YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)

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**Laws of Conversion and Circumcision**

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**This shiur is dedicated *le-zekher nishmot***

**Amelia Ray and Morris Ray
by their children Patti Ray and Allen Ray**

**on the occasion of their twelfth *yahrtzeits***

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**Brit Mila on Shabbat**

**Cesarean Section, IUI and IVF, Forceps**

**Introduction**

The *mishna* (*Shabbat* 128b) teaches:

R. Yosei says: One may even cut the umbilical cord. And all the requirements of circumcision may be performed on Shabbat.

Another *mishna* (ibid. 133a) teaches:

One performs all the necessities of the circumcision, even on Shabbat: One circumcises the foreskin (*mila*), uncovers the skin by removing the thin membrane beneath the foreskin (*peria*), and sucks the blood from the wound, and places on it both a bandage (*ispelanit*) and cumin as a salve.

The rabbis offer three sources to explain why a circumcision is performed on Shabbat, even though it entails *melakhot* usually forbidden on Shabbat. The Talmud (*Shabbat* 132a) first derives this law from a *gezeira shava* (analogy by common term).

R. Elazar said: This halakhais derived [by means of a verbal analogy between the word] sign (*ot*) [that appears with regard to circumcision: “And you shall be circumcised in the flesh of your foreskin; and it shall be a **sign** of the covenant between Me and you” (*Bereishit* 17:11), and sign that appears with regard to Shabbat: “However, you shall keep My *Shabbatot*, for it is a **sign** between Me and you throughout your generations” (*Shemot* 31:13). From this verbal analogy, it is derived that circumcision, which is a sign, may be performed even on Shabbat, which is itself a sign].

R. Nachman further qualifies this derivation:

This halakhais derived not from one common word alone, but based on the three words sign (*ot*), covenant (*brit*), and generations (*dorot*) that appear with regard to circumcision, and sign, covenant, and generations that appear with regard to Shabbat – to the exclusion of ritual fringes and phylacteries, that with regard to each of them, one of these is written, but not all three words together.

R. Yochanan offers a second explanation:

The verse says: “And on the eighth day…shall be circumcised” (*Vayikra* 12:3); this means that the child is circumcised on the eighth day whenever it occurs, even on Shabbat.

In addition to these three views in the Talmud, the *Mekhilta* (31:16) teaches:

"And the children of Israel shall keep the Shabbat to observe the Shabbat for their generations, an everlasting covenant" (*Shemot* 31:16)… R. Eliezer says ["to observe on Shabbat"] that which seals the covenant — circumcision.

In addition to the three sources cited above, some (Shabbat ibid.) suggest this it is a law transmitted from generation to generation from Moshe Rabbeinu, a halakha *le-Moshe mi-Sinai*.

It appears that the three sources cited above reflect different understandings of this halakha.

On the one hand, there are certain *mitzvot* that override others. For example, certain sacrifices were offered in the *Beit Ha-Mikdash* on Shabbat. Similarly, R. Yochanan appears to believe that it is crucial that the circumcision is performed on the eighth day, even if that entails the violation of the Shabbat.

On the other hand, according to R. Eliezer (cited in the *Mekhilta*), performing a circumcision on Shabbat is actually a fulfillment of the observance of Shabbat, as one is fulfilling the "covenant" (*brit*). The observance of Shabbat affirms the covenant between God the Jewish People, and the performance of a circumcision on Shabbat is the ultimate expression of the affirmation of the covenant. Therefore, *mila* does not really override Shabbat; rather, it is a fulfillment of Shabbat in the fullest manner.

Finally, R. Nachman appears to maintain that the performance of *brit* *mila* on Shabbat is not rooted in the nature of *mila* or Shabbat, but rather relates to the origin of *brit mila* – the circumcision of Avraham Avinu (where the word *ot* appears in relation to *mila*). The covenant between God and Avraham, the ancestral covenant, transcends the Torah and *mitzvot* that were given only later at Sinai. In other words, *brit mila*, in a sense, is above the *mitzvot*, and it is therefore performed even on Shabbat.

