YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Laws of Conversion and Circumcision**

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***Giyur Ketanim* – The Conversion of Children**

 The Talmud describes the conversion of adults in depth, including the convert’s motives, the process of the conversion, the role of *beit din*, and the convert’s status after the conversion. The Talmud also relates to another type of conversion – the conversion of children (*giyur ketanim*).

 As we will see, the topic of *giyur ketanim* not only enhances our understanding of the foundations of conversion, but is also extremely relevant in the modern era. Many Jewish couples who are unable to have biological children choose to adopt children, sometimes through surrogacy. Usually, these parents will need to convert their children. In other instances, a non-Jewish wife may choose to convert after already bearing children, in which case she and her children must convert. This is especially relevant in the State of Israel, where conversion is viewed by some as a partial solution to the national challenge due of a high percentage of non-halakhically Jewish immigrants.

 In this *shiur*, we will begin our study of *giyur ketanim*, and discuss the mechanism of this conversion, the place of *kabbalat ha-mitzvot* in this type of conversion, and the cases in which a *beit din* is permitted to convert a minor. We will also relate to the question of converting the children of non-observant parents, which has become increasingly relevant in Israel and abroad.

**The Mechanism of *Giyur Ketanim* – *Zakhin* and *Mecha'ah***

Although the conversion of a child is performed in the presence of a *beit din* and entails both circumcision (for a boy) and immersion, it differs fundamentally from the conversion of an adult. An adult may be converted only with his explicit consent and knowledge (*da’at*). It is the convert’s *da’at* that enables the process of conversion to change his personal status. Since a child, by definition, does not have *da’at*, how is it possible to convert and thereby change the personal status of a child?

 The Talmud (*Ketubot* 11a) relates to this question and presents the mechanism through which a child may be converted:

R. Huna said: With regard to a convert who is a minor, one immerses him in a ritual bath with the consent of the court (*al da’at beit din*). What is R. Huna coming to teach us? Is he teaching that it is a privilege for the minor to convert, and one may act in a person’s interests even in his absence? We already learned that explicitly in a *mishna* (*Eiruvin* 81b): One may act in a person’s interests in his absence, but one may not act against a person’s interests in his absence. Rather, R. Huna’s statement was necessary lest you say: With regard to a gentile, licentiousness is preferable for him [so conversion is contrary to his interests], just as we maintain that with regard to a slave, licentiousness is certainly preferable. Therefore, R. Huna teaches us: That applies only with regard to an adult, who has experienced a taste of prohibition [and who therefore presumably prefers to remain a slave and indulge in licentiousness]. However, with regard to a minor [who did not yet engage in those activities], it is a privilege for him to convert.

The Talmud asserts that a non-Jewish child, who due to his age is not considered to have *da’at*, is converted “*al da’at beit din*,” with the consent of the court. Furthermore, the *gemara* teaches that the *beit din*’s ability to provide consent is possible through the well-established mechanism of “*zakhin le-adam she-lo be-fanav*” – “One may act in a person’s interests in his absence, but one may not act against a person’s interests in his absence.”

 We are familiar with this principle from other passages in the Talmud (see *Kiddushin* 42a). The Rambam (*Hilkhot Zekhiya U-Matana* 4:2) briefly summarizes this law:

The following rules apply when a person transfers ownership over an article to a colleague through the agency of a third party. Once the third party takes possession of it – for example, he performs *meshicha* on movable property, a deed of transfer of landed property reaches his hand, or he manifests ownership over the land – his colleague acquires the gift, even though it does not reach his hand. The giver can no longer retract.

The recipient, by contrast, has the option in his hand. If he desires, he may accept it. If he does not desire, he need not accept it. For a positive acquisition may be made for a person without his consent, and an obligation cannot be undertaken on his behalf without his consent. If a person desires that a gift be given to him, it is considered to be a positive acquisition. If, however, he does not desire it, a person cannot be forced to accept a gift that is given to him.

Through this mechanism, one may accept a gift on behalf of another person, as receiving a gift is considered to be a “*zekhut*” for the recipient. Similarly, even though the child does not (and cannot) consent to being converted, since conversion is viewed as a “*zekhut*” for him, *beit din* may convert the child.

