**YESHIVAT HAR ETZION**

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

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**Laws of Conversion and Circumcision**

**Rav David Brofsky**

***Shiur* #06:**

**The Conversion Candidate during the Process of Converting**

**Teaching the Non-Jew Torah in Preparation for Conversion**

A convert accepts upon himself the yoke of Torah, and is therefore expected to observe the *mitzvot* immediately upon emerging from the *mikveh*. It seems to follow, therefore, that the conversion candidate should study the Torah and practice fulfilling its laws before completing the conversion process.

Is there any objection to a non-Jew studying Torah and performing *mitzvot*? The Talmud relates to two different aspects of Torah study: a non-Jew studying Torah and teaching Torah to a non-Jew.

The Talmud (*Sanhedrin* 59a) praises a non-Jew who studies Torah:

R. Meir would say: From where is it derived that even a gentile who engages in Torah study is considered like a High Priest? It is derived from that which is stated: “You shall therefore keep My statutes and My ordinances, which if a man does he shall live by them” (*Vayikra* 18:5). It does not state, “Which if Priests, Levites, and Israelites do they shall live by them,” but rather: “A man” [which indicates mankind in general].

The *gemara* notes, however, that R. Yochanan appears to disagree. He says:

A gentile who engages in Torah study is liable to receive the death penalty, as it is stated: “Moshe commanded us a law [*Torah*], an inheritance of the congregation of Yaakov” (*Devarim* 33:4), indicating that it is an inheritance for us, and not for them.

The *gemara* resolves this contradiction by explaining that R. Meir refers to “a non-Jew who engages in the study of their seven *mitzvot*,” whereas a non-Jew may not study other portions of the Torah.

The *gemara* offers two understandings of R. Yochanan’s source. According to one understanding, the Torah is viewed as “an inheritance (*morasha*),” such that a non-Jew who studies Torah misappropriates or even robs the Jewish people of their inheritance. According to a second understanding, the verse refers to the Torah as the “betrothed (*me’orasa*),” such that by studying Torah the non-Jew betrays the unique relationship between God and the Jewish People.

The commentators discuss the scope of this prohibition and whether one may distinguish between different areas of Torah or different individuals and motivations.

Some distinguish between the reasons behind the *halakhot*, which non-Jews should not study, and practical instruction (see, for example, *Tiferet Yisrael*, *Zevachim* 14:4). Others differentiate between different areas of Torah. For example, the *Shiltei Giborim* (*Avoda* *Zara*, ch. 1) claims that a non-Jew may only be taught *Nevi’im* and *Ketuvim*. Others (*Maharatz Chayot*, *Sota* 35b; *Yehuda Ya’aleh*, OC 1:4; Netziv, *Meshiv Davar* 2:77) limit this prohibition to the study of *Torah She-Be’al Peh*, apparently based on an understanding of the Oral Law as an expression of the unique covenant between God and the Jewish People. Indeed, R. Yochanan (*Gittin* 60a) teaches:

The Holy One, Blessed be He, made a covenant with the Jewish People only for the sake of the matters that were transmitted orally [*al peh*], as it is stated: “For on the basis of [*al pi*] these matters I have made a covenant with you and with Israel” (*Shemot* 34:27).

R. Yitzchak b. Walid (1777–1870), in his *Ya-Yomer Yitzchak* (OC 28), explicitly rejects this idea.

Some insist that this prohibition may depend on the motivation of the student. For example, the Rambam (*Teshuvot* 149) writes that “it is permitted to teach the *mitzvot* to Christians and to entice them to our religion; however, this is not permissible for Muslims, as they do not believe in the Divine origin of the Torah.” In other words, one may teach Torah to certain non-Jews in order to bring them closer to Judaism. Similarly, R. Yechiel Yaakov Weinberg (1884–1966), in his *Seridei Eish* (2:55), suggests that this prohibition does not apply to one who “studies [the Torah] due to his love of wisdom and in order to familiarize himself with the Torah of Israel.”

