters of the *mikveh*, a new spiritual reality replete with destiny fills him, and ‎he is ‎endowed with the sanctity of the Jew (*kedushat Yisrael*). It is not coincidental that the ‎act ‎of accepting the yoke of the commandments is tied to immersion. The entire essence ‎of ‎immersion is the re-creation of the experience of the acceptance of the Torah and the elevation ‎of ‎the people to the status of a holy nation through its freely given commitment to obey God’s ‎word. ‎If the convert is circumcised and does not immerse himself, then the association of man to ‎destiny ‎is missing, and the gentile is fenced off from the Covenant of Sinai and from a ‎halakhic ‎identification with a holy nation.‎

While the *mila* removes the prior non-Jewish identity and identifies the convert with the Jewish People, the immersion in a *mikveh* endows him with the sanctity of a Jew, as he joins embraces the spiritual covenant of the Jewish People.

 Whether the circumcision of a convert is considered to be a preparatory or an integral part of the conversion process may have other important halakhic ramifications as well.

***Mal ve-lo Taval* – One who has been Circumcised but has not yet Immersed**

As mentioned above, the Talmud rules that a male convert must undergo *mila* and *tevila*. Indeed, the Rambam (*Hilkhot Issurei Bi'ah* 13:6) writes:

When a convert is circumcised but does not immerse himself, or immerses himself but was not circumcised, he is not considered a convert until he perform both of these activities.

The *Shulchan Arukh* (YD 268:2) also rules that one who has been circumcised but has not yet immersed is not considered to be Jewish.

The *Acharonim* discuss whether the fact that the *brit mila* was performed with the intent of converting has any halakhic impact. Does a non-Jew who is circumcised with the intent of conversion but has not yet immersed have a different status than an ordinary gentile?

 In a previous [*shiur*](https://www.etzion.org.il/en/shiur-06-conversion-candidate-during-process-converting), we discussed whether a conversion candidate may fully observe the Shabbat, in light of the Talmudic passage ([*Sanhedrin* 58b](https://www.sefaria.org/Sanhedrin.58b?lang=he-en&utm_source=sef_linker)) that teaches that a non-Jew may not observe Shabbat. Based on this passage, many *Acharonim* assume that even a non-Jew in the process of converting may not fully observe the Shabbat. Therefore, these *Acharonim* instruct conversion candidates not to fully observe Shabbat before their conversion. Rather, they should violate at least one of the prohibited labors (*melakhot*) each Shabbat before they complete their conversion. Based on this assumption, the *Acharonim* discuss whether a male conversion candidate may observe Shabbat fully after being circumcised for the sake of conversion.

As we noted in the previous *shiur*,this question was first addressed by the authorities in response to an incident that occurred in Jerusalem in 1848. A certain non-Jew was circumcised with the intention to immerse and complete his conversion, but unfortunately, he could not immerse before Shabbat. Although he was still recovering from the circumcision on Shabbat, he refused to ask a non-Jew to light a fire for him on Shabbat. R. Asher Lemel – who was substituting for the Chief Rabbi of the Ashkenazic community, R. Shmuel Salant, while he was abroad – ruled that not only was there no prohibition of asking a non-Jew to light a fire, but this fellow himself must light the fire, as he was not yet permitted to observe Shabbat. The next day, the Ashkenazic and Sephardic scholars of Jerusalem criticized R. Lemel’s ruling, arguing that after a non-Jew accepts upon himself the *mitzvot* and is circumcised, he may observe the Shabbat.

It is reported that when the question was posed to R. Shmuel Salant – who was visiting R. Yitzchak Meir Alter, the first Rebbe of the Ger Chasidic dynasty and author of the *Chiddushei Ha-Rim*, in Warsaw – both of them rejected R. Lemel’s ruling and permitted a conversion candidate, after being circumcised, to observe Shabbat. R. Lemel authored a responsum defending his position, which spurred extensive rabbinic discussion.

 Some of this discussion related to the status of someone who was circumcised for the sake of conversion but had not yet immersed in the *mikveh*.

 For example, R. Yaakov Ettlinger (1798–1871), in his *Binyan Tzion* (91), argued that since the gentile has already entered the covenant through circumcision and has removed himself from his non-Jewish identity, he may observe Shabbat, which is also an expression of the covenant.

