YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Laws of Conversion and Circumcision (3)**

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In memory of Rabbi Jack Sable z”l and

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***Tevilat Ha-Ger:* The Role of *Beit Din* and the Immersion of Female Converts**

Last week we began our study of the final stage of conversion – *tevilat ha-ger*, the convert's immersion in a *mikveh*. We discussed whether the *tevila* must follow the *mila*, the blessing said upon immersing for the sake of conversion, and the blessing during the immersion of a child who is converted by a *beit din*. Finally, we discussed whether the convert may and should say the *Shehechiyanu* blessing upon emerging from the *mikveh*.

 This week, we will discuss the role of *beit din* during the *tevila*, as well as the presence of men during the *tevila* of female converts.

**The Role of *Beit Din* at the *Tevilat Ha-Ger***

The Talmud (*Yevamot* 47b) teaches that a conversion must be performed in front of a *beit din* of three *dayanim*. However, the *gemara* does not specify which segment of the conversion process requires a *beit din*. We discussed this question in depth in previous *shiurim*. This week, we will focus on whether a *beit din* must be present at the *tevila*.

The Talmud appears to indicate that three *dayanim* must be present 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 clearly indicates the presence of three *dayanim* at 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 for the sake of purification of a *nidda* or for purification from a seminal emission suffices for conversion.

R. Asi makes no mention of three *dayanim*, who were presumably not present when this woman immersed. If so, in light of the sources cited above, how is this conversion valid?

The *Rishonim* offer attempts to reconcile this apparent contradiction.

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 the passages that maintain that the *tevila* must be performed in front 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-khatchila* and *be-di'avad*. He notes the contradiction between the sources and concludes 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.

Alternatively, 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.

It appears that these *Rishonim* believe that the *kabbalat mitzvot*, by definition, **must** be performed in from of a *beit din*. While *mila* and *tevila* stand on their own, *kabbalat mitzvot* is only significant when performed in front of a *beit din*.

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. For example, the Ritva (*Yevamot* 45b, s.v.*mi lo*) and the *Nemukei Yosef* (ibid. 15b, s.v. *mi lo*) explain that a *beit din* was indeed present. Alternatively, *Tosafot* (ibid.) cite 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 have been performed in the presence of the *beit din*. This approach has far-reaching ramifications, which we will address below.

The Rambam (*Hilkhot 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*.

The presence of the *beit din* at the *tevila*, according to these *Rishonim*, may be understood in numerous ways. Perhaps the *beit din* may only need to be present to ensure that the convert indeed immersed. Alternatively, just as *kiddushin* performed privately are halakhically insignificant, the *tevila*, and thus the conversion, performed privately are invalid.

 In practice, the *mila*, *tevila*, and *kabbalat mitzvot* are performed in front 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*.

 Even if we require the presence of a *beit d*in at the immersion of a convert, we have still not determined the role of the *beit din* and the definition of "presence." These questions are central to our next discussion regarding the presence of *dayanim* at the immersion of a female convert.

***Tevilat Giyoret* – The Immersion of a Female Convert[[1]](#footnote-1)**

 As demonstrated above, the *beit din* must be present during the immersion of a convert. While the presence of a *beit din* at the immersion of a male convert may be somewhat uncomfortable, the presence of a *beit din* of three males at the *tevila* of a female convert compromises the standards of *tzni'ut* for both the rabbis and the convert. The mere presence of the *dayanim* at the immersion appears to be immodest, and the female convert undoubtedly feels discomfort as they stand above her supervising the *tevila*.

 Even if the *tevila* must be performed in front of a *beit din*, the situation is inherently immodest. Indeed, the *gemara* itself (*Yevamot* 47b), as well as *Masekhet Gerim* (1:8), take this into account. This discomfort is expressed by leading halakhic authorities, such as R. Moshe Feinstein (*Iggerot Moshe*, YD 2:127), R. Ovadia Yosef (*Yabi'a Omer*, YD 1:19), R. Ben-Zion Meir Chai Uziel, R. Shmuel Salant, and others, regardless of their halakhic conclusion. This leads us to the following question: Is it necessary for a *beit din* to be present at the *tevila* of a female convert?

 The Talmud (*Yevamot* 47b) describes the conversion of a female convert:

For the immersion of a woman: Women appointed by the court seat her in the water of the ritual bath up to her neck, and two Torah scholars stand outside [the *mikveh*] so as not to compromise her modesty, and from there they inform her of some of the lenient *mitzvot* and some of the stringent *mitzvot*.