***Brit Mila* on Shabbat**

If the *brit* is not performed on the eighth day, it is considered to be a *mila she-lo be-zmena*, and it is not performed on Shabbat (see *Shabbat* 132a). The *Acharonim* discuss whether the *brit* is still valid in such a case if the *brit mila* was performed on Shabbat, or if it is necessary to draw blood (*hatafat dam*) from the child (see Pitchei Teshuva 266:1; R. Akiva Eiger 177).

The Talmud mentions other cases in which *brit mila* is not performed on Shabbat. For example, if the child is born without a foreskin (*Shabbat* 135), blood is not drawn on Shabbat. Similarly, in a case of doubt, such as a child who is a "*tumtum*" or "androgynous," or if the child is born during twilight (*bein ha-shemashot*) and the exact date of birth is unclear, the *brit* is delayed until Sunday (*Shabbat* 134b).

The Talmud cites a debate regarding whether only those acts that are central to the mitzva of *brit mila* (i.e., *mila* and *peria*) are performed on Shabbat, or even preparatory actions (*makhshirei mila*). For example, the *mishna* (ibid. 13a) cites the view of R. Eliezer:

R. Eliezer says: If he did not bring an implement [for circumcising the child] on Shabbat eve, he brings it on Shabbat itself uncovered [so that it will be clear to all that he is bringing a circumcision scalpel]… And furthermore, R. Eliezer said with regard to this issue: One may even cut down trees to prepare charcoal in order to fashion iron tools [for the purpose of circumcision].

However, the halakha is in accordance with the view of R. Akiva, who rules:

Any prohibited labor that can be performed on Shabbat eve does not override Shabbat [including transporting the circumcision scalpel]. However, any prohibited labor involved in the mitzva of circumcision itself that cannot be performed on Shabbat eve overrides Shabbat.

In light of R. Akiva's view, the Talmud discusses what to do if the preparations for the *brit mila* were not performed before Shabbat. For example, one of the central sources for the topic of *amira le-nakhri* (asking a non-Jew to perform a prohibited labor on Shabbat) is taught in this context. Based on the *gemara* (*Eiruvin* 67b), the *Rishonim* disagree as to whether one may ask a non-Jew only to carry the hot water needed for the circumcision through a public domain for the purpose of a *brit mila*, which already sets aside the laws of Shabbat (Ramban ibid.), or whether a non-Jew may be asked to perform any biblically prohibited labor for a mitzva (Behag), or whether a non-Jews may only be asked to violate a rabbinic prohibition in order to enable the performance of a mitzva (Rambam, *Hilkhot Mila* 2:9; see Shulchan Arukh, OC 307:5 and Rema 266).

**The Manner of Birth: Cesarean Sections and Forceps**

In addition to the cases cited above, the Talmud also teaches that the manner of the birth may also affect upon whether the *brit mila* is performed on Shabbat. The *gemara* (*Shabbat* 134b–135a) teaches that only a boy born through a natural (i.e., vaginal) birth is circumcised on the eighth day that falls on Shabbat:

R. Asi stated a principle: Any child whose birth renders his mother ritually impure due to childbirth is circumcised at eight days; any child whose birth does not render his mother ritually impure due to childbirth [e.g., the birth was not natural, but by caesarean section] is not necessarily circumcised at eight days. As it is stated: “If a woman bears seed and gives birth to a male, she shall be impure seven days…and on the eighth day the flesh of his foreskin shall be circumcised” (*Vayikra* 12:2-3). This verse draws a parallel between the two issues, indicating that only a child whose birth renders his mother impure is circumcised on the eighth day…

The *gemara* understands that a mother is only rendered *teme'a* (*tum'at leida*) after a vaginal birth. Since the obligation to circumcise a male appears immediately afterwards, the absolute obligation to circumcise the child on the eighth day, which even sets aside the Shabbat, does not apply to non-vaginal births.