 R. Shmuel Salant offered a more ambitious reason to permit this gentile, who had been circumcised, to observe the Shabbat. He noted that the Rashba ([*Yevamot* 71a](https://www.sefaria.org/Yevamot.71a?lang=he-en&utm_source=sef_linker)) explains that while a non-Jew who has been circumcised but has not yet immersed is not yet Jewish, “he has begun to enter into the Jewish religion (*nikhnas ketzat le-dat ha-Yehudit*), as he only needs to immerse [in order to complete his conversion].” Therefore, R. Salant argues, he is no longer considered to be a non-Jew, and he may therefore observe the Shabbat.

 While R. Lemel apparently did not believe that the *mila le-shem giyur* has any impact upon the person’s personal status, and R. Yaakov Ettlinger suggests that one who was circumcised for the sake of conversion is no longer viewed as a “non-Jew,” R. Shmuel Salant, based on the Rashba, insists that this convert has partially entered the Jewish faith.

 Perhaps the different Talmudic passages regarding one who was circumcised but has not yet immersed shed light on this question. While one passage (*Berakhot* 47b) teaches that “until he immerses he is a non-Jew (*nokhri*),” implying that the *mila* has no impact, another text (*Yevamot* 46b) teaches that “he is not a convert until he is circumcised and immerses,” which may be understood to mean that he is not considered to be a convert, although after the circumcision for the sake of conversion he may no longer be considered a non-Jew.

 This question may impact upon another halakhic issue as well. The *Rishonim* disagree as to whether a non-Jew who has been circumcised but has not yet immersed prohibits wine through touch. Tosafot (*Avoda Zara* s.v. *ein mafkidin*) and the Rosh (ibid. 5:5) relate that there was once a non-Jew who had been circumcised but had not yet immersed and who touched wine, and the R”i permitted the wine. He argued that since this convert had wholeheartedly (*be-lev shalem*) accepted upon himself to perform *mitzvot*, the wine is permitted.

 The Rashba (*Torat Ha-Bayit* 5:1) and the Ran (*Avoda Zara* 31a, s.v. *tanya*) disagree and prohibit wine touched by one who was circumcised with the intent to convert but who did not yet immerse. He explains that since the convert does not accept upon himself to perform the *mitzvot* until after he immerses, he is still considered to be a non-Jew, whose touch prohibits wine.

 The *Shulchan Arukh* (YD 124:2) prohibits such wine, while the Shakh permits it. He insists that the Rema (ibid.) also rules in accordance with the more lenient view. While there are numerous interpretations of this debate, some *Acharonim* imply that the non-Jew who was circumcised with the intent of converting may have a different legal personal status than other non-Jews.

 Seemingly, the *Rishonim* disagree as to whether the prohibition of *stam* *yenam* relates to all non-Jews or whether it does not apply to a non-Jew who has already been circumcised *le-shem giyur* but who cannot immerse until he recovers.

 However, R. David ibn Zimra (1479 – 1573), known as the Radbaz, offers a different interpretation. In his responsa (3:479), he explains that unlike a *ger* *toshav*, a non-Jew who has been circumcised with the intention of converting “has left the impurity of the non-Jews,” and while he is not considered to be a Jew until he immerses, he is “no longer considered to be not Jewish (*yatza* *mikhlal akum*).” This explanation is similar to the position of R. Shmuel Salant and the Rashba.

**Anesthesia During the Circumcision**

 The question of whether a conversion candidate may be circumcised while under general anesthesia may also reflect our question.

From the 19th century on, the *Acharonim* have discussed whether topical and general anesthesia may be used during a *brit mila*. On the one hand, R. Meir Arik (1855–1926), in his *Imrei Yosher* (2:140), suggests that pain may be an integral part of *brit mila*, as reflected by the following *midrash* (*Bereishit Rabba* 47:9): “‘Avraham was circumcised (*nimol*)’ — R. Abba bar Kahana says: He suffered pain so that God would double his reward." The *Imrei Yosher* therefore prohibits the use of topical and general anesthetics during a *brit mila*. Some *Acharonim* (*Tzitz Eliezer* 20:73; *Shevet Ha-Levi* 5:146) agree with R. Arik and insist that unless there is a fear of significant pain (e.g., the circumcision of an adult), no anesthetics of any kind should be used.

