YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

**Rav David Brofsky**

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In memory of Rabbi Jack Sable z”l and

Ambassador Yehuda Avner z”l

By Debbi and David Sable

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***Tevilat Ha-Ger* – The Conversion of a Pregnant Woman**

Last week, we discussed whether a *beit din* must be present at the *tevila* of a convert and, more specifically, at the *tevila* of a female convert. This week we will discuss another *halakha* relevant to a female convert: the conversion of a pregnant woman.

The Talmud (*Yevamot* 78b) teaches: "If a pregnant gentile woman converted, her son [who was a fetus at the time of the conversion] does not require immersion.” What is the halakhic mechanism through which the child does not require *tevila*? In addition, what is the halakhic status of the child?

The Talmud (ibid.) explains that this principle that the child born of a pregnant gentile woman who converts does not require immersion" must be understood in light of a broader debate regarding the halakhic status of a fetus.

The *gemara* cites a debate regarding whether "*ubar yerekh imo*,”“the fetus is considered the thigh" – i.e., a part of its mother – or whether "the fetus is not considered the thigh" – i.e., not a part of its mother, but rather a separate creature, despite the fact that it is still in utero. This debate appears in numerous places in the Talmud.

According to the position that maintains that "*ubar yerekh imo*," the fetus in our case considered part of the mother, and it is therefore Jewish due to being part of its mother who converted. However, according to the position which maintains that "*ubar lav yerekh imo*," the fetus is considered a distinct entity that immerses in the *mikveh* alongside its mother.

The Talmud questions the validity of the *tevila* according to this second approach, as seemingly the mother is a "*chatzitza*," i.e., interposition, between the fetus and the water. The *gemara* therefore explains that "a fetus is different, as this is its natural manner of growth." In other words, the mother’s womb is not considered an interposition, as it is the fetus’ natural place of development, and the fetus itself is therefore regarded as having undergone immersion.

What is the halakhic status, or identity, of the child after birth? This question is subject to much debate, with many practical and even far-reaching ramifications, as we shall see. Seemingly, if one maintains that "*ubar yerekh imo*," since the mother converted, upon birth, the child was born to a Jewish mother and is therefore considered to be Jewish. Indeed, R. Akiva Eiger (*Ketubot* 11a) comments that according to this view, even if the mother does not want her *tevila* to convert the fetus, her child is still considered Jewish.

However, according to those who believe that "*ubar lav yerekh imo*," it appears that the fetus converts in utero. If so, we may question whether the *tevila* completes the conversion, or whether, in the case of a boy, it is only completed after the circumcision. This question, as we shall see, was debated extensively by the *Rishonim* and *Acharonim*.

The *Acharonim* raise and debate numerous questions rooted in this debate. For example, R. Yechezkel Landau (1713-1793), in his comments to the *Shulchan Arukh*, *Dagul Mervava* (YD 268), writes: "If the *beit din* did not know that she [the female convert] was pregnant, there is much to say, and it depends upon [a debate between] great trees [i.e. halakhic authorities]." Although R. Landau does not explicitly mention the debate upon which this question depends, many *Acharonim* assume that he refers to the question of *ubar yerekh imo* or *ubar lav yerekh imo*. If *ubar yerekh imo*, the child is considered to be Jewish at birth and not as having been converted as a minor in utero. However, if ub*ar lav yerekh imo*, the *beit din* seemingly must be aware that it is converting not only the mother but the fetus as well.

The Beit She'arim (YD 359) assumes that the *halakha* is in accordance with those who maintain that *ubar lav yerekh imo*. R. David Tzvi Hoffman, in his *Melamed Le-Ho'il* (EH 12), appears to rule that the child in R. Landau’s case would need to immerse again. R. Moshe Feinstein (*Iggerot Moshe*, YD 1:155, s.v. *u-bedvar ha-gerut*) writes that it is proper (*tov*) to inform the *beit din* if the female convert in pregnant, in order to avoid the doubt raised by the *Dagul Mervava*. However, the *Arukh Ha-Shulchan* (YD 269:11), and others (see R. Ovadia Yosef, *Yabi'a Omer* YD 9:17), insist that the *halakha* is that *ubar yerekh imo*, and therefore the child is not actually converted in utero.

