YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)

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**Laws of Conversion and Circumcision**

**Rav David Brofsky**

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Dedicated by Mr. and Mrs. Leon Brum for the *Refua Sheleima* of

Dana Petrover (Batsheva bat Gittel Aidel Leba)

and Marvin Rosenberg (Meir Chaim ben Tzipporah Miriam)

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In memory of six friends and family,
strong pillars of the Montreal Jewish community,
who have left us in the past seven years.
All were אוהבי עם ישראל, אוהבי ארץ ישראל, אוהבי תורת ישראל.

Joseph (Yosie) Deitcher

Avrum (Avy) Drazin

Rabbi Joseph Drazin

Leibel Frisch

Israel (Mutch) Yampolsky

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**Shiur #12:**

**The *Brit Mila* of a Convert (2)**

**Common Questions Regarding *Milat Ha-Ger***

**Introduction**

 Last week, we discussed the conversion of one who cannot be or who was already circumcised. Regardingone who may cannot be circumcised due to medical concerns, we noted that in the early 20th century, R. Yechiel Yaakov Weinberg sent this question to a number of leading rabbis in Eastern Europe and the Land of Israel. R. Avraham Yitzchak Ha-Kohen Kook (*Da'at Koh*en, YD 150) and R. Chaim Ozer Grodzinski ruled that a non-Jew who cannot be circumcised may not be converted. A more lenient view can be found in R. Eidelberg’s *Chazon Le-Moed* 6. Similarly, R. David Zvi Zehman (*Minchat Solet* 2:6; see also *Derekh Pikudekha, Mila* 29) suggests that a non-Jew who is unable to be circumcised may convert with *tevila* alone. R. [Asher Weiss](http://www.torahbase.org/%D7%9E%D7%AA%D7%95-%D7%90%D7%97%D7%99%D7%95-%D7%9E%D7%97%D7%9E%D7%AA-%D7%9E%D7%99%D7%9C%D7%94-%D7%AA%D7%A9%D7%A2%D7%94/) suggests that this question may depend on whether *mila* is a necessary component of conversion for a male or simply a preparation for the *tevila*.

The *Rishonim* disagree regarding whether a child who is "born circumcised" (*nolad mahul*) must undergo a *hatafat dam brit*. Tosafot Shabbat 135a s.v. *lo*; *Yere’im*,cited byHagahot Maimoniyot, *Hilkhot Mila* 1:2; see also Rambam, *Hilkhot Mila* 1:7) rules that a convert who was previously circumcised requires *hatafat dam brit*. The *Ba’al Ha-Ma'or* ([*Shabbat* 53b](https://www.sefaria.org/Shabbat.53b?lang=he-en&utm_source=sef_linker)) and Rabbeinu Chananel (Tosafot, ibid.), however, rule that a circumcised conversion candidate does not require *hatafat dam*. Interestingly, some (see Ramban, Rashba, and Ritva, *Shabbat* 135b) understand that Rabbeinu Chananel maintains that a non-Jew who was previously circumcised cannot convert at all, as he is unable to fulfill the circumcision requirement of conversion.

The Shulchan Arukh (YD 268:1) rules that in this case, a convert must undergo a *hatafat dam*.

 Finally, we discussed the *hatafat dam* itself and questioned from which part of the penis the blood is drawn. The *Avnei Nezer* (YD 334) writes that blood should be drawn from “the place where the glans meets the shaft.” The Chazon Ish (*Hilkhot Mila* 154), however, claims that blood should be drawn from the *atara*, the glans itself. In addition, he adds that *hatafat dam brit* does not need to actually draw blood; rather, even a scratch that causes the area to become red or bruised (*nitzrar ha-dam*) is sufficient. R. Eliezer Waldenberg (*Tzitz Eliezer* 8:28:4), R. Chayim Elazar Spira (*Ot Chayim Ve-Shalom* 263:5), and R. Yosef Eliyahu Henkin (*Kol Torah*, 5723) accept the view of the *Avnei Nezer*, who rules that the blood should be drawn from the shaft, and not the glans. The custom is to draw blood from the area above the glans, i.e., the shaft.

