**YESHIVAT HAR ETZION**

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

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**Laws of Conversion and Circumcision**

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Dedicated in memory of Rabbi Jack Sable z”l and

Ambassador Yehuda Avner z”l

By Debbie and David Sable

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**Shiur #3: Who Can Perform a *Brit Mila*?**

**Introduction**

 [Last week](https://etzion.org.il/en/shiur-02-who-obligated-brit-mila), we analyzed the obligation of *brit mila*. We noted that the Talmud (*Kiddushin* 29a) presents a three-tiered obligation: First the father is obligated, and if the father cannot or does not circumcise the child, the *beit din* is obligated, and when child becomes an adult (bar mitzva), he assumes the responsibility for this *mitzva*. We discussed the nature of the father’s obligation, as well as the responsibility of the mother and the community to ensure that a young Jewish male is circumcised.

 This week, we will discuss who is halakhically qualified to perform a *brit mila*. We will question whether a circumcision may be executed by a non-Jew, a woman, and an uncircumcised or non-religious Jew.

**Circumcision Performed by a Non-Jew**

The Talmud (*Avoda Zara* 27a) teaches that the *brit mila* should not be performed by a non-Jew:

It was stated: From where is it derived with regard to circumcision performed by a gentile that it is not valid? Daru bar Pappa says in the name of Rav: This is derived from a verse, as it is stated: “And God said to Avraham: ‘And as for you, you shall keep My covenant, you, and your seed after you throughout their generations.’” And R. Yochanan says that it is derived from the verse: “He must be circumcised [*himmol yimmol*].” According to R. Yochanan, this verse teaches that a Jew must be circumcised by one who is already circumcised.

According to Daru bar Pappa, a non-Jew is categorically excluded from performing a *brit* *mila*, as he is not one of children of Avraham entrusted to keep the covenant (*brit*). R. Yochanan suggests that a non-Jew should not perform the *brit mila* because he himself is categorically excluded from the mitzvah of *brit mila*. As we shall see, the Talmud suggests that whether or not a woman may perform a *brit mila* may depend upon these two understandings.

What happens if a non-Jew indeed circumcised a Jewish child? The Semag (positive command 29) rules that it is necessary to extract a drop of blood (*hatafat dam brit*). Since the Talmud describes the *mila* as invalid, the child must undergo another circumcision. The Rambam (*Hilkhot Mila* 2:1) appears to disagree:

A gentile, however, should not be allowed to perform the circumcision at all. Nevertheless, if he does so, there is no need for a second circumcision.

The Beit Yosef (*Yoreh De’ah* 264) explains that the Rambam does not actually disagree with the Semag. Rather, he means to say that while “there is no need for a second circumcision,” a drop of blood must certainly be extracted. R. Yoel Sirkis (Bach) and the Vilna Gaon disagree, insisting that the Rambam does not require any further action if the child was circumcised by a non-Jew.

 Some suggest that this debate may depend upon a broader question regarding the nature of the mitzvah of *brit* *mila*: Is the focus of the *mitzva* the “*ma’aseh*” (act) of circumcision or the “*totza’ah*” (result), i.e. that the children is circumcised? We might suggest that according to the Rambam, the focus of the *mitzva* if the result – that the child is circumcised – and not the act of circumcision itself. This conclusion, however, is difficult, as elsewhere (*Hilkhot Mila* 1:7) the Rambam writes:

Similarly, a child who was born without a foreskin must have blood extracted for circumcision on the eighth day.

A child born without a foreskin (*nolad mahul*) must undergo *hatafat dam brit*, implying that the focus of the *mitzva* is the act of circumcision and not its result.

 We might suggest that the Rambam does indeed believe that the focus of the *mitzva* of *mila* is the result, i.e. that the child is circumcised. However, that result, the removal of the foreskin, must be accomplished during an “act” of circumcision. Circumcision performed by a non-Jew is still considered to be an “act” (as Rabbeinu Manoach explains that circumcision does not require “*lishma*,” intent to perform a *mitzva*), but a child born without a foreskin must still undergo some “act” of circumcision, a *hatafat dam brit*. Alternatively, the Sha’agat Aryeh (*Yeshanim* 54) explains that when the circumcision is performed improperly, i.e. by a non-Jew, it cannot be repaired (*me’uvat lo yukhal le-tkon*), and there is therefore no need to perform *hatafat dam*. (This question relates to an issue we will discuss at a later point regarding whether one who was circumcised before the eight day or at night is required to undergo a *hatafat dam brit*.)