R. Yechiel Yaakov Weinberg (*Seridei Esh* 3:96), the *Maharsham* (6:85), R. Ovadya Yosef (*Yabia Omer*, YD 5:22), and other *poskim* permit full general anesthesia during circumcision, rejecting the notion that ritual circumcision must include pain.

However, the *Acharonim* raise a specific concern regarding the *brit mila* of a convert. R. Weinberg (*Seridei Esh*, ibid.) suggests a reason to prohibit circumcising an adult Jewish male while under general anesthesia:

Regarding an adult who wishes to convert, it is certainly prohibited to cause him to sleep using general anesthesia, as through the *mila* he attains the sanctity of a Jew (*nikhnas* *le-kedushat Yisrael*), and if he is asleep during the circumcision, who brings him into the sanctity of Israel? … Rather is appears that the convert himself must have in mind that through the circumcision he enters the sanctity of Israel.

The *Seridei Esh* argues that a person must preferably have intention in order to fulfill a mitzva (*mitzvot tzerikhot kavana*), especially when fulfilling a biblical mitzva (see *Magen Avraham* 60:3), and a person under general anesthesia does not have “intention”; therefore, general anesthesia should not be used for a *brit mila le-shem giyur*.

The *Seridei Esh* also cites the *Chatam Sofer* (YD 300), who proves that the *mila* of a convert, unlike the *mila* of a person born Jewish, must be done with specific intention (*lishma*).

 This question of whether a convert must be conscious during the *brit mila* may depend on whether *brit mila* is an integral part of the conversion process, in which case the convert might need to be awake, or only a preparatory phase (*hekhsher*), in which case he may be fully anesthetized.

 Interestingly, R. Moshe Sternbuch (*Teshuvot Ve-Hanhagot* 3:308) suggests that this debate may further depend on the disagreement regarding whether *brit mila* must be performed in the presence of a *beit din*. If the *brit mila* must be performed in front of a *beit din,* this may indicate that the *brit mila* is part of *ikkar geirut,* the essence of conversion, and we may thus also conclude that the convert must have the proper intention during the circumcision. Alternatively, if the *mila* is merely a *hekhsher* and not an inherent part of the conversion process, we would not require any specific intention.

R. Sternbuch concludes that since the *mila* should preferably (*le-khatechilla*) be performed in the presence of a *beit din*, it follows that the *mila* should be performed without general anesthesia. However, since, in his view, *be-diavad* (after the fact), if the *brit mila* was not performed in front of the *beit din*, the conversion is valid, then *be-diavad*, an adult male may undergo a circumcision while anesthetized, as the *brit mila* is not perceived as an integral part of the conversion process requiring intention *lishma*. R. Sternbuch concludes that a minor may be fully anesthetized, as he does not have any *da’at* (halakhic competence) in any case.

***Hatafat Dam Le-Shem Giyur***

 Next week, we will discuss the type of circumcision required for a conversion. When a non-Jew is already circumcised, he must undergo a *hatafat dam brit* (drawing a drop of blood), in place of a ritual circumcision.

 The *Acharonim* debate whether a child who was circumcised “*le-shem mitzva*” (i.e., with the intent of being ritually circumcised), but not “*le-shem giyur*,” must undergo another *hatafat dam* with the proper intention. This is a common scenario nowadays, as many children born to Jewish fathers and non-Jewish mothers are ritually circumcised, but not *le-shem giyur*.

 As we shall see, although some *poskim* (*Iggerot Moshe*, YD 2:128) require the convert to undergo an additional *hatafat dam*, most *Acharonim* are lenient. We might suggest that this debate depends on whether the *mila* is viewed as an integral part of the conversion process, and therefore must be performed with the intention of *giyur*, or whether it merely enables the convert to immerse in the *mikveh* and fully enter the Jewish People. We will discuss this issue in greater depth next week.

 Next week, we will continue our discussion of the *milat ha-ger*, focusing on some practical contemporary questions.