In addition to the prohibition of studying Torah, the Talmud (*Chagiga* 13a) further teaches that one should not “transmit” Torah to a non-Jew:

R. Ami said further: The words of Torah may not be transmitted to a gentile, as it is stated: “He has not dealt so with any nation, and as for His ordinances, they have not known them” (*Tehillim* 147:20).

This passage appears to explicitly prohibit teaching Torah to non-Jews. The commentators related to different aspects of this prohibition.

Some (Tosafot, ad loc., s.v. *ein*) ask why it is necessary to prohibit teaching Torah to non-Jews; since they many not study Torah, teaching them Torah would violate the prohibition of “*lifnei iver lo titen mikhshol*” (causing another person to sin). Tosafot suggest that in addition to not studying Torah, there is another, unique prohibition against teaching non-Jews Torah, derived from the verse cited by the *gemara*. The Maharsha (ad loc.; see also Meiri ad loc. and *Kunteras Be’er Mayim Chaim* in *Sefer Be’er Sheva* 14) suggests that this *gemara* teaches a different principle: One should not reveal the reasons and secrets (*ta’am ve-sod*) of the Torah to a non-Jew. Similarly, the *Tzitz Eliezer* (16:55) insists that the Maharsha and others only prohibit teaching Torah secrets to non-Jews; however, non-Jews are still prohibited from studying other portions of the Torah.

Others note that this statement is especially difficult to understand in light of other Talmudic passages that describe how great rabbis taught Torah to non-Jews. For example, the *gemara* (*Bava Kama* 38a) relates:

The Sages taught: And the Roman kingdom once sent two military officials (*sardeyotot*) to the Sages of Israel and ordered them in the name of the king: Teach us your Torah. The officials read the Torah, and repeated it, and repeated it again, reading it for the third time. At the time of their departure, they said to the Sages: We have examined your entire Torah and it is true, except for this one matter that you state – that with regard to an ox of a Jew that gored the ox of a gentile, the owner is exempt from liability, whereas with regard to the ox of a gentile that gored the ox of a Jew, whether it was innocuous or forewarned, the owner pays the full cost of the damage.

Similarly, the *gemara* (*Sota* 35b) describes how the Torah was written on stones (*Devarim* 27:8) in order that the non-Jews should study the Torah, “and on account of this matter their decree to be sent to the pit of destruction was sealed, as once the Torah was in their possession, they should have studied it, and they did not study.”

The commentators offer numerous explanations of the apparent contradiction. Some note that neither the Rambam (see, however, *Hilkhot Avadim* 8:18) nor the *Shulchan Arukh* codify this statement. It appears that R. Ami’s assertion is not to be understood as a *halakha*, but rather as a *middat chassidut* and a description of proper behavior (R. Asher Weiss, *Kuntras Shevu’i*, *Parshat Bamidbar*, 5773).

Furthermore, a number of *Acharonim* suggest that the Rambam himself defines the parameters of this prohibition. The Rambam writes (*Hilkhot Melakhim* 10:9):

A gentile who studies the Torah is liable for the death penalty. They should only be involved in the study of their seven *mitzvot*. Similarly, a gentile who rests, even on a weekday, observing that day as a Sabbath, is liable for the death penalty. Needless to say, he is liable for that punishment if he creates a festival for himself.

The general principle governing these matters is: **They are not to be allowed to originate a new religion or create *mitzvot* for themselves based on their own decisions.** They may either become righteous converts and accept all the *mitzvot* or retain their statutes without adding or detracting from them. If a gentile studies the Torah, makes a Sabbath, or creates a religious practice, a Jewish court should beat him, punish him, and inform him that he is liable for the death penalty.