This week, we will discuss two common modern day questions regarding the intention of a *milat ha-ger*.

***Mila Le-Shem Yahadut***

Is it necessary for that the convert's circumcision be performed "*le-shem giyur*," i.e., for the sake of conversion, or it is sufficient that the brit is performed "*le-shem Yahadut*," i.e., as a ritual circumcision symbolizing entering the covenant between God and the Jewish People? This question is very common nowadays. For example, at times, a *mohel* is asked to circumcise the child of a non-Jewish mother, without being told that the child is not halakhically Jewish. If a non-Jewish child is ritually circumcised, but the *mohel* does not know that the child is not-Jewish, does the child need to undergo another *hatafat dam brit* before immersing (*tevila*) for the sake of converting?

 R. Yechezkel Abramsky (1886– 976), who served as the head of the London Beit Din, raised this question in an article published in *HaPardes* (21:3). He ruled that in this case of a non-Jewish child circumcised *le-shem mitzvat mila* but not *le-shem giyur*, he does not need to undergo a *hatafat dam brit* before completing his conversion. R. Abramsky proves his assertion from the view of the Ramban.

The Talmud (*Yevamot* 46a) teaches that Jewish males were circumcised before their final conversion at Har Sinai. The Rambam (*Hilkhot Issurei Bi'ah* 13:2) explains:

Circumcision took place in Egypt [before the Paschal sacrifice], as the verse states (*Shemot* 12:48): "No uncircumcised person shall partake of it." Moshe our teacher circumcised [the people]. For with the exception of the tribe of Levi, the entire people neglected the covenant of circumcision in Egypt. Regarding this, the Torah (*Devarim* 33:9) [praising the Levites,] says: "They upheld Your covenant."

The Rambam writes that while the tribe of Levi never abandoned the practice of circumcision, all of the other males were circumcised in Egypt before offering the *korban Pesach*.

The Ramban (*Yevamot* 46a; see also Rashba and Ritva), based on this Rambam, explains that males from the tribe of Levi did not require an additional *hatafat dam brit* before Matan Torah, as they were already circumcised for the sake of the mitzva.

R. Abramsky asserts that just as the tribe of Levi did not need to undergo *hatafat dam brit* before Matan Torah, as they were previously circumcised of the sake of a mitzva, so too, in our case, a child circumcised *le-shem mitzva* does not require a *hatafat dam* before completing his conversion.

R. Ben Zion Notelovitz (*HaPardes* 21:5) and R. Mordekhai Pinchas Teitz (ibid.) disagreed and rejected R. Abramsky’s proof from the Ramban, explaining that the Ramban refers specifically to a case in which a the non-Jew was previously commanded to be circumcised, as a ben Noach. R. Yosef Shlomo Elyashiv (*Moriah* 18, vol. 1, p. 205) make a similar objection.

R. Avraham Ever Hirschowitz (1840-1924) sent this question to R. Naftali Herman Adler (1839–1911), Chief Rabbi of the British Empire, and R. Shmuel Salant **(**1816–1909), the Ashkenazic Chief Rabbi of Jerusalem. He includes their answer in his Beit Avraham (p. 49). R. Adler relates that "our custom here [in London] is that if a Jewish person circumcises his son from a non-Jewish woman, since his Jewish father enters him into the covenant of Avraham Avinu for the sake of the mitzva, we do not extract a drop of blood when he is older [and completes his conversion]." R. Salant, in a responsum written in 5653 (1893), also rules that we do not require the child to undergo *hatafat dam brit*. R. Tzvi Pesach Frank (*Har Tzvi*, YD 219) similarly rules that "if the circumcision was performed *le*-*shem mitzvat mila*, that is sufficient."

