

What Does It Take to Become a Jew? - The Conversion Controversy in Modern Jewish Law – Lesson 2

Conversion for Ulterior Motives

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By the very nature of things, the process of conversion begins with the decision of a non-Jewish person to convert. This process begins as a personal one, a matter of the soul, which drives a person to choose to convert. Are a person's motives important? Are there motives which are illegitimate? In this lesson, we will examine a critical Talmudic debate on this subject; note how the Talmudic debate is codified in the halacha and then survey a variety of opinions on the subject in the response literature.

(Responsa is the English name for what is known in Hebrew as שאלות ותשובות – Questions and Answers – the legal literature of the sages throughout ages, where sages were asked questions and responded with answers. This type of Jewish legal literature corresponds to case law in general legal literature.)

I say, we will survey the subject because the literature on this particular question is vast. I will bring some representative answers to give us some perspective.

Before we get started, I want to introduce the problem. If religious belief concerns itself with pure and loyal thoughts and attachment, then the very idea of converting for motives other than attachment to the pure belief would seem problematic. This is the problem that the sages had to (and have to) contend with. The Talmudic discussion, beginning with the Mishnah is a colorful one. **I am now going to ask you to study this sugya (Talmudic argument) which can be found separately in Hebrew, English which questions for guidance.**

The Mishnah, there talks of someone who converted for who there were rumors that he cohabited with said woman. The marriage, according to the Mishnah, is prohibited on account of the rumors. The Talmud, commenting on this Mishnah, debated whether someone can convert where ulterior motives are suspected. The Talmud presents two schools of thought: the first that of Rabbi Nehemiah who asserts that conversions in such circumstances should be prohibited; the other opinion is that of Rav who holds that such conversions while prohibited before the fact would be acceptable after the fact.

Discussion Questions

1. Speculate on the ideological rationale behind R' Nehemiah's position? Rav's position? What is the modern relevance of these two positions? Whose position do you side with and why?
2. Should a legal tradition have לכתחילה and בדיעבד positions? Do they serve an important purpose or not?

3. Regarding the Mishnah and the Talmud's explanation for the psak (the halachic decision) in the Mishnah (step 6), what rumor is the Talmud worried about? How conscious of the significance of rumor as a legal entity should a religious legal tradition be?

Maimonides, when he codifies the results of this sugya, does so as follows (Mishnah Torah Laws of Forbidden Relationships 13:14-16):

הלכה יד

אל יעלה על דעתך ששמשון המושיע את ישראל או שלמה מלך ישראל שנקרא ידיד יי' נשאו נשים נכריות בגיותן, אלא סוד הדבר כך הוא, שהמצוה הנכונה כשיבא הגר או הגיורת להתגייר בודקין אחריו שמא בגלל ממון שיטול או בשביל שררה שיזכה לה או מפני הפחד בא להכנס לדת, ואם איש הוא בודקין אחריו שמא עיניו נתן באשה יהודית, ואם אשה היא בודקין שמא עיניה נתנה בבחור מבחורי ישראל, אם לא נמצא להם עילה מודיעין אותן כובד עול התורה וטורח שיש בעשייתה על עמי הארצות כדי שיפרשו, אם קבלו ולא פירשו וראו אותן שחזרו מאהבה מקבלים אותן שנאמר ותרא כי מתאמצת היא ללכת אתה ותחדל לדבר אליה.

Do not let it enter your mind that Samson the redeemer of Israel or Solomon King of Israel who was called friend of God married non- Jewish women while they were non-Jews, rather the secret of these things is, that it is a proper mitzvah, that when a male or female convert come to convert, one checks after them lest perhaps it is on account of money he will take or for position that he will merit or out of fear that he comes to convert, and if he is a man then one checks after whether he has his eyes on a Jewish women or if it is a woman perhaps she has her eyes on a Jewish man. If one does not find a pretense, one informs them of the weight of the burden of Torah and the burden of its performance on people so that they might withdraw. If they accept and don't withdraw and see that they return out of love then accept them, as it is written: "And she (Naomi) saw how determined she (Ruth) was to go with her, she ceased to argue with her." (Ruth 1:18)

הלכה טו

לפיכך לא קבלו בית דין גרים כל ימי דוד ושלמה, בימי דוד שמא מן הפחד חזרו, ובימי שלמה שמא בשביל המלכות והטובה והגדולה שהיו בה ישראל חזרו, שכל החוזר מן העכו"ם בשביל דבר מהבלי העולם אינו מגירי הצדק, ואעפ"כ היו גרים הרבה מתגירים בימי דוד ושלמה בפני הדיוטות, והיו ב"ד הגדול חוששין להם לא דוחין אותן אחר שטבלו מכ"מ ולא מקרבין אותן עד שתראה אחריתם.