The Rambam appears to maintain that a non-Jew is not fundamentally prohibited from studying Torah or observing the Sabbath (see below); rather, he may not do so with the intent to create his own religion. Accordingly, the *Seridei Esh* concludes, according to the Rambam, if the non-Jew studies the Torah because of his love of wisdom or his desire to be familiar with the Torah of the Jewish People, one may even teach him Torah. The *Seridei Esh* acknowledges that *Tosafot* clearly do not adopt this understanding.

What about teaching Torah to a non-Jew who is considering converting to Judaism?

R. Shmuel Eidels (1555–1631), known as the Maharsha, writes (comments to *Shabbat* 31a) that a non-Jew intending to convert to Judaism may study Torah. Similarly, the Meiri (*Sanhedrin* 59a) distinguishes between one who studies Torah without any intention of fulfilling the *mitzvot* and one who is investigating Judaism “with the intention that if he finds our Torah to be perfect, he will convert.”

R. Akiva Eiger (1761–1837), in his responsa (*Mahadura Kama*, 41), discusses a locale in which it is prohibited by law to convert non-Jews. He was asked whether a non-Jew who wishes to study “*mikra ve-seder ha-tefilla yom yom*” (Bible and the daily prayers) may be taught, with the intention that he will travel to a different place to convert. R. Eiger cites the Maharsha and disagrees, arguing that it is prohibited to teach a non-Jew Torah.

Interestingly, R. Moshe Feinstein (*Iggerot Moshe,* YD 3:90) insists that it is absolutely necessary for a conversion candidate to study Torah before his conversion. He expresses concern that if the non-Jew converts without truly understanding Judaism, this may even invalidate his conversion! Furthermore, although R. Feinstein rules in accordance with the Maharsha, he explains that even R. Akiva Eiger would permit teaching Torah to one who is in the final preparations of conversion.

R. Asher Weiss (ibid.) also discusses this question and concludes:

In my opinion, it seems that from the moment that [the non-Jew] comes to convert, it is permitted to teach him Torah, and the prohibition no longer applies, as the Maharsha writes. I derive this from the words of the *Tosafot* *Yeshanim* (*Yevamot* 48b), who write that since his intention is to convert, he may observe the Sabbath … It seems to me that this is also true regarding Torah study, as since he has come to convert [the reasons mentioned by the Talmud no longer apply] … A non-Jew is commanded not to observe a day of rest and not to study Torah as a non-Jew, but [if he studies the Torah] with the intention of becoming Jewish (*le-shem Yahadut*) and as preparation for becoming Jewish, there is absolutely no prohibition and he may behave as a Jew regarding every aspect.

Furthermore, R. Weiss argues that our generation may be different than previous generations regarding this question:

I will not refrain from revealing my opinion regarding this weighty matter. In my opinion, our generation is not like previous generations, as from eternity we have refrained from initiating conversions and only [accepted] one who came with the intention of converting after being pushed away numerous times, if his intentions appear to be genuine. And this is the proper way according to the Torah. However, in our time period, when so many of those who immigrated from the [former] Soviet Union are non-Jews according to the law and they are mixing-in with the residents of the land, there is a great stumbling block for generations, and we should not discourage them from converting. Rather, we should make efforts to convert them, and while we should not be lenient, God forbid, regarding the requirement of accepting upon themselves the yoke of Heaven and the yoke of *mitzvot*… we should not discourage them from converting…

For this reason, he permits a teacher in Israel to teach Torah to a class that includes non-Jewish children.

It is indeed customary in many communities to educate a conversion candidate in the laws, reasons, and philosophy of the Torah before he/she is converted.

**Performing *Mitzvot* before Converting**

May a non-Jew perform *mitzvot*? As we saw above, R. Meir maintains (*Sanhedrin* 59a) that a non-Jew who engages in Torah is akin to a *Kohen Gadol*. However, the Talmud appears to somewhat minimize the scope of this statement. In one place (*Avoda Zara* 2b-3a), the *gemara* insists that while the non-Jew receives reward for performing *mitzvot*, he receives less reward, as “one who is commanded and performs is greater than he who is not commanded and performs.” Elsewhere (*Sanhedrin* 59a), as we saw above, the Talmud limits R. Meir’s statement to the study of the Noachide laws, in which the non-Jew is obligated.

