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 (2)**

**Which Children May be Converted by a *Beit Din***

 Last week, we began our discussion of the conversion of children. We noted that the conversion of a child differs fundamentally from the conversion of an adult. While an adult may be converted only with explicit consent and knowledge (*da’at*), a child, by legal definition, does not have *da’at*. The Talmud (*Ketubot* 11a) identifies the principle of *zakhin*, i.e., one may act in a person’s interests in his absence, as the mechanism through which, with the consent of *beit din* (*al da’at beit din*), the court may convert the child. We discussed different understandings of this principle in last week’s *shiur*.

We also noted the R. Yosef adds that unlike the conversion of an adult, which is irreversible, if a child "protests" (*mecha'ah*), he may repeal his conversion. We discussed whether *mecha’ah* undermines *beit din*’s consent to the child’s conversion or whether the child is expected, upon reaching adulthood, to accept upon himself the yoke of the *mitzvot* (*kabbalat mitzvot*), and by protesting, he prevents the completion of his conversion. We will return to this question next week.

 This week, we will further explore the parameters of *giyur ketanim* and discuss which children may be converted by a *beit din*.

**Which Minors May be Converted by a *Beit Din* – *Da’at Beit Din* vs. *Neich Lei***

 Which minors may be converted by a *beit din*? The Talmud (*Ketubot* 11a) relates to two different scenarios, first citing the view of R. Huna:

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*).

Afterwards, the *gemara* attempts to find support for R. Huna’s assertion that the *beit din* may provide consent for the conversion of a child:

Let us say [that the *mishna*] supports [R. Huna’s statement]: With regard to a female convert, or a captive woman, or a maidservant, who were ransomed, who converted, or who were freed when they were less than three years and one day old. What, is it not referring to a case in which they immersed [the minor converts and the maidservants] with the consent of the court? [And apparently, a conversion of that sort is valid.] No; with what are we dealing here? **It is with a convert whose minor sons and daughters converted with him, as they are content (*neicha lei*) with whatever their father does in their regard.**

The *gemara* distinguishes between a case in which a minor converts with his father, who are “content with whatever their father does,” and other minors who are converted “*al da’at beit din*.”

 If so, which minors may be converted *al da’at beit din* according to R. Huna? And is there a difference between a conversion with the consent of the father (*al da’at* *beit din*) and one with the consent of the father (*neicha lei*)?

There are numerous possible scenarios regarding the identity of the parents. In this classic case of *giyur ketanim*, the birth mother is not Jewish. She may wish to convert her child either while converting herself or while remaining a non-Jew. The father may not be Jewish, in which case he too may wish to convert the child along with his own conversion or while remaining a non-Jew. In addition, we may ask whether a Jewish father may convert his child from a non-Jewish woman or whether *beit din* may convert a child whose parents cannot be found.

Rashi (ibid. s.v. *ger katan*) explains that R. Huna refers to a case in which “[the child] does not have a father, and his mother brings him to be converted.” If Rashi is to be taken literally, why would there be a difference between a conversion performed by the mother or the father? Some *Acharonim* (see *Bach* YD 268) explain that according to Rashi, there are two paths to conversion for a minor: The mother can bring the child to *beit din*, even though she is not Jewish, and *beit din* can choose to invoke the principle of *zakhin* and convert the child “*al da’at beit din*.” In addition, it appears that the father has a unique right to convert his child. If so, what is the nature of the father’s right to convert his children?

Some *Acharonim* suggest that the non-Jewish father’s right to convert his children is rooted in his legal relationship to his children. R. Elazar Shach (*Aviezri*, *Issurei Bi'ah* 13:7) notes that according to the Rambam (*Hilkhot Avadim* 9:2), a non-Jewish father may sell his children to be slaves to a Jewish master, who in turn may convert them without their consent as part of the process of becoming a slave and being freed. If so, the father has the right, R. Shach argues, to convert his child even without consent. R. Yitzhak Yaakov Rabinovich (*Zekher Yitzchak* 2) discusses this idea as well. R. Shach notes that this understanding is difficult considering the conclusion of our *gemara*, which explains that the father may convert his children because "they are content with whatever their father does" (*neicha lei*), and not due to his right to sell them.

Alternatively, R. Benayahu Bruner (*Tzohar* 30) suggested that since, among non-Jews, one’s national identity is determined by the father, the non-Jewish father fundamentally has the right to determine his child’s religious-national identity.

