YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

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

**Rav David Brofsky**

***Tevilat Ha-Ger* – When a Couple Converts**

Last week, we discussed the conversion of a pregnant woman. We noted that 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.” We noted that the *gemara* explains that this principle must be understood in relation to 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. According to the position that maintains that *ubar yerekh imo*, the fetus in our case is considered part of the mother, and it is therefore Jewish due to being part of its mother who converted. However, according to the position that maintains that "*ubar lav yerekh imo*," the fetus is considered a distinct entity that immerses in the *mikveh* alongside its mother.

In light of this debate, we examined whether a male child’s circumcision, after converting in utero, is considered to be the circumcision of conversion or of a Jewish child. We also discussed numerous practical issues that immerge from this discussion.

This week we will discuss the conversion of a couple – i.e., when both the man and the woman converts, or when one of the partners converts, and the halakhic implications.

**The Three-Month Separation Period – *Havchana***

The *mishna* (*Yevamot* 41a) teaches that certain women must wait three months before remarrying.

A *yevama* may neither perform *chalitza* nor enter into levirate marriage until she has waited three months [from the time of her husband’s death]. And similarly, all other women may not be betrothed and may not marry until they have waited three months [since their previous marriage ended]. This applies both to virgins and non-virgins, both to divorcées and widows, and both to women who were married to their previous husbands and women who were only betrothed.

The *gemara* explains that a *yevama*, a woman whose husband died without children and is expected to marry or perform *chalitza* with her brother-in-law, must wait three months, lest the woman is actually pregnant from the first brother; in such a case, she is not-obligated to perform *yibum*, and she will violate the prohibition of having marital relations with her husband’s brother. Similarly, the woman must wait three months before performing *chalitza*, in order that she should not perform *chalitza* while she is carrying her husband’s child.

Regarding a widow or a woman who has just been divorced, the Talmud cites a debate. R. Nachman, in the name of Shmuel, explains:

It is due to the fact that the verse states [with regard to Avraham]: “To be a God to you and your seed after you” (*Bereishit* 17:7) – to distinguish between the seed of the first husband and the seed of the second husband.

Rashi explains that “the Divine Presence rests with someone only when his seed can be identified as being descended from him [i.e., there are no uncertainties with regard to their lineage].” Therefore, the woman must wait so that it will be possible to prevent any uncertainties concerning the lineage of her child. After three months, if she had conceived from her previous husband, the pregnancy will already be noticeable.

The Talmud relates that Rava offers a different reason:

Rava stated: It is a rabbinic decree lest [a child be born and be incorrectly identified as the son of his mother’s second husband when he is fact the son of her first husband. This could result in him] marrying his paternal sister, [unaware of the true relationship between them,] or consummating a levirate marriage with the wife of his maternal brother [under the misconception that his maternal brother was also his paternal brother]. Or [in the event that his mother’s second husband died and he was assumed to be his only offspring], he would cause his mother to go out and be permitted to the general public [because, under the misconception that he was the offspring of the deceased, there is an assumption that there is no mitzva of levirate marriage]. Or [in the event that his maternal brother died childless and the brother’s widow became subject to levirate marriage, under the misconception that he was the paternal brother of the deceased, he might perform *chalitza* and] permit his supposed *yevama* to marry a man from the general public.

Rava maintains that a misunderstanding regarding the child’s paternity may potentially case a host of halakhic problems.

The *Shuchan Arukh* (EH 13:1) rules that a woman who has divorced or widowed may not marry or be betrothed until ninety days pass since her divorce or her husband’s death, so that she might know if she was pregnant or not, “in order to distinguish between the seed of her first husband and the seed of her second husband.”

R. Meir (*Yevamot* 42b) extends this rule to women who are unable to conceive, such as minors, those who are physically unable to carry a child, one whose first husband was abroad, sick, or in prison, and even one who miscarried after the death of her husband. The Talmud (*Yevamot* 42b) and the *Shulchan Arukh* (ibid.) rule accordingly.