Interestingly, the *Sifra* (*Vayikra* 18:5) attributes an expanded version of this view to R. Yirmiya:

“[You shall observe My edicts and laws] that a man shall do [and live by them]” (*Vayikra* 18:5). R. Yirmiya says: From where do we know that even a non-Jew who observes the Torah is like a High Priest? The verse teaches, “that a man shall do them and live by them.” Similarly, it does not say, “And this is the Torah . . . of Priests, Levites, and Israelites,” but rather it says, “And this is the Torah of man, O Lord God” (*Shmuel* *II* 7:19). Similarly, it does not say, “Open up your gates . . . that Priests, Levites, and Israelites may enter,” but rather, “that the righteous nation (*goy*) who keeps the faith may enter” (*Yeshayahu* 26:2). Similarly, it does not say, “This is the gate of God . . . and let the Priests, Levites, and Israelites enter therein,” but rather, “and let the righteous enter therein” (*Tehillim* 118:20). Similarly, it does not say, “Rejoice . . . Priests, Levites, and Israelites,” but rather, “Rejoice the righteous in God” (*Tehillim* 33:1). Similarly, it does not say, “God does good . . . to the Priests, Levites, and Israelites,” but rather, “God does good to those who are good” (*Tehillim* 125:4). From this we learn that even a non-Jew who observes the Torah is like a High Priest.

This passage appears to present a bolder position that supports the assertion that a “righteous” non-Jew who performs the *mitzvot* is “like a High Priest.”

The Rambam appears to adopt this approach. He writes (*Hilkhot Melakhim* 10:10):

We should not prevent a non-Jew who desires to perform one of the Torah's *mitzvot* in order to receive reward from doing so, provided he performs it as required. If he brings an animal to be sacrificed as a burnt offering, we should accept it.

The Rambam writes that a non-Jew may perform *mitzvot* and he will receive reward. Indeed, this may explain his ruling regarding circumcision of a non-Jew (*Hilkhot Mila* 3:7):

If the non-Jew had the intent, expressed or otherwise known, that the operation should be a ritual circumcision (*mila*), a Jew may perform the operation.

The *Acharonim* question whether the Rambam refers to one who wishes to be circumcised in order to undergo a conversion or one who simply wishes to fulfill a *mitzva*. The Rambam dedicates an entire responsum (*Teshuvot Ha-Rambam* 148) to this question:

It is permitted for a Jew to circumcise a non-Jew if the non-Jew wants to remove the foreskin, because any *mitzva* that a non-Jew performs, he is given reward; however, he is not like one who is commanded and performs. All of this is only if he performs the *mitzva* in a context in which he accepts the prophecy of Moshe our Teacher, who has received this command from God, and he believes this, and is not performing due to other motivations…

The Rambam repeats this assertion in his Commentary to the Mishna (*Terumot* 3:9):

It is permitted to circumcise a non-Jew, regardless of whether he is Christian or Muslim, as long as he acknowledges the prophecy of Moshe Rabbeinu who commands this by the word of the elevated God, and he believes this, rather than doing this for a different reason or according to his own opinion.

Not all authorities agree that this openness towards non-Jews fulfilling the *mitzvot* should apply to *brit mila* as well. The Rema (YD 263:6) rules that it is prohibited to circumcise a non-Jew. The Taz (ad loc. 3) explains that by circumcising non-Jews, one nullifies the uniqueness of the *brit* for the Jewish People (*mevatel et siman ha-mila be-Yisrael*). The *Levush* (*Ateret Zahav*, YD 263:5) adds another concern: We should not mark non-Jews with the symbol of our covenant with God for no reason. The Shakh (263:8 and 268:19), however, disagrees and explains that aside from the issue of offering medical assistance to non-Jews, which is permitted when done for payment or when there is a fear of *eiva*, there is no prohibition of circumcising non-Jews. Some contemporary authorities, such as R. Tzvi Pesach Frank (*Har Tzvi*, YD 215), rule that it is forbidden to circumcise a non-Jew, but R. Ovadia Yosef (*Yabia Omer*, YD 2:19) disagrees and rules that one may circumcise non-Jews, Christians and Muslims, even without payment.