This is why converts were not accepted in the days of David and Solomon; in the days of David lest they converted out of fear, and in the days of Solomon, lest they convert for the sake of the position, gratuities and power that came with being a Jew. For a non-Jew who converts for the sake of the vanities of the world is not a righteous convert. And though many converted in the days of David and Solomon, they converted before suspect courts, and the High Court suspected them but did not revoke their conversions since after all they immersed themselves but they did not draw them near until after they checked after them.

הלכה טז

ולפי שגיר שלמה נשים ונשאן, וכן שמשון גייר ונשא, והדבר ידוע שלא חזרו אלו אלא בשביל דבר, ולא על פי ב"ד גירום חשבן הכתוב כאילו הן עכו"ם ובאיסורן עומדין, ועוד שהוכיח סופן על תחלתן שהן עובדות כו"ם שלהן ובנו להן במות והעלה עליו הכתוב כאילו הוא בנאן שנאמר אז יבנה שלמה במה.

And since Solomon converted women and married them and Samson converted women and married them, and it is known that these women only converted for ulterior motives, and they converted

without coming before a court, Scripture counted them as if they were not Jews and were therefore prohibited. And there later acts proved regarding the initial acts that they remained committed to their idolatries for they built for themselves altars and Scripture accounted him as if he built them, as it says: "The Solomon built an altar.

I first want to say a word or two above Rambam's historiography. Yes, he imposes upon the biblical stories rabbinic sensibilities which are anachronistic. He simply cannot imagine a reality in biblical times which did not adhere to how the rabbis saw the rabbinic tradition. With that said, let's get down to business.

Questions

1. What legal conclusions does Rambam draw from the Talmudic discussion that we just learned?
2. Whose opinion from the Talmud does he adopt?
3. Does he adopt a before the fact or after the fact position?
4. What do you think Rambam would decide if a case of conversion for the sake of marriage would come before him?

Now that we have seen Rambam in action, our first teshuva on the subject will be a case which was brought before him (Maimonides Responsa 211):

שאלה מה יאמר אדוננו בדבר בחור, שקנה שפחה יפת תואר והיא אצלו בחצרו, והחצר גדולה והוא דר עם אשת אביו ושלוש בנותיה הקטנות. נפלו דין ודברים בינו ובין אחיו. תבעו (האח) אל השופט ואירעו ביניהם דין ודברים הרבה. אחר כך הלשין אחיו אותו אל השופט, שקנה שפחה נוצריה וגיירה ושאלה השופט, מה היא, אמרה: יהודיה. הציע לה הפשעות וסרבה ואמרה: אני, יהודיה בת יהודיה אני. החזיר אותה לו השופט ולקחה לביתו ורננה עליו העיר והיא עכשו נשאה בביתו. האם צריכים בית דין להוציאה מביתו משום יחוד, אף על פי שלא יתיחד עמה, משום שנאמר +במדבר ל"ב, כ"ב, פ"ן+ והייתם נקיים מ"י ומישראל, או נאמר, משום שאשת אביו עמו בחצר, אינו חייבים להוציאה מאצלו. ואם בית דין צריכים להוציאה, מאיזה טעם תהיה הוצאתה, לפי שלא מצינו שאסרו אלא יחוד פנויה ויחוד בגויה, ומאיזה טעם נאסור ישיבתה בביתו? והאם לה דין יפת תואר אם לאו? יורנו רבינו ושכרו כפול מן השמים.

Question: What would our master say with regard to young man who bought a non-Jewish slave woman (perhaps a war captive) and she dwells with together in him in the same courtyard. It is a large courtyard and he dwells there together with his father's wife and her three small daughters. He was involved in a legal dispute with his brother. The brother made a claim before a non-Jewish judge and there was a big dispute between them. Afterwards the brother denounced his brother to the judge, that had purchased a Christian slave woman and converted her (which was forbidden). The judge asked her: 'What are you?' and she answered: 'I am a Jewess'. The judge offered her to admit that she was a Moslem or a Christian. She refused and said: 'I am a Jewish the daughter of a Jewess. The judge returned her to him and he took her to his house and the city was full of rumors regarding him and she now remained in his house. Should the Beit Din remove her from his house on account of cohabitation, even

though he has not cohabited with him,, on account of what is written: “you shall be clean before God and before Israel” (Numbers 32:22) Or should be say that since his father’s wife lives with him in the courtyard, that we do not need to remove her from him? And if the Beit Din needs to remove her, on account of what reason should it remove her, for we find that there is no prohibition other than cohabiting with an unmarried woman and cohabiting with a non-Jewess? For what reason is she prohibited from dwelling in his house? Do the laws of “Yefat toar” apply? Teach us our rabbi and his reward will be double from Heaven.