***Havchana* for a Convert**

Does this principle apply to a woman who was not halakhically married, such as to a captive who was freed, a slave who was released, or even to a woman who converted? For example, many conversion candidates are already married and either convert with their non-Jewish spouse or convert alone in order continue living with their Jewish spouse. The Talmud (*Yevamot* 35a) teaches:

In the case of the female convert and the captured woman [who is suspected of having been raped during her imprisonment] and the maidservant, who were redeemed or *who were converted* or who were released, they must wait three months prior to marriage. This is the statement of R. Yehuda. R. Yosi allows them to be betrothed and married immediately.

This *gemara* cites a debate between R. Yehuda and R. Yosi regarding this question. Why is R. Yosi lenient regarding these cases?

Rabba said: What is the reasoning of R. Yosi? He holds that a woman who engages in promiscuous sexual intercourse uses [a contraceptive] resorbent that she places at the opening of her womb] so as not to become impregnated. [Therefore, there is no concern that she might be pregnant.] Abaye said to him: Granted, a female convert does this. Since she is determined to convert, she guards herself [so as not to be impregnated while still a gentile] in order to distinguish between children conceived in sanctity [i.e., after her conversion] and children conceived out of sanctity.

R. Yosi permits these women to marry immediately because he assumes that they took the proper precautions in order to avoid becoming pregnant. Furthermore, regarding a convert, Abaye notes that a convert is especially careful, “in order to distinguish between children conceived in sanctity, and children conceived out of sanctity.”

Interestingly, although the passage cited above presents a debate regarding this matter, elsewhere (ibid. 42a) the Talmud states:

Therefore [on account of the requirement to wait three months], a male convert and a female convert [who were originally married to each other and converted] need to wait three months [before they may remarry following their conversion]… Here, too, *there is a need to distinguish between seed that was sown in sanctity*, [i.e., a child conceived by a Jewish parents], *and seed that was not sown in sanctity*, [i.e., a child conceived by gentile parents].

According to this passage, a convert must wait three months before marriage.

The *Rishonim* note that these two sources appear to contradict each other, as the second source does not mention the lenient opinion of R. Yosi. Tosafot (*Yevamot* 35a, s.v. *chutz*) offers several explanations. First, he suggests that the second, strict passage follows the view of R. Yehuda. Second, he suggests that R. Yosi was lenient only when it was known that the woman took contraceptive measures. If, however, we know that she did not, then even R. Yosi would agree that she must wait three months before marrying.

Finally, Tosafot cite the R”i (see also Rashi, *Yevamot* 45a, s.v. *ger*), who suggests that when a husband and wife convert together, the woman is not concerned about becoming pregnant before her conversion, due to her monogamous marital relationship. However, a single woman is more likely to exercise caution and therefore need not wait three months.

The Rambam, as understood by the *Maggid Mishneh* (*Hilkhot Gerushin* 11:21), the *Ba’al Ha-Maor* (*Yevamot* 10a in Rif’s pages) and the Rosh (*Yevamot* 3:10) appear to maintain that any woman who was married while still a non-Jew must wait three months before marrying again, even if she converts alone.

The *Shulchan Arukh* (EH 13:5) rules that a convert “who was married while still a non-Jew” must wait three months before marrying. Furthermore, the *Shulchan Arukh* adds that “even a man and his wife who convert together must be separated for ninety days in order to distinguish between children conceived in sanctity [i.e., after her conversion] and children conceived out of sanctity.” In other words, the *Shulchan Arukh* rules that any woman who was married while still a non-Jew must observe the law of *havchana*, in order “to distinguish between seed that was sown in sanctity and seed that was not sown in sanctity.”

In summary, a female convert who was married while still a non-Jew is expected to live separately from her partner for three months (i.e., ninety days excluding the day of the conversion and the day of the marriage) before marriage.