Interestingly, R. Moshe Feinstein (*Iggerot Moshe*, YD 2:7; see also YD 1:3) rejected this understanding and asserts that while non-Jews receive reward for performing those *mitzvot* regarding which they were included, such as *tzedaka* and *korbanot*, “Sabbath and Yom Tov observance, donning *tefillin*, *tzitzit*, *sukka*, *lulav*, *shofar* and eating [only] kosher food, and avoiding *shaatnez*, are not at all considered to be *mitzvot* for non-Jews.” R. Feinstein appears to believe that we should distinguish between universal *mitzvot* and those that are particular to the Jewish People.

In any case, there does not seem to be any formal objection to a non-Jew fulfilling *mitzvot*. Therefore, nowadays, it is common and even expected that non-Jewish conversion candidates should fulfill the *mitzvot* before concluding their conversion.

However, as we shall see, the Talmud does appear to prohibit non-Jews from observing the Shabbat.

**A Conversion Candidate and Shabbat Observance**

Although it is customary, as described above, for a conversion candidate to observe the *mitzvot* before completing his conversion, many authorities instruct the candidate not to fully observe the Shabbat. This ruling is based on a Talmudic passage (*Sanhedrin* 58b) that teaches that a non-Jew may not observe Shabbat:

Reish Lakish says: A gentile who observed Shabbat is liable to receive the death penalty, as it is stated: “And day and night shall not cease” (*Bereishit* 8:23). And the Master said that their prohibition is their death penalty [i.e., the punishment for any prohibition with regard to descendants of Noah is execution]. Ravina says: If a descendant of Noach observes a day of rest on any day of the week, even one not set aside for religious worship [e.g., on a Monday], he is liable.

Ravina adds that not only must a non-Jew not observe Shabbat, but even one who observes a day of rest on a different day of the week is liable. The *Rishonim* offer a number of explanations of this prohibition.

Rashi (*Sanhedrin* 58b s.v. *amar*) explains that the *gemara* does not refer to Shabbat observance for religious reasons; rather, “‘resting’ is prohibited, in order that they should not refrain from work, even on a day which is not designated as the Shabbat.” Rashi apparently believes that God desires that mankind should work every day, either to better the world (*yishuvo she olam*) or because not working may lead to immoral behavior (*batala mevi’ah lidei zima*, *Ketubot* 59b). Shabbat is a unique gift given to the Jewish People for their spiritual betterment. In contrast, the Meiri (*Sanhedrin* 58b) explains that the Talmud fears that a non-Jew who observes the Shabbat for religious reasons will become a model for Jews, who will imitate his general behavior.

The Rambam (*Hilkhot Melakhim* 10:9), as mentioned above, developed a broader approach relating to a non-Jew’s performance of *mitzvot*. While a non-Jew may perform *mitzvot*, and even receives reward for doing so, the Talmud objects to creating an alternative religious framework:

Similarly, a gentile who rests, even on a weekday, observing that day as a Sabbath, is obligated to die. Needless to say, he is obligated for that punishment if he creates a festival for himself. The general principle governing these matters is: They are not to be allowed to originate a new religion or create *mitzvot* for themselves based on their own decisions. They may either become righteous converts and accept all the *mitzvot* or retain their statutes without adding or detracting from them.

The Rambam claims that the Talmud objects to a non-Jew establishing a day of rest for religious reasons, as by doing so he creates a religious framework other than the Torah.