The *gemara* relates that the scholars (i.e., the *beit din*) stand "outside [the *mikveh*]" and inform the woman of the *mitzvot*. Although this passage implies that the *dayanim* do not view the immersion, Rambam (*Hilkhot Issurei Bi'ah* 14:6) explains:

If the convert was female, women position her in the water until her neck while the judges are outside. They inform her about some of the easy *mitzvot* and some of the more severe ones while she is sitting in the water. Then she immerses herself in their presence. Afterwards, they turn their faces away and depart so that they will not see her when she ascends from the water.

The Rambam apparently understood that the Talmud only describes how the female convert is informed of the *mitzvot* while in the water. The actually immersion, however, is performed in the presence of the *beit din*.

However, minor tractate *Masekhet Gerim* (ibid.) teaches: "A man immerses a man, and a woman immerses a woman but not a man." This passage strongly implies that the *tevila* was **not** performed in the presence of male *dayanim*.

 We find similar indications in the *Rishonim* as well. For example, we mentioned that some *Rishonim* (see, for example, Tosafot Maharam, *Yevamot* 46b) explicitly rule that the *tevila* is not performed in the presence of the *beit din*. R. Yitzchak ben Moshe of Vienna (Austria, 13th century), in his *Or Zaru'a* (v.1, *Yibum Ve-Kiddushin*, 598), writes:

[The Talmud] implies that [the *dayanim*] do not see her; rather, they rely upon the women who see her immerse.

The *Or Zaru'a* explicitly describes that the immersion was performed solely in front of women. This is implies by the words of the *Aguda* (*Yevamot* 45b) as well.

 Although, as mentioned above, the *Shulchan Arukh* explicitly rules that, at least *le-chatchila*, the immersion must occur in the presence of the *beit din*, we shall see that the *Acharonim* relate to the immersion in front of women, *be'diavad*, even *le-chatchila*.

***Tevila* in the Presence of Women – Contemporary *Poskim***

This question arose in the twentieth century numerous time when, in certain situations, men were not permitted to approach the water. It is important to note that immersion in the presence of men became a greater challenge in modern *mikvaot*. In the past, women immersed in muddy, often murky water. Only somewhat recently were *batei din* confronted with *tevilot* in clean, clear water.

For example, in 1893, R. Avraham Ever Hirschowitz, Rav of Melbourne, Australia, wrote to two important scholars, Dayan Yaakov Reinowitz of London and R. Shmuel Salant, the Rav of Jerusalem. R. Hirschowitz explained that the *mikveh* in Melbourne was not under Jewish control, and men were not permitted to enter the premises. He further writes that even if the *beit din* were to bribe that female guard in order to be allowed to enter the bathing area, they would be severely punished, and their behavior would cause a great *chillul Hashem*. If so, he asked, how would it be possible to supervise the *tevila* of a female convert (*Beit Avraham*, p. 47)?

Dayan Reinowitz responded that in extenuating circumstances, one may rely on the view of Tosafot, who require a *beit din* only for the *kabbalat ha-mitzvot*. Dayan Reinowitz concluded by asking that R. Hirschowitz only rely upon his opinion if another great scholar concurred.

R. Shmuel Salant also responded. He wrote:

And three *talmidei chakhamim* should accompany them until the place at which there are permitted to enter, and at the bathhouse the female convert should enter with God-fearing, kosher women who are to be trusted to immerse the female convert in accordance with Torah law. All three scholars stand at the perimeter and their mind is upon them, and after the *tevila* they relate to the three scholars that she immersed according to Torah law.

 The first Sephardic Chief Rabbi of the State of Israel (Rishon Le'Tzion), R. Ben-Zion Meir Chai Uziel (1880 - 1953), issued a similar ruling. He relates that when he served as a rabbi on Salonika, he was asked whether a female convert may immerse in the *mikveh*, which was located in the non-Jewish bathhouses, into which the rabbinic judges were not permitted to enter. He writes:

I established that the female convert, accompanied by three Jewish women, should stand before the *beit din*. They will inform her of the *mitzvot kalot* and *mitzvot chamurot* and their punishments, as is required. And after she accepts upon herself the yoke of *mitzvot*, they will tell her to go with the women to immerse in front of them, as agents of the *beit din* (*shlichot beit din*), with intention of becoming Jewish and accepting the *mitzvot*… And it seems to me that this is proper according to all of the opinions. (*Mishpetei Uziel*, YD 1:53)

R. Uziel adds that the women should immerse in the presence of three women.

 Unlike R. Reinowitz, R. Uziel does not simply maintain that the lenient opinion (*Tosafot*) may be relied upon in extenuating circumstances. Rather, he argues that even according to the Rambam, the presence of the *beit din* ensures that the *tevila* is performed with the proper intention. However, as long as she accepted upon herself the yoke of *mitzvot* immediate before the *tevila* and immerses afterwards with that in mind, the conversion is valid. Furthermore, R. Uziel asserts that one should rely upon this *le-chatchila*, "in order not to close the door before converts." R. Uziel notes that other authorities, such as the *Perach Mateh Aharon* (2:50), disagree.