Similarly, the *Acharonim* discuss whether this child, upon reaching his or her bar or bat mitzvah age, may protest (*mocheh*) and undo his conversion, as other child converts (*ger katan*) may do (see *Ketubot* 11a). The *Tiferet Moshe* (YD 268) writes that since we follow the view that maintains that *ubar yerekh imo*, the child may not protest when he is older, as he is not considered to be a convert at all. The *Avnei Milu'im* (4:2) concurs.

We will discussion whether a daughter converted in utero may marry a kohen in a separate shiur.

***Brit Mila***

As mentioned above, the Talmud teaches, “If a pregnant gentile woman converted, then her son [who was a fetus at the time of the conversion] does not require immersion.” The *Rishonim* note that elsewhere (*Yevamot* 47b), the *gemara* implies that when a male converts, the *mila* precedes the *tevila*. If so, how are we to view the circumcision of a boy born to a mother who converted while pregnant according to the opinion that maintains *ubar lav yerekh imo*?

The Ramban (*Yevamot* 47b) deduces from our *gemara* that the order of the *tevila* and *mila* are not significant. Therefore, even though the child will be circumcised after the *tevila*, the conversion is valid. The Ramban maintains that according to the view that *ubar lav yerekh imo*, the fetus is considered to have converted either in utero (if it is a girl) or after circumcision (if it is a boy).

The *Nemukei Yosef* (*Yevamot* 16a; see also Ritva 47b) cites the Ra'ah, who explains that this passage cannot serve as a proof regarding the proper order of the *mila* and *tevila*, as in this situation, the conversion of a boy fetus is completed in utero, without a *mila*, as in case of a girl. These *Rishonim* maintain that even according to those who believe that *ubar lav yerekh imo*, the child is considered fully Jewish at birth.

Interestingly, *Tosafot* (Yevamot 47b s.v. *matbilin*) explains that in this case, the order does not matter as "[the child] isn't yet fit to be circumcised." The *Acharonim* debate what *Tosafot* mean. Perhaps they maintain that since the fetus cannot yet be circumcised, it is not yet obligated, and therefore *tevila* is sufficient (see *Kehilat Yaakov*, *Yevamot* 36). Alternatively, some (see *Tzafnat Pe'aneach*, *Mila* 1:10) explain that *Tosafot* agree with the Ramban that in this case, since the fetus cannot yet be circumcised, the *mila le-shem giyur* may be performed out of order, i.e., after the *tevila*, after birth. This question may depend upon whether the circumcision must precede the *tevila* because immersing before circumcision is akin to one who "immerses with a *sheretz* in his hand" (Ritva, *Yevamot* 47b), and therefore in this case, when the child is not yet obligated to be circumcised, he is not considered to be an *arel*, or, because the *tevila* is meant, by definition, to be the final step of the conversion (Rashba, *Yevamot* 47b).

**The Ramban’s View**

As mentioned above, the Ramban maintains that, according to the view that maintains that *ubar lav yerekh imo*, the child is immersed to be a convert, and in the case of a boy, the conversion is completed after birth, upon being circumcised. A number of *Acharonim* note that this view appears to contradict other Talmudic passages.

For example, the Talmud (*Yevamot* 98a) teaches: "Two twin brothers who are converts – if they engage in marital relations with [their brother's wives], they are not liable [to receive *karet*]for engaging in marital relations with a brother’s wife." This is due to the principle of "a convert is like a newborn baby," and he or she is therefore not considered to be related to his or her original family. However, the *gemara* continues: "If they were not conceived in sanctity and only their birth was in sanctity … they are liable for engaging in marital relations with a brother’s wife." According to this *gemara*, twins who convert in utero are considered to be siblings, implying that they were born Jewish, not as converts.

Similarly, the *mishna* (*Bekhorot* 46a) rules that the child of a woman who converted during his pregnancy is obligated in *pidyon ha-ben*, once again implying that the child is not considered a convert.