Based on this passage, many *Acharonim* assume that even a non-Jew in the process of converting may not fully observe the Shabbat. Therefore, these *Acharonim* instruct conversion candidates not to fully observe Shabbat before their conversion. Rather, they should violate at least one of the prohibited labors (*melakhot*) each Shabbat before they complete their conversion.

The *Acharonim* discuss whether a male conversion candidate, after being circumcised for the sake of conversion, may observe Shabbat fully. This question was first addressed by the authorities in response to an incident that occurred in Jerusalem in 1848. On Tuesday, the 23rd of Adar II, a certain non-Jew was circumcised with the intention to immerse and complete his conversion, but unfortunately, he could not immerse before Shabbat. Although he was still recovering from the circumcision on Shabbat, he refused to ask a non-Jew to light a fire for him on Shabbat. R. Asher Lemel – who was substituting for the Chief Rabbi of the Ashkenazic community, R. Shmuel Salant, while he was abroad – ruled that not only was there no prohibition of asking a non-Jew to light a fire, but this fellow himself must light the fire, as he is not yet permitted to observe Shabbat.

The next day, the Ashkenazic and Sephardic scholars of Jerusalem criticized R. Lemel’s ruling, arguing that after a non-Jew accepts upon himself the *mitzvot* and is circumcised, he may observe the Shabbat. It is reported that when the question was posed to R. Shmuel Salant, who was visiting R. Yitzchak Meir Alter, the first Rebbe of the Ger Chasidic dynasty and author of the *Chiddushei Ha-Rim*, in Warsaw, both of them rejected R. Lemel’s ruling and permitted a conversion candidate, after being circumcised, to observe Shabbat. R. Lemel authored a responsum defending his position, which spurred extensive rabbinic discussion.

R. Yehosef Cohen (1804–1865), in his [Divrei Yosef](http://www.hebrewbooks.org/pdfpager.aspx?req=159&pgnum=176) (24), describes how he convinced R. Lemel that he had erred. He cited a *midrash* (*Midrash Rabba*, *Devarim* 1:18) that states that “a gentile who observes the Shabbat prior to accepting circumcision upon himself is liable to the death penalty,” implying that after being circumcised he may observe the Shabbat. Incidentally, a similar view, which we will discuss below, is held by the *Tosafot Yeshanim* (*Yevamot* 48b).

R. Yaakov Ettlinger (1798–1871), in his *Binyan Tzion* (91), also rejects R. Lemel’s ruling. He relates that after extensive investigation, he found that it was unheard of to demand that a conversion candidate, after being circumcised, should be instructed to violate the Shabbat. He argued that since the gentile has already entered the covenant through circumcision, he may observe Shabbat, which is also an expression of the covenant.

Interestingly, R. Shmuel Salant offers a different reason to permit this gentile, who has been circumcised, to observe the Shabbat. He notes that the Rashba (*Yevamot* 71a) explains that while a non-Jew who has been circumcised but has not yet immersed is not yet Jewish, “he has already begun and entered somewhat into the Jewish religion” (*nikhnas ketzat le-dat ha-Yehudit*). Therefore, R. Salant argues, he is no longer considered to be a non-Jew, and he may therefore observe the Shabbat. Based upon this reasoning, R. Ettlinger suggests that the gentile may be obligated to observe Shabbat after being circumcised (see also *Avnei Nezer*, YD 351).

A recent [article](https://seforimblog.com/2014/02/rabbi-jacob-ettlinger-and-warder-cresson/) identifies the convert in question as Warder Cresson, an American Quaker who came to Jerusalem to convert to Judaism. After his conversion, he returned to the United States for a short time, after which he returned to Jerusalem and married Rachel Moledano. He died in 1865 and was buried on Har Ha-Zeitim.

In summary, the *Acharonim* suggest that after circumcision for the sake of conversion, a gentile may observe Shabbat, either because he has already partially entered the covenant or because he is no longer considered to be a non-Jew.