 The Shulchan Arukh (YD 264:1) rules in accordance with the Rambam. The Rema, however, rules in accordance with the Semag and requires that a *hatafat dam* is performed if the circumcision was done by a non-Jew.

**Circumcision Performed by a Woman**

 The Talmudic passage (*Avoda Zara* 27a) cited above cites two opinions regarding whether a non-Jew is disqualified from performing a *brit mila* because he is not Jewish or because a non-Jew is categorically excluded from the *mitzva* of circumcision. The *gemara* continues:

Rather, there is a difference between these two opinions with regard to a woman. According to the one who says that the *halakha* is derived from the verse, “And as for you, you shall keep My covenant,” there is no reason to permit a woman to perform circumcision, as a woman is not subject to the *mitzva* of circumcision, and therefore she is not included in those who must keep God’s covenant. And according to the one who says that the *halakha* is derived from the verse, “He must be circumcised [*himmol yimmol*],” there is reason to permit a woman to perform circumcision, as a woman is considered as one who is naturally circumcised.

Confronted with the biblical story in which Tzippora apparently circumcised her son, the Talmud offers two explanations:

And is there anyone who says that a woman may not perform circumcision? But is it not written: “Then Tzippora took [*va-tikkach*] a flint and cut off the foreskin of her son” (*Shemot* 4:25)”? This verse explicitly states that a circumcision was performed by a woman! One should read into the verse: And she caused to be taken [*va-takkach*], i.e., she did not take a flint herself. But is it not written: “And she cut off [*va-tikhrot*]”? Read into the verse: And she caused to be cut off [*va-takhret*], as she told another person to take a flint and cut off her son’s foreskin, and he did so. And if you wish, say instead: She came and began the act, and Moshe came and completed the circumcision.

 The Rishonim debate whether the *halakha* is in accordance with Rav, who does not permit a woman to circumcise, or R. Yochanan, who permits. Tosafot (ibid., s.v. *isha*) rules in accordance with Rav. Other Rishonim, including the Rif (*Shabbat* 56a), Rosh (*Shabbat* 19:11), and the Rambam (*Hilkhot Mila* 2:1), rule that a women be perform a *brit mila*.

The Shulchan Arukh (YD 264:1) rules that a woman can perform a circumcision. The Rema, however, cites those who are strict, and writes that “it is customary to seek a man [to perform the circumcision].” The *Acharonim* (see Shakh 2 and Gra 6) attempt to understand the intention of the Rema. After all, the Shulchan Arukh agrees that one should preferably ask an adult male, and if the Rema maintains that a woman may not perform a *brit mila*, then why does the Rema write that is it “customary” to search for a male to perform the *brit mila*? Furthermore, the Shakh adds that it is not proper to write “it is customary” regarding something which is uncommon, such as woman performing circumcision. The Arukh Ha-Shulchan (YD 264:3-4) suggests that the Rema fundamentally agrees with the lenient view, but insists that when there is no adult male in the city, one should go to a different city to find an adult male *mohel*, as it is customary for a woman never to serve as a *mohel*.

**Circumcision Performed by an *Arel* (Uncircumcised Jew) or a *Mumar***

 The Talmud (*Avoda Zara* 27a) concludes that an uncircumcised Jewish male (i.e. an *arel*) may circumcise a Jewish child. The example given by the *gemara* is a person whose two older brothers died as the result of being circumcised; this person is exempt from *brit mila* (see *Yevamot* 64b). But may one who is uncircumcised by choice serve as a *mohel*?

Tosafot (s.v. *ika*) asserts that a *mumar le-arlut*, a person who refuses to be circumcised, can still perform a *brit mila*. Tosafot explain that this person is still a “*bar shemirat ha-brit*” (a person capable of participating in the covenant) and he is therefore not disqualified as a *mohel*. The Rambam (*Hilkhot Mila* 2:1) also implies that all uncircumcised Jewish males may perform a *brit mila*, not just those who have halakhic justification for their lack of circumcision (i.e. one whose two brothers died due to *brit mila*). Other *Rishonim* appear to disagree. The Beit Yosef (YD 264) cites Rabbeinu Manoach and the Ba’al Ha-Ittur (*Hilkhot Mila* 50:3), who insist that one who is not circumcised and intentionally violates the covenant may not perform a *brit mila* for others. Similarly, the Darkhei Moshe (YD 264) cites the Or Zaru’a (*Hilkhot Mila* 97), who questions whether a circumcised *meshumad* may perform a *brit mila*. The Or Zarua writes that although there should be no technical reason to exclude a *meshumad*, we are concerned that he might not perform the circumcision with the proper intention (*lishma*).