These two passages, which imply that the child is born Jewish and not as a convert, appear to contradict the Ramban cited above. The *Acharonim* suggest novel understandings of the Ramban to resolve these problems.

R. Avraham Dov-Ber Kahana Shapiro (1870–1943), in his *Devar Avraham* (3:7:9), offers the following novel explanation:

Were I not afraid I would suggest a new idea in order to reconcile the Ramban – that the part of the child that developed in utero before the conversion is considered to be a non-Jew and the part that developed in utero after the conversion is considered to be Jewish. Non-Jewishness and Jewishness are mixed together, similar to the scenario of a *chatzi eved* and a *chatazi ben chorin* [i.e., when a slave owned by two people is released by one of them, in which case the person is partly “free” and partly still a slave]. The non-Jewish part of the child must be converted but due to the Jewish part of the child, he is culpable for relations which is brother’s wife and is obligated to be redeemed with five *sela’im* [*pidyon ha-ben*].

R. Shapiro suggests that the Ramban believes that only part of the child – i.e., the part of the child which grew before the mother's immersion – must undergo conversion. That which developed after the mother's immersion is considered to be Jewish.

Alternatively, R. Naftali Trop (1871–1928), Rosh Yeshiva in Yeshivat Radin, offers a different understanding of the Ramban. He writes:

There are two aspect of conversion. 1) To convert and to become a Jewish person and to enter the Jewish nation. 2) To receive “*kedushat Yisrael*” (the sanctity of a Jewish person) … With this we may resolve R. Akiva Eiger’s question. It is clear that even according to the position that maintains *ubar lav yerekh imo*, he [the child] is considered to be a full-fledged Jew, as he was born to a Jewish woman; however, he lacks *kedushat Yisrael*. (*Chiddushei Ha-Granat*, *Ketubot* 11a)

Accordingly, R. Trop explains that the Ramban requires that the child be circumcised only in order to complete his *kedushat Yisrael*. However, he is already considered to be Jewish, which explains the passages cited above.

Both R. Shapiro and R. Trop maintain that the newborn boy is, in some respects, halakhically Jewish even before the circumcision performed for the sake of conversion.

The *Acharonim* raise numerous practical halakhic differences between the opinion of the Ramban, who views the circumcision of this child as a *milat giyur*, and the Ra’ah and others, who maintain that the child is completely Jewish due to his mother’s conversion.

Seemingly, if the circumcision is for the sake of conversion, it may be performed even before the eighth day, like the circumcision of a slave child (see *Shulchan Arukh*, YD 267:1; see, however, *Tzafnat Pane’ach,* *Hilkhot Mila* 1:10). However, if the child is born Jewish, the circumcision must be performed on the eighth day.

Similarly, if the *brit mila* is performed for the sake of conversion, it would appear that a *beit din* should be present, as a *beit din* should be present at the circumcision of any convert (YD 268:3).

Furthermore, the *Acharonim* disagree as to whether this child's circumcision may be performed on Shabbat. While the *brit mila* of a Jewish child is performed even on Shabbat, the circumcision of a convert must be performed on a weekday.

R. Yaakov Ettlinger (1798–1871), in his *Binyan Tzion* (22; see also R. Yaakov Emden, *Migdal Oz*, *Mila* 7:50) suggests that this should depend upon the debate between the Ramban and the Ra'ah. He concludes that since, in his view, the *halakha* is in accordance with the Ramban, the circumcision may not be performed on Shabbat. However, it appears that according to the *Devar Avraham* and R. Naftali Trop, even the Ramban would agree that the *mila* may be performed on Shabbat. R. Shlomo Zalman Auerbach (*Halakha U'Refu'a,* vol. 5, p. 81) writes that it is proper to be strict and not perform the circumcision on Shabbat. However, the Maharam Shick (247) and R. Chaim Ozer Grodzinsky (*Kovetz Iggerot* 27) disagree and insist that the circumcision may be performed on Shabbat.

Next week, we will discuss he halakhot relevant to a couple after the conversion of one or both partners.