R. Yisrael Rosen (*Techumin* 28) expresses his amazement that these *Acharonim* appear to assume that a conversion candidate may not observe Shabbat based on the *gemara* cited above. While the Talmudic passage is cited by the Rambam, it does not appear in the *Shulchan Arukh*, implying that it may be an aggadic, and not halakhic, statement. In addition, as mentioned above, the Rambam (*Hilkhot Melakhim* 10:9) cites this prohibition with the injunction against a non-Jew studying Torah:

The general principle governing these matters is: They are not to be allowed to originate a new religion or create *mitzvot* for themselves based on their own decisions. They may either become righteous converts and accept all the *mitzvot* or retain their statutes without adding or detracting from them. If a gentile studies the Torah, makes a Sabbath, or creates a religious practice, a Jewish court should beat him, punish him, and inform him that he is obligated to die.

The Rambam implies that prohibition is rooted in a fear that the non-Jew will create his own religious framework. However, if his intention is to practice observing Shabbat before converting, then just as it is customary for the non-Jew to study Torah in preparation for his conversion, he should be allowed to observe Shabbat. As mentioned above, this ruling appears explicitly in the *Tosafot* *Yeshanim* (*Yevamot* 48b).

Similarly. R. Moshe Shternbuch (*Teshuvot Ve-Hanhagot* 1:614) explains:

The injunction against a non-Jew fulfilling *mitzvot* applies when he denies that the *mitzvot* belong to the Jewish People and acts as if a non-Jew also has a share in the *mitzvot*, like Israel, the chosen people. However, if he recognizes that the *mitzvot* were given to the Jewish People, but he wishes to observe them like a Jew in order to receive reward, he should not be prevented [from fulfilling them].

R. Sternbuch questions the ruling of R. Shmuel Salant and the *Chiddushei Ha-Rim*, cited above, who permitted the emigrant to observe Shabbat only after being circumcised, and concludes that one who is studying in preparation for conversion may observe Shabbat fully. This appears to be the view of R. Yechiel Michel Tukachinsky (*Ha-Me'asef* 4:40), who argues that since we permit a non-Jew to study Torah in preparation for conversion, Shabbat observance should be permitted as well. More [recently](https://www.koltorah.org/halachah/shabbat-between-milah-and-tevilah-by-rabbi-chaim-jachter), R. Gedalia Schwartz and R. Melech Schachter also permitted a conversion candidate to observe Shabbat.

**Burying a Non-Jew Who has not Completed Conversion in a Jewish Cemetery**

In the unfortunate case in which a conversion candidate passes away before his conversion, the question arises whether he may be buried in a Jewish cemetery. This question is especially relevant in Israel, when non-Jews, fighting for the security of the State of Israel and its citizens, fall in battle. May a non-Jewish soldier be buried in a Jewish cemetery? What if he has taken steps towards converting?

The authorities agree that gentiles are not buried in Jewish cemeteries. What is the source of this practice? The Ran (*Sanhedrin* 28a, s.v. *kovrin*) invokes a *gemara* that describes the burial of those who are executed by the *beit din*. The *mishna* (*Sanhedrin* 46a) teaches:

And they would not bury him [the executed] in his ancestral burial plot. Rather, two graveyards were established for those executed by the court, one for those who were decapitated or strangled and one for those who were stoned or burned.

The Talmud (ibid. 47a) questions why in addition to one’s family burial tomb, the *beit din* established two other areas – one for those executed by beheading (*hereg*) and strangulation (*chenek*) and another for those executed by stoning (*sekila*) and burning (*sereifa*):

And why is all this necessary? Because a wicked man is not buried next to a righteous man…And just as a wicked man is not buried next to a righteous man, so too, an extremely wicked man is not buried next to a less wicked man. If so, let them establish four graveyards? It is learned as a tradition that there are two graveyards.

According to the Talmud, one should be buried next to someone with a comparable level of religious observance.