Some suggest a different approach. Rashi (s.v. *da’at beit din*) writes regarding a conversion performed with the consent of *beit din* that “three judges should be present at his immersion…and they function as his father.” In other words, the right to convert a child is rooted in the father’s responsibility for the child’s religious upbringing. In the father’s absence, the *beit din* fills this role. Similarly, the *Me’iri* (ibid. 11a) explains:

Those who convert the child inform the *beit din*, and then they convert him with their consent, as if they were the child’s parents, just as all matters regarding the child are entrusted to the parents, to bring him into the covenant and the sanctity of [Jewish] faith.

Here too, the *Me’iri* focuses on the parent’s guardianship over the child and how *beit din* assumes the role of the parents and converts the child with their consent.

Of course, it is possible that we should not read Rashi literally. Perhaps Rashi simply described what he perceived to be the more common case. However, Rashi would agree that either the father or mother may bring the child to *beit din* to request that the child be converted. Indeed, the Rashba (ibid.) and Ritva (ibid.) cite Rashi as saying that if the father **or** mother bring the child to *beit din* for conversion, but they themselves do not convert, *beit din* may convert the child “*al da’at beit din*.” However, if the father or mother convert with the child, as the *gemara* describes later, the conversion is not with the *beit din’s* consent; rather, since the parent also converts, the child is content with the decision (*neicha*).

The *Shita Mekubetzet* (*Ketubot*, ibid.) explains the opinion of Rashi slightly differently. He writes that if the non-Jewish mother or father brings the child to *beit din*, they may convert the child “*al da’at beit din*.” However, if either parent converts with the child, or if both parents bring the child to convert even though they themselves are not converting, they child is “content” and the conversion is **with the consent** of the parents.

Seemingly, *al da’at beit din* and *neicha lei* achieve the same goal – they provide the consent needed to employ *zakhin* as the mechanism of conversion. However, we might suggest that while in order to employ the principle of *zakhin*, *beit din* must be convinced that the conversion is in the best interest of the child, if the child is converted based on the principle of *neicha lei*, the conversion is viewed as objectively in the best interest of the child. We will discuss next week whether there is a practical difference between these two paths to conversion.

 In summary, we presented different views regarding the difference between *al da’at beit din* and with the consent of the parents, and which conversion employs which mechanism.

**May a Jewish Father Convert His Non-Jewish Child?**

 The Talmud (*Yevamot* 23a) discusses the legal relationship between a Jewish man and his non-Jewish son, born to a non-Jewish woman.

R. Yochanan said in the name of R. Shimon ben Yochai: The verse states: [“Neither shall you make marriages with them: Your daughter you shall not give unto his son, nor his daughter shall you take unto your son] for he will turn away your son from following Me” (*Devarim* 7:3–4). This teaches that your son born from a Jewish woman is called your son, but your son born from a gentile woman is not called your son, but her son.

The *gemara* teaches that since, according to the verse, the son of a gentile woman is her son alone, he is not considered related at all to his Jewish father.

 If the father is not legally related to his non-Jewish son, is he able to bring the son to *beit din* and request that they convert him? Is the right to convert one’s child based on their legal relationship or the child’s innate relationship to his father?

 The Tosafot Yom Tov (*Kiddushin* 3:12) understands that while a non-Jew who converts may convert his children as well, a Jewish man who marries a non-Jewish woman may not convert their child, as the father is not legally related to his non-Jewish children. The Pnei Yehoshua (*Kiddushin* 69a) appears to disagree.

 More recently, R. Avraham Yitzchak Ha-Kohen Kook (*Da’at Kohen*, YD 147) explains:

The reason of the Talmud, i.e., that they are content with whatever their father does, means, in other words, that the father is compassionate to his son, and therefore we may assume that the child is content with whatever the father does, as [the father] is concerned for his best welfare. And this is not dependent upon the Torah law, i.e., if he is [legally] considered to be his father or not, but rather, on the human nature of a father and his feelings for his son… And here regarding conversion the law is not dependent upon there relationship, but rather whenever one has guardianship (*shlita*) over a child he is considered to be his father.

R. Kook clearly maintains that as the child’s acting parent and guardian, the father has to right to bring the child to *beit din* to be converted.