Other *Acharonim*, such as R. Yosef Rosen (1858–1936), known as the Rogatchover Gaon (*Tzofnath Paneach*, *Hilkhot Mila* 3:7), R. David Tzvi Hoffman (1843–1921, *Melamed Le-Ho'il*, YD 82), and more recently R. Ovadia Yosef (*Yabi'a Omer*, YD 10:27) agree that in this case the there is no need for a *hatafat dam brit*.

In addition to R. Notelovitz and R. Teitz, the *Sefer Nehar Mitzrayim* (*Hilkhot Gerim*), the *Minchat Yitzchak* (1:36), and R. Yosef Shalom Elyashiv (cited in *Chedvat Yaakov* YD 14) require the child to undergo a *hatafat dam brit* in this case.

Interestingly, while in one responsum, R. Moshe Feinstein (*Iggerot Moshe,* YD 2:128) rules that the child must undergo a *hatafat dam brit* in the presence of a *beit* *din*, elsewhere (YD 3:105) he rules that one may be lenient in extenuating circumstances (*dochak gadol*).

Needless to say, this entire discussion is predicated on the assumption that *be'di'avad*, a circumcision performed not in the presence of a *beit din* is valid for *giyur*. In practice, different *batei din* have adopted different policies regarding this question.

**A Non-Religious *Mohel***

Another common scenario involves the circumcision of a conversion candidate performed by a non-religious *mohel* or surgeon.

Regarding the circumcision of a Jewish child, the Talmud ([*Avoda Zara* 27a](https://www.sefaria.org/Avodah_Zarah.27a?lang=he-en&utm_source=sef_linker)) concludes that an uncircumcised Jewish male (i.e. an *arel*) may circumcise a Jewish child. The example given by the *gemara* is a person whose two older brothers died as the result of being circumcised; this person is exempt from *brit mila* (see [*Yevamot* 64b](https://www.sefaria.org/Yevamot.64b?lang=he-en&utm_source=sef_linker)), and thus legitimately remains uncircumcised. But may one who is uncircumcised by choice serve as a *mohel*?

Tosafot (ad loc., s.v. *ika*) asserts that a *mumar le-arlut*, a person who refuses to be circumcised, can still perform a *brit mila*. Tosafot explain that this person is still a “*bar shemirat ha-brit*” (a person capable of participating in the covenant), and he is therefore not disqualified as a *mohel*. The Rambam (*Hilkhot Mila* 2:1) also implies that all uncircumcised Jewish males may perform a *brit mila*, not just those who have halakhic justification for their lack of circumcision (i.e. one whose two brothers died due to *brit mila*).

Other *Rishonim* appear to disagree. The Beit Yosef (YD 264) cites Rabbeinu Manoach and the Ba’al Ha-Ittur (*Hilkhot Mila* 50:3), who insist that one who is not circumcised and intentionally violates the covenant may not perform a *brit mila* for others. Similarly, the Darkhei Moshe (YD 264) cites the Or Zaru’a (*Hilkhot Mila* 97), who questions whether a circumcised *meshumad* may perform a*brit mila*. The Or Zarua writes that although there should be no technical reason to exclude a *meshumad*, we are concerned that he might not perform the circumcision with the proper intention (*le-shma*).

This debate continues through the *Acharonim*. The Shulchan Arukh (YD 264:1) writes: “All are valid to circumcise … even one who is not circumcised because his brothers died due to being circumcised.” The Shakh (1; see also Perisha) notes that the Shulchan Arukh implies that one who intentionally chooses to violate that covenant (*mitkaven le-hafer brit*) may not perform a *brit mila*. Similarly, the Rema (ibid.) writes explicitly that “a *mumar* (one who rebels against) the entire Torah, or [even] a *mumar* for circumcision, is considered for this matter to be like a non-Jew.” This would certainly include a *meshumad*, as the Rema noted in the Darkhei Moshe (above), as well as one who rejects the observance of *mitzvot*.