The Ran cites this principle as the source for the custom not to bury gentiles next to Jews. This practice appears in numerous *Acharonim*, including R. Kook (*Daat Kohen* 201), R. Ovadia Yosef (*Yabia Omer*, YD 7:36:2), R. Ovadia Hedaya (*Yaskil Avdi,* YD 6:20), and R. Moshe Feinstein (*Iggerot Moshe*, YD 3:146).

Interestingly, the Aramaic translation (*Targum*) of the Book of Ruth interprets Ruth’s declaration to Naomi: “Wherever you die I will die, and there I will be buried” (*Ruth* 1:15), as: “Ruth said: However you die, I will die. Naomi said: We have separate cemeteries. Ruth said: And there I will be buried.” Thus, the *Targum* traces the practice of separate Jewish burial to the days of the Judges.

Of course, one need not conclude from this that all gentiles are wicked. R. Moshe Feinstein (*Iggerot Moshe*, YD 3:146) writes that even a gentile who observed the seven Noahide laws is not buried in a Jewish cemetery, as this distinction is rooted in the sanctity of the Jewish People (*kedushat Yisrael*), and not in the piety of each individual gentile.

Nevertheless, since the basis for this prohibition is the principle that a wicked person is not buried beside a righteous one, the question arises whether in certain circumstances it may be permitted to bury a gentile together with Jews. Some authorities (*Minchat Elazar* 3:8; *Iggerot Moshe*, YD 3:147) were asked about the burial of non-Jewish spouses or non-Jewish children in a Jewish cemetery. In Israel, this question arises regarding the many immigrants from the former Soviet Union whose religious identities are undetermined (*safek Yehudim*). Local Jewish communities and cemeteries have different practices, and these decisions should be made, with great sensitivity, by a local halakhic authority.

The burial of non-Jewish soldiers killed in combat defending the State of Israel has also become a source of controversy. R. Shlomo Goren (1917–1994), Chief Rabbi of the Israel Defense Forces and later the third Ashkenazic Chief Rabbi of Israel (1973–1983), permitted, at least theoretically, burying a non-Jewish soldier in a Jewish military cemetery (*Terumat Ha-Goren* 1:27, 2:79). This discussion is beyond the scope of this *shiur*.

What about those who had not yet completed the process of conversion? R. Chaim Elazar Shapira (1868 –1937), the Munkaczer Rebbe, writes in his *Minchat Elazar* (3:8):

However, we must make clear that if a convert who underwent circumcision but had not yet immersed passes away, it is inconceivable (*lo yisbol ha-da’at*) that he should be buried among non-Jews, as he already accepted upon himself, with *mesirut nefesh*, to enter under the wings of the *Shekhina* in the religion of Israel, with the affliction of being circumcised. God forbid that we should be so cruel to distance him and to bury him among the non-Jews! Rather, he should certainly be buried in a Jewish cemetery.

R. Shapira strongly asserts that this partial convert should be buried in a Jewish cemetery. However, he raises a doubt whether he should be buried eight *amot* from other Jewish graves, as he is not yet a full convert until he immerses.

R. Shlomo Krispin, a rabbinic judge on numerous conversion courts in Israel, relates that former Chief Rabbi of the Israel Defense Forces (2000–2006) R. Yisrael Weiss ruled, based on the ruling of former Sephardic Chief Rabbi, R. Mordechai Eliyahu, that a soldier who expressed his desire to convert or registered for a conversion course – and certainly one who began to observe the *mitzvot* – may be buried in a Jewish military cemetery. R. Krispin (*Mikhtav Shlomo*, pp. 118–120) cites other precedents for this ruling (see, for example, *Chaim Be-Yad* 99).

Contemporary authorities (see *Iggerot Moshe*, YD 1:160, 2:149; *Seridei Esh* 3:100) also discuss the burial of those who underwent non-halakhic conversions. These sensitive questions should be decided by local rabbinic authorities familiar with the specific circumstances and aware of the ramifications of the decision.