 The sentiment is similarly expressed by the *Mateh Levi* (55) and R. Moshe Feinstein (*Iggerot Moshe* YD 1:158, EH 2:22). We will return to this point shortly regarding the conversion of adopted children.

**May a Minor Ask to be Converted?**

 What if the child requests to be converted? As we saw above, a literal reading of Rashi (see, however, Rashba, ibid. 11a) may preclude *beit din* converted a minor without his parents. Similarly, the Behag (see *Tur*, YD 268; see also *Beit Yosef,* ibid.) rules that a child may only be converted when his parents bring him to *beit din*. Other *Rishonim*, including the Ra’ah (*Shita Mekubetzet*, *Ketubot* 11a; see also *Tosafot*, *Ketubot* 44, s.v. *Ha-Giyoret*) assume that if a child comes to *beit din* on his own and asks to be converted, *beit din* may convert him *al da’at beit din*. The *Shulchan Arukh* (YD 268:7) rules accordingly.

 May *beit din* convert a child without his consent? R. Moshe Isserles(*Darkei Moshe Ha-Katzar*, YD 268) cites a debate regarding whether *beit din* may convert a child of their own accord, without the consent of the child. The Mordekhai (*Yevamot* *remez* 40) cites the Ra’avia, who rules that “if [the child] does not wish [to convert], he is not a convert.” The Ran (*Chidushei Ha-Ran*, *Ketubot* 11a, Rif’s pages 4a), however, implies that *beit din* converts the child, regardless of the child’s consent. The *Shakh* (YD 268:16) rules in accordance with the Ra’avia. Similarly, the Tosafot Rid (*Piskei* *Rid*, *Ketubot* 11a) explains that R. Huna refers to “a child who does not have a father or a mother, such as an abandoned child or non-Jewish children taken captive.”

 What about a child who is too young to express his will? Seemingly, one might suggest that even those who object to converting a child against his will would assume that a small child who cannot express his will may be converted. Indeed, R. Shmuel Wosner writes (*Shevet Ha-Levi* 6:202):

The *Tur* was not referring to the case of an infant in his crib, who does not have *da’at* or will, and nothing can be considered to be against his will.

Therefore, R. Wosner concludes that while the *Rishonim* write that *beit din* does not pursue the conversion of small minors, in certain cases (see below), they may convert a small child who is unable to express his will.

**The Conversion of Adopted Children**

In more recent years, the *poskim* have discussed the conversion of minors in the context of adoption. May a child’s adoptive parents ask the *beit din* to convert the child?

There are different ways to view this case. Some maintain that it is possible, just as a Jewish father may convert his non-Jewish children despite not being halakhically related to his children; since they are the child’s parent and guardian, we can assume that the child “would be content” with being like his father. Others suggest, based on the sources cited above, such as the Tosafot Rid, that *beit din* may convert the child *al da’at beit din*. (See *Mishpitei Shaul* 38.)

Interestingly, R. Joseph Soloveitchik (*Community, Covenant, and Commitment*, pp. 20 – 21) offers a different path. In a letter written to the American Jewish Congress (in 1950) regarding the view of Halakha on the matter of adoption, he writes:

The legitimacy of such a conversion is founded upon two principles. First, we consider conversion to the Jewish religion to be a privilege and not a liability … Second, Maimonides (*Hilkhot Avadim* 8:20) advanced a new opinion regarding conversion… There is a form of conversion which is based upon an authoritarian principle (*kibush*). When a Jewish family adopts a child and gives him devotion and love, the foster parents are entitled to convert and rear him in their faith. Parents always determine the future of their children and impart to them their religious convictions and beliefs. There is no valid reason to say that an adopted child should grow up in a religious vacuum and that we deny his father and mother the natural right inherent in the fact of parenthood.

R. Soloveitchik refers to the following passage in the Rambam:

If a Jew seizes possession of a gentile who was a minor or finds a gentile child and has him immersed with the intent that he become a convert, he becomes a convert.

He understands that one who is responsible for an (unrelated) child has the legal ability to convert him. Seemingly, this right is not a function of the *zakhin* mechanism.

 The custom of Jewish courts is to perform conversions in these cases. However, as we will discuss next week, the *Acharonim* question whether a *beit din* should or may only perform a conversion when the family will raise the child as a Torah-observant Jew.

 Next week, we will discuss the role of *mecha’ah* in the conversion of minors, as well as whether *beit din* may convert children of a non-observant parent.