On the other hand, some *Acharonim* (see Peri Chadash, cited in *Pitchei Teshuva* 8; see also R. Akiva Eiger, *Teshuvot* 4:73; *Even Ha-Ozer*, OH 189; and Arukh Ha-Shulchan) note that the Rema’s ruling contradicts the simple understanding of the Talmud, as well as that of Tosafot (above). R. Akiva Eiger even writes that in extenuating circumstances, including avoiding communal strife (*rivot u-ketatot*), a *mohel* who is *mechalel Shabbat* may perform a *brit mila*.

R. Moshe Feinstein (*Iggerot Moshe*, YD 2:123), based on the Rema, rules that a circumcision performed by a Jewish doctor who violates the Shabbat (*mechalel Shabbat be-farhesya*) is invalid and a *hatafat dam brit* must be performed by another *mohel*. Other prominent *Acharonim*, such as R. Shmuel Wosner (*Shevet Ha-Levi* 5:146), R. Ovadia Yosef (see *Yalkut Yosef*, *Sova Semachot* II 15:7), and R. Yitzchak Yaakov Weiss (*Minchat Yitzchak* 4:101), disagree and rule that *be-dia’vad*, there is no need to perform *hatafat dat brit* on a child who was circumcised by a non-religious *mohel*. R. Wosner raises the possibility that it may in fact be prohibited to perform *hatafat dam brit* in this case, due to the prohibition of *chabalah*. *Sefer Mila Shleima* (9:14) asserts that this is the ruling of the Torah authorities of the generation.

A number of *Acharonim* discuss what one should do when a non-religious doctor is the only *mohel* available or when faced with a choice between a non-religious doctor performing the circumcision on the eighth day or a religious *mohel* after the eight day.

R. Moshe Pirutinsky (*Sefer Ha-Brit*, p. 159) cites R. Yaakov Emden, who claims that when there is no “*Yisrael kasher*” available to perform the *brit mila*, one should wait until a proper *mohel* arrives in order to perform the *brit mila*. Similarly, he relates that he heard from R. Mendel Zaks, the Chafetz Chaim’s son-in-law, that when the Chafetz Chaim was asked regarding a doctor in London who did not observe the Shabbat and who performed circumcisions, the Chafetz Chaim ruled that it is preferable for an observant *mohel* to perform the *brit mila* after the proper time (i.e. after the eighth day) rather than for a *mohel* who violates the Shabbat to perform the *brit mila* in its proper time. When R. Zaks showed him the opinion of R. Akiva Eiger, cited above, the Chafetz Chaim responded: “Despite this, it should not happen in the Jewish People that a Shabbat violator performs a *brit mila*; it is better to enact a fence [around the Torah]” (p. 166:7). This appears to correspond to the opinion of R. Moshe Feinstein, cited above.

R. Shaul Yisraeli (cited in *Be-Mareh Ha-Bazak* 3:122) sides with R. Akiva Eiger and rules that if there is no Shabbat-observant *mohel* available to perform the *brit mila* on the eight day, one should prefer a Jewish *mohel* who violates the Shabbat in order that the circumcision should be performed on time. *Sefer Mila Shleima* (9:15) writes that one should not rebuke one who follows the lenient view.

Regarding a conversion candidate who was circumcised by a non-religious *mohel* or surgeon for the sake of a *brit mila*, R. Moshe Klein (*Mishnat Ha-Ger* 27) rules that we may be lenient and forgo a *hatafat dam brit*. He enumerates a number of reasons to be lenient. He first notes that the Rambam (*Hilkhot Mila* 2:1) rules that "A gentile… should not be allowed to perform the circumcision at all; nevertheless, if he does so, there is no need for a second circumcision." Second, he notes that numerous *Acharonim*, including R. Akiva Eiger, rule that a circumcision may be performed by a *mumar*. Finally, he adds that nowadays, most non-religious doctors would be categorized as "*tinokot she-nishbu,*" in which case there is no need to be strict and require an additional *hatafat dam*.

 Next week we will begin to study the laws of *tevilat ha-ger*.