

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)

GEMARA KETUBOT

TALMUDIC METHODOLOGY

By: Rav Moshe Taragin

SHIUR #13: GER KATAN

The mishna in Masekhet Ketubot (11a) alludes to a process of converting a gentile child. There is much debate amongst the Rishonim as to the conditions under which we will encourage and even facilitate this conversion. Certainly there are both ideological and socio-historical factors which would dictate the conditions mandating such 'imposed conversion.' However, once we determine interest to enable this conversion, we still must apply a valid mechanism to allow its implementation.

The ensuing gemara cites Rav Huna's explanation as to how this works: "We may convert a gentile katan [minor] through the principle of zakhin le-adam she-lo be-fanav." The principle of zakhin (cited several times in halakha) allows a person to act on behalf of another even without formal appointment - as long as the representation is beneficial. For example, Reuven may pick up and acquire a watch on Shimon's behalf even though Shimon never requested this service (and perhaps never even met Reuven). Since this act works in Reuven's favor, Shimon may represent him. By applying this rule, we may execute geirut on behalf of this gentile katan without his ever having appointed us (as he does not have the requisite maturity to actually appoint an agent), since it is clearly to his benefit to become a Jew. What the gemara does not address, is precisely which part of the geirut process is enabled by zakhin. Generally, zakhin allows the performance of an 'act' necessary to establish a new halakhic state. In the aforementioned situation, Reuven performed the act of kinyan upon a watch that Shimon was unable to pick up due to lack of physical proximity. I might be able to collect money from a person's debtor in a situation in which he physically cannot. In the first instance, the person performs an act of kinyan, whereas in the second, he executes an act of collecting. In both cases, though, a particular action is performed. It is fairly clear that in our instance we will not perform anything physical on behalf of the prospective ger. He will personally immerse in the mikva and will himself undergo mila. In what manner, then, does zakhin apply?

Tosafot in Sanhedrin present a simple answer to this question: this geirut is not a product of zakhin at all!! The ger katan is, indeed, personally performing the stages of geirut. Zakhin was cited by the gemara in Ketubot only in a very general sense. Had it not been for the general halakhic concept of zakhin, we would not have taken the initiative and imposed this fate upon the katan. Given this concept, we are comfortable authoring unilateral decisions for others who stand to benefit from them. Ultimately, though, zakhin is not supporting this geirut; instead, it is performed personally, without any need for the zakhin mechanism.

Though this approach is certainly appealing, it invites a basic question. The gemara in Ketubot cited Rav Yosef as saying that upon reaching the age of thirteen, the ger has the right to repeal the conversion. Though this halakha poses certain practical concerns, it is eminently logical given the basic role of zakhin in this geirut. Whenever zakhin is employed, the beneficiary has the right of refusal upon discovering the process. In the above example, when Shimon discovers that Reuven acquired a watch for him, he has the immediate right to refuse the favor and rescind the transaction. Hence, if zakhin were responsible for this geirut, it would be understandable that the ger, upon reaching maturity, may employ the right of refusal. But if, as Tosafot claim, zakhin is not responsible, how do we justify Rav Yosef's halakha? Tosafot respond to this question with a very creative and provocative answer. Even though the essential geirut occurred through the personal immersion in the mikva and the personal process of mila, the acceptance of mitzvot did not occur; it takes place only when the ger reaches the age of thirteen. Rav Yosef was not describing a zakhin-based right of refusal. Instead, he was describing the performance of the missing and final piece of the puzzle of geirut - the acceptance of mitzvot. Practically, there might be an important difference between the classic understanding of Rav Yosef and Tosafot's perspective. Typically, zakhin is canceled only if the favor is outrightly rejected. Hence, according to the standard version of Rav Yosef, the ger remains Jewish unless he immediately and actively rejects the conversion. By contrast, Tosafot might require a more active and cognitive acceptance of mitzvot on the part of this ger. Non-rejection may not be sufficient to constitute active acceptance of mitzvot.

