**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)**

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

**Laws of Conversion and Circumcision**

**Rav David Brofsky**

**The Proper Time for a *Brit Mila (2)***

***Brit Mila* Performed at Night or Before the Eight Day**

[For the first *shiur* on The Proper Time for a *Brit Mila*, [click here](https://etzion.org.il/en/shiur-05-proper-time-brit-mila-1-zerizin-makdimin-le-mitzvot-and-delaying-brit-mila-she-lo-bi-zmanah).]

The Torah explicitly relates to the time during which one should circumcise a newborn male.

“On the eighth day, the flesh of his foreskin shall be circumcised” (*Vayikra* 12:3).

This week, we will continue our study of the proper time for the *brit mila*, and we will discuss a *brit mila* performed at night and *a* *brit mila* performed before the eight day. We will also discuss if there is any practical or even fundamental difference between them.

***Brit Mila* at Night and *Brit Mila* Before the Eight Day**

The Talmud (*Megilla* 20a) teaches that a circumcision should be performed during the day, as early as sunrise (*hanetz ha-chama*).

One may not read the *Megilla*, nor perform a circumcision … until after sunrise. And with regard to all these activities that are supposed to be performed during the day, if one did them after daybreak, [i.e., after the appearance of the first light of the sun, even before sunrise,] they are valid.

The Gemara derives this law, i.e., that the circumcision must be performed during the day, from the verse: “And on the eighth day he shall be circumcised” (*Vayikra* 12:3). This indicates that the circumcision must be during the day, not at night. Elsewhere, the Talmud (*Shabbat* 142a) insists that this law is derived from a different verse, “And he that is eight days old [shall be circumcised among you throughout your generations]” (*Bereishit* 17:12).

The Rishonim question why the Talmud derives this law from two different verses. Some Rishonim (Tosafot, *Megilla* ibid. s.v. *Di-khtiv* and *Shabbat* ibid. s.v. *Ha-hi*) explain that while this law is really derived from “And he that is eight days old,” the Gemara in *Megilla* cites a simpler *derasha*. The Rashba (*Megilla* ibid. s.v. *Ve-lo*) suggests that the passage in *Megilla* refers to a circumcision performed after the eight day (*she-lo bi-zmanah*), teaching us that even a delayed *brit mila* must be performed during the daytime.

The Rishonim discuss whether one who is circumcised before the eighth day or at night must undergo *hatafat dam brit*. They also debate whether there is a difference between circumcision before the eight day and circumcision at night.

What is the halakhic status of a *brit mila* performed at night? The *Hagahot Maimoniyot* (*Hilkhot Mila* 1:5) notes that the Mishna (*Megilla* 20a) implies that if the *mila* is not performed during the day, it is not valid. Therefore, he rules that in this case, the boy must undergo *hatafat dam brit*. In other words, not only has the *mohel* not fulfilled the mitzva, the boy is not considered to be fully circumcised. On the other hand, the Meiri (*Megilla*, ibid.) writes that when a circumcision is performed at night, while the *mohel* has not performed the mitzva, the child is considered to be *nimol*, and, ostensibly, there is no need to draw blood. In addition, the *Beit Yosef* (*YD* 262) maintains that those Rishonim who rule that one who was circumcised before the eighth day does not need to undergo a *hatafat dam brit* would also exempt one who was circumcised at night.

Regarding circumcision performed before the eighth day, the Rosh (*Shabbat* 19:5) rules that since the child no longer has a foreskin, he is considered to be circumcised, and therefore even *hatafat dam brit* is not required. This is also the opinion of the Meiri (*Shabbat*, ibid.) and of the *Sha’agat Aryeh* (53), who rules that although the mitzva has not been fulfilled, drawing blood cannot rectify the improperly performed circumcision. R. Moshe Isserles, in his *Darkhei Moshe* (*Tur YD* 262), suggests that a circumcision before the eight day may be “better” (*adif*) than one performed at night. In *Shulchan Arukh*, he rules that if the circumcision is done before the eighth day, he “has fulfilled his obligation” (*yatza*). We will return to his position below.

Why is *hatafat dam brit* required in some cases and not others, and can one distinguish between a circumcision performed before the eighth day and one performed at night? Seemingly, this question may depend upon a number of issues.