R. Eliezer Yehuda Waldenberg, author of the *Tzitz Eliezer*, stated at a conference of Rabbinic Judges (*Protocol Kenes Dayanim Sheni*, p. 23) that R. Uziel wished to adopt this practice in Israel as well. R. Waldenberg supported R. Uziel's proposal, arguing, "In our generation, unfortunately, many criticize and look for faults in those who bear the flag of the Torah…"

Although Dayan Reinowitz, R. Salant, and R. Uziel related to specific, local scenarios, it was clearly customary in numerous places to immerse female converts in the presence of women. For example, R. Ovadia Yosef (*Yabi'a Omer*, YD 1:19) describes that when he arrived in Egypt to serve on the Cairo *beit din*, he found that it was customary for the *dayanim* to stand in a room adjacent to the *mikveh*, from which they would inform the convert of the *mitzvot*. Afterwards, she would immerse in the presence of a Jewish woman. R. David Bas (in the article cited in n.1 above, p. 97) records that this apparently was also customary in the *beit din* of R. Shalom Messas, as well as in the Paris *beit din* headed by R. S. Guggenheim. As we shall see, this was customary in England as well.

 R. Ovadia Yosef strongly objected to this practice. In fact, he later recalled that this was one of the reasons why he was dismissed from his position in Egypt (see Tikochinsky [n.1 above], p. 81). R. Yosef proposed that in order to maintain the proper level of modesty, the convert should wear a robe when she immerses. However, despite his objection to immersing in the presence of women, he writes that, after the fact, the conversion is valid. Others (*Nehar Mitzrayim*) suggest placing a sheet over the water, so that only her head can be seen. R. Moshe Shternbuch (*Teshuvot Ve-Hanhagot* 1:625), who also records that this practice was observed in "numerous *batei din* throughout the world," insists that the *giyur* is valid (although he recommends immersing again in the presence of a *beit din*). R. Yitzchak Yaakov Weiss, in his *Minchat Yitzchak* (4:34), also rules that *be'diavad*, if the *dayanim* were outside the *mikveh*, the door was open, a woman supervised the *tevila*, and the *dayanim* are certain that the convert immersed properly, the conversion is valid.

 In 1963, R. Moshe Feinstein (*Iggerot Moshe*, YD 2:127) was asked regarding the practice in London to immerse the convert "when the *beit din* was in a different room, and they also did not see the *tevila*." R. Feinstein rules that the woman should immerse again in the presence of a *beit din*, in order that she be a "*giyoret vada'it*" (certain convert). Interestingly, in a different *teshuva*, authored in 1974 (YD 3:112; see also YD 1:47), he validates a conversion at which the *beit din* stood right outside the *mikveh* and one of the *dayanim* even saw the *tevila*. He argues that absolute knowledge is akin to vision; since there is no doubt that the woman immersed, the conversion is valid.

**Conclusion**

 It customary in most *batei din* for the *dayanim* to enter the room of the *mikveh* only after the convert, who is wearing a long and loose robe, is already in the water. After the women accepts upon herself the yoke of *mitzvot*, she immerses, and the *dayanim* immediately leave the room.

 It is crucial that the *beit din* do the utmost to preserve the modesty and dignity of the convert, as well as of the *dayanim*. For example, many *batei din* insist upon the presence of a woman at the *beit din* and the *mikveh*, and many *dayanim* are especially careful regarding the manner in which they engage both male and female converts while they are in the *mikveh* waters.

 Next week, we will discuss the unique situation of a pregnant woman who converts.

1. A number of comprehensive articles have been written on this topic in recent years, including:

Dr. Michal Tikochinski, “*Ve-Ha-Isha Matbelet et Ha-Isha*,” *Akdamot* 21 (Elul 5768); R. Yoni Rosensweig, *Yishrei Lev* 2: YD 103; R. David Bas, “*Chovat Nokhechut Beit Din Be-Tevilat Giyur*,” *Drisha*, 3. [↑](#footnote-ref-1)