Based on this passage, a child born through cesarean section is circumcised on the eighth day, but not on Shabbat (Shulchan Arukh, YD 266:10).

Interestingly, R. Hershel Schachter (Ginat Egoz 20) suggests that this principle may also apply to a child born with the assistance of forceps. He notes that R. Yosef Rosen (1858–1936), known as the Rogatchover Gaon, in his Tzofnat Paneach (6), discusses a child born with the assistance of forceps. While other *Acharonim* maintain that a child delivered with forceps might not need a *pidyon ha-ben* due to a *chatzitza* at birth (which we will discuss in a separate *shiur*), R. Rosen suggests that a child delivered with forceps is considered to be similar to a "*yotzei dofen*," a child delivered by cesarean section. If so, this may also affect whether the *brit mila* should be performed on Shabbat. In practice, in this situation circumcisions are performed on Shabbat.

**The Manner of Conception: IUI and IVF**

The *Acharonim* discuss whether the manner of conception may also determine whether the circumcision is held on Shabbat. What if the child is not conceived in the "normal" manner? In recent years, halakhic authorities have grappled with new questions and applications based upon this principle.

Many children are now conceived either through Intrauterine Insemination (IUI), during which the husband's (or a donor's) sperm is placed inside a woman’s uterus to facilitate fertilization. Alternatively, some children are conceived during In Vitro Fertilization, during which extracted eggs are fertilized outside of the body, and the embryo(s) is then transferred to the uterus.

 Some *Acharonim* note that the Talmud relates to a case in which the child is conceived without sexual relations. The *gemara* (*Chagiga* 16a) discusses a case in a woman became pregnant in a bathhouse, i.e., by semen floating in the water. Rabbeinu Channanel explains:

This is a miraculous act, and a woman does not become ritually impure through this type of conception because it does not meet the specifications of the verse (*Vayikra* 12:1), “When a woman conceives and gives birth.”

R. Shlomo Zalman Auerbach (Noam 5718 [1958]; see also Minchat Shlomo 3:98:4) rules, based upon Rabbenu Chananel, that a child conceived through IUI should not be circumcised on Shabbat. He explains that Rabbeinu Chananel refers to a child conceived in an unconventional manner (not necessarily miraculously). Since artificial insemination is not considered to be the common manner of impregnation, the circumcision is not held on Shabbat. This view is held by R. Hershel Schachter as well. R. J. David Bleich (*Tradition* 35:2,Summer 2001) notes that in this case, the parents may lie about the reason why the *brit mila* is delayed, in order to protect the family's privacy.

Interestingly, the Nishmat Avraham (third edition, p. 584) cites R. Azriel Auerbach, son of R. Shlomo Auerbach, who relates that although is father-in-law, R. Yosef Shalom Elyashiv, concurred with this ruling, his father, R. Shlomo Zalman Auerbach, changed his mind and ruled that since these methods had become so common, they are no longer considered to be "*maaseh nissim*" (i.e., rare), and the circumcision therefore may and should be held on Shabbat. Similarly, R. Ovadia Yosef (Yabia Omer, YD 7:24:5; Nishmat Avraham, vol. 4, p. 226) rules that one may perform a *brit* on Shabbat on a baby conceived through artificial insemination or in vitro fertilization. [R. Asher Weiss](https://en.tvunah.org/2015/04/27/ivf-baby-bris-milah-on-shabbos/) also insists that in this case the *brit mila* must be held on Shabbat (see also Shevet Ha-Levi 9 YD 209).

Interestingly. R. Moshe Sternbuch (Teshuvot Ve-Hanhagot 2:224) distinguishes between a child conceived through IUI – which he views as a conventional form of conception, such that the *brit mila* is held on Shabbat – and a child conceived though IVF, regarding whom he believes the circumcision should be delayed until Sunday.

Next week, we will discuss other situations that may justify delaying the circumcision until Sunday.