 The Talmud also cites R. Yosef, who adds another aspect of the conversion of minors:

R. Yosef said: [In any case in which minors convert, when] they reach adulthood [i.e., 12 or 13 years old] they can protest [and annul their conversion] … Once she reached majority for even one moment and did not protest, she may no longer protest.

R. Yosef teaches that unlike the conversion of an adult, which is irreversible, if a child "protests" (*mecha'ah*), he may repeal his conversion.

 These passages raise a number of questions. How are we to understand the conversion of children, which is accomplished through the mechanism of *zakhin*? How should we understand the possibility of repealing the conversion of a child through "*mecha'ah*"? And how should we understand the process of the conversion of a minor, in contrast to the conversion of an adult? The *Rishonim* offer different understandings of the *gemara* and of the conversion of minors in general.

**Conversion of Minors Cannot be Performed through *Zakhin***

The *Rishonim* begin their analysis by questioning the basis of the *gemara*’s statement that a child may be converted with the consent of *beit din* by employing the principle that "one may act in a person’s interests in his absence" (*zakhin le-adam she-lo be-fanav*). Many *Rishonim* understood that the principle of *zakhin le-adam she-lo be-fanav* works through *shelichut* (agency). Accordingly, Tosafot (*Ketubot* 11a, s.v. *matbilin*) asks:

Since *zekhiya* [i.e. *zakhin le-adam*] works through *shelichut*, and since it is a *zekhut* (privilege) for him, we can attest that [the child] would appoint them to serve as his *shali'ach*... If so, how is it possible to act in the interest (*zakhin*) of the child, as there is no agency for children … Furthermore, he is still a non-Jew, and while the *gemara* (*Bava Metzia* 71b) teaches that there is "*zekhiya*" for a minor on a rabbinic level, there is no "*zekhiya*" for a non-Jew even on a rabbinic level.

In other words, the mechanism of "*zakhin*" cannot be employed in this case, as the convert is both a minor and a non-Jew.

Some *Rishonim* concluded, unlike the simple understanding of the *gemara*, that the conversion of children cannot be based upon the classic mechanism of *zakhin*.

 Tosafot (ibid.), for example, suggests that since "*zekhiya*" can only be effective on a rabbinic level, child converts are only considered to be Jewish *mi-derabbanan*. Of course, this explanation raises other difficulties. For example, how would it be possible to allow this rabbinic convert to marry a Jewish woman? Tosafot explain, based upon another Talmudic passage (*Yevamot* 89b), that the rabbis have the authority to uproot certain biblical prohibitions. However, since the entire conversion is only *mi-derabbanan*, the child may repeal the conversion if he protests upon reaching adulthood. The *Rishonim* (see, for example, Tosafot, *Sanhedrin* 68b, s.v. *katan*; Ritva, *Ketubot* 11a, s.v. *amar*) reject this explanation.

Elsewhere (*Sanhedrin* 68b, s.v. *katan*), Tosafot offer a different explanation, suggesting that the *gemara* does not really intend to employ the principle of “*zakhin*":

The "*zekhiya*" of conversion is unlike other *zekhiyot*, as when *beit din* immerses him [in the *mikveh*], they do not acquire something on his behalf. Rather, he acquires himself and with his own body; he becomes a convert and enters under the wings of the *Shekhina*.

Tosafot explains that *zakhin* is not the mechanism through which *beit din* converts the child. Children may be converted in a manner similar to the way in which they became Jewish at the time of *Matan Torah*. The Talmud simply means to teach that since the child lacks the legal ability to consent, *beit din* will only convert a child if they are convinced that becoming Jewish is in the child's best interest.

According to this approach, how is it possible for the child to protest and revoke his conversion upon reaching the age of bar/bat mitzva? Tosafot explains that the conversion of a child is just like any other conversion. Therefore, in addition to circumcision and immersion, the convert must accept upon himself the *mitzvot* (*kabbalat mitzvot*). Although a child cannot perform *kabbalat mitzvot*, he is considered to be Jewish until during that time period, but if he reaches the age of adulthood and does not protest, that is considered to be a *kabbalat mitzvot*, and the conversion is complete. This view is consistent with the view of Tosafot elsewhere, which maintains that *kabbbalat mitzvot* is central to the conversion and that without *kabbalat mitzvot*, the conversion is invalid.