What makes Tosafot's position so intriguing is that they envision a form of geirut without formal acceptance of mitzvot. During the period between his conversion and his maturity, this ger is Jewish, having undergone mila and

tevila but without having accepted any mitzvot. What type of Judaism can exist without acceptance of, and obedience to, mitzvot? Can we claim that since he is still a minor and not legally bound by mitzvot, his geirut does not have to incorporate the acceptance of mitzvot?

There is a famous position staked by the Rambam (and echoed by the Ritva in Ketubot 11a) that the ceremony of informing the ger of a cross-section of mitzvot (as described by the gemara in Yevamot 47a) is non-essential; if omitted, it does not obstruct the geirut. However, most understand that the Rambam still requires basic acceptance of mitzvot. A ger who wants to be Jewish without any intention of fulfilling mitzvot is missing the basic reality of Judaism - the fusion between faith and obedience, between creed and behavior. The Rambam and the Ritva merely claim that the CEREMONY of informing the ger (during his immersion in the mikva) of sample mitzvot can be omitted be-di'eved. However, a sincere will to perform mitzvot is indispensable to every geirut. Yet, Tosafot allow a ger katan to delay this aspect of his geirut until he reaches the legal age of mitzvot.

Perhaps, we can identify two independent aspects of geirut. Rabbi Soloveitchik zt"l, in his famous essay "Kol Dodi Dofek," considered geirut as comprised of a nationalistic element as well as a religious one. Usually, both factors occur simultaneously, and the attempt at partial conversion may have no significance whatsoever. However, in the case of the conversion of a minor, who is not obligated by mitzvot, the two may be temporarily separated. While still a minor, the conversion may exhaust itself in becoming part of the Jewish nation. This can be accomplished without accepting mitzvot. This partial and unnatural state terminates when the child reaches the age of maturity, which lends itself to the acceptance of mitzvot and a complete conversion. At that point, if the ger decides not to accept the religious obligations of Judaism, his national affiliation to the Jewish People dissolves as well, since the unnatural state of partial Judaism is no longer mandated. On the other hand, he can choose to commit himself to mitzvot, thereby completing his geirut.

Tosafot in Ketubot take a diametrically opposite approach. They believe that strict zakhin is applied and vital toward the success of this geirut. In fact, the entire Tosafot is dedicated to solving the problem of applying zakhin to an individual who is both a katan and a gentile. Tosafot throughout shas believe that zakhin is an offshoot of classic shelichut. As such, it should apply only to shelichut candidates. Two factors potentially undermine this would-be

convert's candidacy for shelichut and, by extension, for zakhin: he is both a minor and a gentile. Overcoming these obstacles is a difficult task and exacts a heavy toll. Tosafot is forced to concede that zakhin only operates at a rabbinic level for this ger katan, and hence the geirut is valid only according to rabbinic law. One attitude, though, emerges quite clearly from Tosafot: they felt that literal zakhin underlies this form of geirut. This position merely sharpens our original question: what aspect of geirut requires zakhin? Isn't the child himself immersing and undergoing mila?

One possible solution would be that zakhin allows others to accept mitzvot on behalf of the katan. As mentioned earlier, acceptance of mitzvot is an indispensable component of the geirut process. Presumably, the minor is incapable of weighing this decision. Perhaps we may accept mitzvot on his behalf through the magic of zakhin.

Another, slightly different scenario would suggest that aside from the actions necessary to become a ger (mila, tevila and acceptance of mitzvot), the convert must also generate 'da'at,' or creative intent, to produce his ultimate state of being a Jew. Rav Chayim Brisker described certain halakhic states that can be achieved only through creative intent coupled with ceremonial actions. For example, kiddushin is a combination of presenting money, reciting a formula and actively creating that state through creative will. As a katan is incapable of this 'da'at,' we might claim that through zakhin we supply this creative intent. This would, of course, assume that geirut is the type of halakhic transformation which indeed requires that da'at of which the katan is incapable.