This debate continues through the *Acharonim*. The Shulchan Arukh (YD 264:1) writes: “All are valid to circumcise … even one who is not circumcised because his brothers died due to being circumcised.” The Shakh (1; see also Perisha) notes that the Shulchan Arukh implies that one who intentionally chooses to violate that covenant (*mitkaven le-hafer brit*) may not perform a *brit mila*. Similarly, the Rema (ibid.) writes explicitly that “a *mumar* (one who rebels against) the entire Torah, or [even] a *mumar* for circumcision, is considered for this matter to be like a non-Jew.” This would certainly include a *meshumad*, as the Rema noted in the Darkhei Moshe (above), as well as one who rejects the observance of *mitzvot*.

On the other hand, some *Acharonim* (see PeriChadash, cited in Pitchei Teshuva 8; see also R. Akiva Eiger, *Teshuvot* 4:73; Even Ha-Ozer, OH 189; and Arukh Ha-Shulchan) note that the Rema’s ruling contradicts the simple understanding of the Talmud, as well as that of Tosafot (above). R. Akiva Eiger even writes that in extenuating circumstances, including avoiding communal strife (*rivot u-ketatot*), a *mohel* who is *mechalel Shabbat* may perform a *brit mila*.

R. Moshe Feinstein (*Iggerot Moshe*, YD 2:123), based upon the Rema, rules that a circumcision performed by a Jewish doctor who violates the Sabbath (*mechalel Shabbat be-farhesya*) is invalid and a *hatafat dam brit* must be performed by another *mohel*. Other prominent *Acharonim*, such as R. Shmuel Wosner (*Shevet Ha-Levi* 5:146), R. Ovadia Yosef (see Yalkut Yosef, *Sova Semachot* II 15:7), and R. Yitzchak Yaakov Weiss (*Minchat Yitzchak* 4:101), disagree and rule that *be-dia’vad*, there is no need to perform *hatafat dat brit* on a child who was circumcised by a non-religious *mohel*. R. Wosner raises the possibility that it may in fact be prohibited to perform *hatafat dam brit* in this case, due to the prohibition of *chabalah*. Sefer Mila Shleima (9:14) asserts that this is the ruling of the Torah authorities of the generation.

 A number of *Acharonim* discuss what one should do when a non-religious doctor is the only *mohel* available or when faced with a choice between a non-religious doctor performing the circumcision on the eighth day or a religious *mohel* after the eight day.

R. Moshe Pirutinsky (Sefer Ha-Brit, p. 159) cites R. Yaakov Emden, who claims that when there is no “*yisrael kasher*” available to perform the *brit mila*, one should wait until a proper *mohel* arrives in order to perform the *brit mila*. Similarly, he relates that he heard from R. Mendel Zaks, the Chafetz Chaim’s son-in-law, that when the Chafetz Chaim was asked regarding a doctor in London who did not observe the Sabbath and who performed circumcisions, the Chafetz Chaim ruled that it is preferable for an observant *mohel* to perform the *brit mila* after the proper time (i.e. after the eighth day) rather than for a *mohel* who violates the Shabbat to perform the *brit mila* in its proper time. When R. Zaks showed him the opinion of R. Akiva Eiger, cited above, the Chafetz Chaim responded: “Despite this, it should not happen in the Jewish People that a Sabbath violate performs a *brit mila*; it is better to enact a fence [around the Torah]” (p. 166:7). This appears to correspond to the opinion of R. Moshe Feinstein, cited above.

R. Shaul Yisraeli (cited in *Be-Mareh Ha-Bazak* 3:122) sides with R. Akiva Eiger and rules that if there is no Sabbath observant *mohel* available to perform the *brit mila* on the eight day, one should prefer a Jewish *mohel* who violates the Shabbat in order that the circumcision should be performed on time. *Sefer Mila Shleima* (9:15) writes that one should not rebuke one who follows the lenient view.

 Next week we will discuss who may and maynot be circumcised.