Interestingly, although Tosafot understands that the child must perform *kabbalat mitzvot* in order to complete his conversion, he does not appear to require an active, formal declaration. Rather:

The *mila* and *tevila* performed while he was a minor are effective, as they were done with his body, and only *kabbalat mitzvot* is missing. And since he reached adulthood without protesting, that is considered to be an acceptance [of the *mitzvot*].

Although the Ritva (ibid.) explains that according to Tosafot, "they are not full converts until [*beit din*] informs them of the reward and punishment of the *mitzvot* when they reach adulthood," that does not appear to be the simple understanding of Tosafot. In any case, Tosafot appears to maintain that while the conversion of a child is halakhically valid, it undergoes a final stage when the child performs *kabbalat mitzvot* upon becoming an adult.

 Due to the difficulty of employing *zakhin* as the mechanism through which a *beit din* may convert children, Tosafot were forced to either reject the entire possibility of a proper, biblical conversion being performed through the mechanism of *zakhin* (*Ketubot* 11a) or to deny that the Talmud referred to the familiar, legal principle of *zakhin le-adam she-lo be-fanav* (*Sanhedrin* 68b). We might suggest that by slightly redefining our understanding of *zakhin*, we may understand how the principle of *zakhin* may enable the conversion of a minor.

**Conversion of Minors through *Zakhin***

Some *Rishonim* maintain that the *gemara* may be understood literally, i.e., that the conversion of minors is performed through the legal principle of *zakhin*. For example, Tosafot (*Ketubot* 11a, ibid.) themselves challenge the initial assumption that agency (*shelichut*)does not apply to minors. They suggest that although agency does not generally apply to minors, in this case, when conversion is considered to be a "*zekhut gadol*" (an absolute privilege), *beit din* may act as the agents of the non-Jewish child and through the mechanism of *zakhin* perform a conversion "*al da'at beit din*."

R. Akiva Eiger (*Ketubot* 11a) explains that there is no inherent problem to serving as an agent for a minor. However, since his consent is usually necessary to appoint an agent to act on his behalf, and as a minor, since he does not have "*da'at*," he cannot appoint an agent. However, in the case of conversion, the *beit din* does not act as the agent of the child, rather, the *beit din* performs the conversion, and as long as we can assume that the conversion is in the child's best interest (*zakhin*), *beit din* may act accordingly.

The Ritva (ibid.) disagrees with Tosafot completely, and explains the *zekhiya* is not derived from the principle of agency, as agency does not apply to minors. Rather, *zekhiya* is a separate legal mechanism, which is relevant to minors.

Others agree that the *beit din* does not act as the agent of the minor; rather, they serve as the *apotropus*, or appointed guardian, of the child. The Me'iri (*Ketubot* 11a), for example, writes:

A non-Jewish child who comes before Jews and demands that they convert him…is immersed through the decision of *beit din*. In other words, those who come to convert inform *beit din* of the matter and they convert him through their decision, as if they are his fathers, in that his affairs are entrusted to them, like a child's affairs are entrusted to a father to bring him into the covenant and sacred faith.

Similarly, Rashi (s.v. *al* *da'at*) explains that "three [judges] shall be present at his immersion, as required at every immersion of a convert, and they become a father for him, and he is thus a convert through them." The *Shakh* (*Nekudot Ha-Kesef,* YD 305) discusses this issue at length and concludes that the halakhic mechanism employed to facilitate the conversion of a minor is *apotropus*. See also *B'nei Banim* 2:36.

 According to these *Rishonim*, the conversion of minors is valid and biblically binding. However, just as we saw above that "if he does not desire it, a person cannot be forced to accept a gift that is given to him" (Rambam, ibid.), so too a child, upon become an adult, may repeal the conversion that was "given" to him without his knowledge or explicit consent.

The *Shulchan Arukh* (YD 268:7) summarizes the laws of converting a minor:

A minor who is non-Jew – if he has a [living] father, the father can convert him [i.e. present him to be converted]. And if he does not have a father and he comes to convert, or if his mother brings him to convert, a *beit din* can convert him, because it is a privilege for him, and we may act in a person’s interests in his absence.

He appears to reject the view of *Tosafot*, in *Ketubot* and *Sanhedrin*, and rules that the conversion of children is *mi-de'oraita*, and unrelated to the requirement of *kabbalat ha-mitzvot*, which is central to the conversion of adults.

We will continue our discussion of *giyur ketanim* next week.