Both of these solutions work upon the premise that there are aspects of geirut that cannot be achieved through purely physical actions. Though the katan can immerse and undergo mila, he may not be able to accept mitzvot and he may not be able to generate the type of halakhic will necessary to achieve the desired state. These missing ingredients are provided by us through the power of zakhin.

This suggests a certain novelty about zakhin. Typically, we apply zakhin to authorize the performance of an ACTION on behalf of a beneficiary. Zakhin, if applied to geirut, allows decisions to be reached, and perhaps da'at to be supplemented. This allowance suggests a much broader view of zakhin, in fact one that may not stem from shelichut. Shelichut might authorize

execution of certain actions, but zakhin allows decisions to be reached and mental da'at to be provided. It would certainly pull zakhin away from the category of shelichut and toward a more independent and powerful definition.

Possibly, this gemara deals with a very specific application of zakhin and should not be employed toward a global definition of zakhin. The gemara in Kiddushin (42a) initially suggests that zakhin is derived from the verse “nasi echad nasi echad” (Bemidbar 34, 18), which describes the role of the tribal leaders in facilitating the division of Eretz Yisrael and acquiring the specific portions on behalf of the members of their respective tribes. This suggestion is rejected because these leaders had the right to acquire portions that did not necessarily correspond to the preferences of a specific tribal member. The gemara concludes that this verse teaches us the institution of apotropus - a guardian appointed by beit din to initiate several decisions on behalf of defenseless minors. Many commentators understood that the gemara totally rejects the initial suggestion and replaces it with the suggestion of apotropus. However the Ramban in Gittin (52a) claims that apotropus is itself a form of zakhin (see also Rashi, Kiddushin 42a s.v. ela). In other words, the conclusion of the gemara confirms that zakhin is derived from “nasi echad” insofar as the guardian is given the ability to act on behalf of the minor. However, in this unique form, the guardian is awarded the freedom to decide what is beneficial for his charge.

According to this reading of the gemara in Kiddushin, we can interpret our sugya as based on the institution of apotropus. This is clearly the impression given by Rashi who wrote:

"Through the decision of beit din - three [men] 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 Meiri is even more explicit:

"A gentile minor who comes before Jews and demands that they convert him... and the father does not come to convert, in which case his son converts with him, by the father's decision... he is immersed through the decision of beit din, meaning, those who come to convert him 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 INTO A FATHER, TO BRING HIM INTO THE COVENANT AND SACRED FAITH."

Apparently, a father or guardian is required in order to affect the conversion of a minor who lacks the maturity necessary to personally make such critical decisions. Therefore, the halakhic institution employed to facilitate the geirut is apotropus (which is a form of zakhin), which empowers a guardian to act or decide on behalf of a minor. (See the comments of the Shakh in his sefer, Nekudat Ha-kessef to Yoreh De'ah (305)). Based on this understanding, the requirement of zakhin to facilitate the geirut of a katan is understood.

Sources for the next shiur:

1. Mishnayot, Ketubot 1:2-4; Gemara 11b - "Amar Rav Yehuda... samkhi."
2. Yerushalmi 1:3, until "Ve-rabbanan amrin batel chinna"; Tosefot s.v. u-Shemuel; Tosefot Rid - 'Itemar... be-dini."
3. Tosefot 39a s.v. ta'ama mai [until "yeish le-haknas"]; Kiddushin 9b, "Amar lei Abayei... tarti."
4. Rambam Ishut 1:1-4.

Questions:

1. What underlies the dispute between Rabbi Meir and the Chakhamim regarding the ketuba of a mukat etz?
2. What ketuba does a woman receive if she had previously had relations "she-lo ke-darka"? Does this hinge on the debate between Rabbi Meir and the Chakhamim?
3. What ketuba does a woman receive if she had been previously married but widowed before engaging in relations? Why?
4. According to Tosefot, wherein lies the point of comparison between a mukat etz and a woman who had previously engaged in relations with a minor?