**Exceptions to the Rule of *Havchana***

The *Acharonim* discuss numerous scenarios in which the expectation to separate for ninety days does not apply. For example, R. Yechezkel Landau, in his *Dagul Merevava* (EH 13:5), permits an older woman who is no longer able to become pregnant to remarry her current spouse without waiting ninety days. He writes that in a case in which the only purpose of *havchana* is to distinguish between a child conceived in sanctity and one who was not, and not to determine who the father was, it is unnecessary to wait three months before marriage.

It would appear that according to this rationale, a woman who converted while pregnant would also be exempt from the three-month waiting period. Indeed, the *Mishneh* *La-Melekh* (*Hilkhot Gerushin* 11:21) relates that he and his colleagues debated this issue, and he concluded that a pregnant woman who converts does not need to wait three months before marriage. The *Birkei Yosef* (YD 269:3), and R. Ben Tzion Chai Uziel (*Mishpetei Uziel*, YD 1:14) concur.

Based on the rationale first raised by R. Landau, R. Moshe Feinstein (*Iggerot Moshe*, EH 2:5) rules that a woman who menstruated shortly before her conversion does not need to wait ninety days before marriage, as she is clearly not pregnant. He adds that she also does not need observe the laws of *nidda* in order to rejoin her husband, as she is not considered to be a *nidda* while still a non-Jew.

What if there is a way to confirm that the female convert is practicing birth control and is therefore not pregnant? R. Eliyahu Chazan, in his responsa “*Ta’alumot Lev*,” rules that if the women lived a number of years with her husband and she still has not had a child, she is clearly using contraception, and we may therefore assume that she is not pregnant. In a similar (yet converse) vein, the *Yisa Ish* (7) writes that if the women has already given birth, we can assume that she cannot be trusted not to have children and to be using contraception.

May a woman who is using contraception get married after her conversion without waiting the three months? Some *Acharonim* suggest that if she can confirm (i.e., through a doctor’s letter) that she has an IUD, she may not need to wait three months (see R. Yehuda Price, “*Shlelosha Chodshei Havchana Be-Kabalat Gerim Be-Yameinu,*” *Techumin* 21, p. 370). Similarly, some *batei din*, including the Special Conversion Courts of the Israeli Chief Rabbinate, require that the woman perform a pregnancy test before her conversion, in order that she may be married immediately after the conversion.

Several *Acharonim* question whether one should really insist that a couple separate for three months before marriage after conversion. For most couples, this expectation may be too expensive, and they may be unable to actually separate for this long period of time. In this case, we may fear that the couple will not succeed in refraining from marital intimacy, and it may therefore be preferable to be wed, despite the prohibition of marrying during the first three months. Furthermore, insisting that they separate for three months may simply encourage them to lie to the *beit din*.

R. Ben Tzion Chai Uziel, the first Sephardic Chief Rabbi of Israel, dedicated a number of *teshuvot* to this question. He concluded:

In this case we should rely upon [his lenient] ruling, as “It is a time to act for God” and to permit their marriage [i.e., a man and his wife the convert], with *chuppa* *ve-kiddushin*, *ke-dat Moshe ve-Yisrael*… When they are already living together, and it is clear that they will not separate, in this case it is better to marry them, and “preferable that they should eat the meat of slaughtered animal, and not the corpses of large non-kosher animals” (*Mishpatei Uziel*, YD 1:14).

This sentiment is found in earlier *Acharonim* as well, such as in the responsa of R. Shlomo Kluger (*Tuv Ta’am Ve-Da’at* 230), R. Eliyahu Chazan (*Ta’alumot Lev* 3:30), and R. David Zvi Hoffman (*Melamed Le-Ho’il*, EH 10), and this is indeed the practice of many modern *batei din le-guyur*.

Next week, we will explore in greater depth the significance and ramifications of the description of a child as being conceived before conversion and born after conversion.