**1. What is the nature of *brit mila***?

This debate may depend upon a broader question regarding the nature of the mitzva of *brit mila*: Is the focus of the mitzva the *totza’a* (result), i.e., that the child is circumcised, or the *ma’aseh* (act) of circumcision? The Meiri appears to believe that the mitzva is to be *nimol*, and although technically the mitzva has not been fulfilled if the *mila* was performed at night or before the eighth day, since the result has already been achieved, there is no further value in drawing blood. The *Hagahot Maimoniyot*, however, may believe that although the child is *nimol*, the *ma’aseh mitzva* can still be fulfilled through the symbolic act of *hatafat dam brit.*

**2. Is there a separate requirement to draw “*dam brit*”?**

As we saw in a previous *shiur,* some Rishonim and Acharonim imply that there is a separate, independent obligation of *hatafat dam brit,* derived from verses and mentioned by some Rishonim. We might suggest that in these cases, although there is no longer a foreskin and the child is considered to be *nimol*, there is an additional requirement to draw blood. Therefore, for example, the *Hagahot Maimoniyot* may believe that while the mitzva of *mila* may no longer be performed, there may be an additional requirement to draw blood, *dam brit*.

3**. What is the status of the night and the first seven days regarding *brit mila***?

Is the night or any day before the eighth day considered to be the *zman mila*, even though technically the mitzva cannot be performed until the eighth day, and during the daytime? Does one who circumcises a child during these times actively abrogate the positive commandment of circumcising a child?

R. Yosef Babad (1800–1874, *Minchat Chinnukh* 2), discusses whether there is any halakhic prohibition to remove the foreskin before the eighth day. He notes that the *Mishneh Le-melekh* (*Hilkhot Melakhim* 10) writes that it is prohibited to circumcise a child at night. The *Minchat Chinukh* responds:

There is absolutely no prohibition, as there is no obligation to perform the mitzva before the eighth day or at night. Rather, [circumcision before the eighth day or at night] causes one not to fulfill the mitzva, but it does not amount to an abrogation of the mitzva (*bitul ha-mitzva*), as he is not commanded [yet] in the mitzva when its time comes, since he no longer has a foreskin… And therefore according to many opinions he does not need [to perform a *hatafat dam*] as he never becomes obligated in the mitzva. Therefore, I see no prohibition of cutting the foreskin before the eighth day.

R. Babad insists that until the eighth day, as well as at night, there is simply no mitzva of *brit mila*.

R. Moshe Feinstein (*Iggerot Moshe,* *YD* 4:47) disagrees with this analysis. He writes:

I wrote in this margin that this is very curious, because if this is true, that at night we assume that there is no mitzva at all, and therefore one can remove the foreskin and it is not considered to be as if he is violating a mitzva, why is one who was circumcised at night prohibited from partaking of the *pesach*?

R. Feinstein notes that one who was circumcised at night is akin to one who has not been circumcised at all, and he may eat the *korban pesach*. If he was never considered to be an “*arel*,” than why must he refrain from eating the *pesach*?

This debate, whether there is a mitzva of *mila* before the eighth day, or at night, despite the technical halakhic inability to perform the *mila*, may impact upon our question. Those who require *hatafat dam brit* may believe that there is a mitzva, and while there may longer be a foreskin, the mitzva was never completely fulfilled. Others, who do not require *hatafat dam*, may believe that by the *mohel*’s removing the foreskin before the proper time, the child never became obligated in *brit mila*, and *hatafat dam*, in the first place.

This final option may help us understand the final halakhic conclusion, especially the view of the Rema.

**The Halakha**

The Acharonim disagree regarding the halakhic conclusion.

The Shakh (2) and *Arukh Ha-Shulchan* (262:5) require *hatafat dam brit* in both cases, i.e., when one was circumcised before the eighth day, or at night. (The *Bach* maintains that *hatafa* should be performed without a blessing; the *Taz* [2] rules that one may even perform *hatafat dam brit* on Shabbat!)

The Rema distinguishes between the two cases, ruling that one circumcised at night must undergo *hatafat dam*, while one circumcised before the eighth day has fulfilled his obligation. This distinction, between a circumcision performed at night (262:1) and one performed before the eighth day, stimulates much discussion in the Acharonim, as we discussed in a [*shiur*](https://etzion.org.il/en/hatafat-dam-brit-role-drawing-blood-brit-mila) on *hatafat dam brit.* Finally, R. Ovadya Yosef (*YD* 7:24) rules in accordance with the *Beit Yosef* and Meiri: in both cases, no blood is to be drawn.

How are we to understand the position of the Rema, who requires *hatafat dam brit* when the circumcision was performed at night (*YD* 262:1) (and when performed by a non-Jew [*YD* 264:1]), but does not require *hatafat dam brit* when the circumcision is performed before the eighth day?

R. Yechezkel Abramsky (1886–1976), in his commentary to the Tosefta, *Chazon Yechezkel* (Shabbat 16:7), cites R. Chaim Soloveitchik, who offers a novel interpretation of the Rema’s view. He suggests that although technically one is not meant to remove the foreskin before the eighth day, he fulfills the obligation of *hatafat dam brit* even before the eight day. However, at night, one may not perform the *mila*, or the *hatafa*, and therefore, *hatafat dam brit* must be performed on another day.

Next week we will discuss the laws of a *mila she-lo bi-zmanah* (a circumcision performed after the eighth day).