התשובה: [אין לה דין יפת תואר], לפי שזאת נתייחדה בדין תורה, משום שהותר ליקחה לאשה באותה העת, ר"ל בעת הכבוש, כשהיא בגיותה, מפני שלא דברה תורה אלא כנגד היצר +קידושין כ"א ב'+ כמו שהותר להם באותה העת לאכול האסורים +חולין י"ז א' והג' שלפני: כתלי דחזירי, ואין להקיש על זה. וצריכים בית דין אחר זאת השמועה אשר לא טובה +שמואל א' ב' כ"ד, ועי' קידושין פ"א א' ופי' המשניות שם וה' סנהדרין פכ"ד ה"ה, ועי' ת' קי"א+ (לכפותו) להוציאה או ישחררה וישאנה לאשה, אעפ"י שיש בזה כעין עברה, לפי שהנטען על השפחה ונשתחררה אסור לו לישאנה לכתחלה, לפי שכבר פסקנו פעמים אחדות בכגון אלו המקרים, שישחררה וישאנה. ועשינו זאת מפני תקנת השבים ואמרנו מוטב שיאכל רוטב ולא שומן עצמו. וסמכנו על דבריהם עת לעשות לי"י הפרו תורתך. ומסייעין לו לישאנה בעדינות וברוך, ויקבעו לו מועד לישאנה או להוציאה, כמו שעשה עזרא (עזרא י:י) והא-להים יתעלה יתקן קלקולנו, כמו שהבטיח ואמר ואסירה כל בדילך (ישעיה א:כה) וכתב משה.

The answer: The laws of “Yefet Torah” where a woman is take in war do not apply since at such a time she would be permitted to be taken, namely in time of conquest, a non-Jewess since the Torah legislated that law to contend with the evil impulse just like it is permitted to eat forbidden foods in times of war.... And one should not draw an equation [between our case and the above discussion] And a beit din needs after this rumor [to know] that it is not good to force him to remove her, or he should free her and marry her, even though in doing so there is a sort of sin, since when there is rumor regarding the freeing of a slave woman and freeing her, that it is prohibited to marry her before the fact. As I have already decided in a number of similar cases, that he should free her and marry her. And I did this based on the principle of “takanat shavim – measure to encourage repentance”; and we say it is better to eat gravy that to eat forbidden fat itself; and we depended on the principle of “it is a time to do for God by abrogating his law. We therefore gently encourage him to marry her, and set a date for him to either marry her or release her, just as Ezra did (Ezra 10:10), and may God may He be exalted repair our corruptions, as He has promised and said: “I will remove your dross (Isaiah 1:25). Thus wrote Moshe.

Rambam’s teshuva is perhaps the most important lenient opinion. It is radical!

- Summarize for yourself the issues in the question that is asked.
- 1. The first is the issue of “yefat toar” – the captive woman talked about in Deuteronomy 21:10-14. The questioner wants to identify the slave woman with the “yefat toar”. Rambam immediately rejects the application of this concept to the question at hand.

2. The more important issue here is how this case impacts on the Mishnah and Talmud that we have studied in this lesson. Should this slave woman be removed from her owner's house? Or should she be converted and married to her master?

The Rambam's answer is fascinating. He realizes that he is "breaking the law" in what he is advocating.

- If he advocates converting the woman, what in the Mishnah and Talmud that we have studied together in this lesson has he transgressed?

Rambam gives three reasons to justify his action:

1. Takanat Hashavim – an enactment to help the penitent.
 2. Better to eat the gravy than to eat the forbidden fat itself.
 3. One must abrogate the law in order to save the law.
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1. Takanat Hashavim, also called Takanat Hamareish originally refers to a case where someone has stolen a roof beam and built it into their house. Normally when someone has stolen something, they are obligated to return the stolen item. In the case of the beam, the normal person would never destroy his or her house to return the beam. In order to encourage the penitent, the rabbis decreed that in such a case the person could compensate monetarily. In our case, since the person would be unlikely under these circumstances to give in and remove the woman from his house, Rambam decided to act in a way which would encourage the person to fix the situation he was in.
 2. In the tractate Yoma, it discusses the case where a person (a pregnant woman) has a dangerous craving to eat something forbidden. (They thought cravings as this sort were medically dangerous.) Their advice was that it was better to try to feed the person the gravy rather than the forbidden substance itself. Hopefully this would do the trick. In our case, Rambam is asserting that it is better to convert the woman and for the man to marry her than for him to cohabit with a non-Jewish woman.
 3. This is Rambam's most explosive reason. The Talmud takes a verse from Psalms which according to its plain meaning means: 'It is a time to act for the Lord, for they have violated your teaching' and reinterpreted it to mean: "It is a time to abrogate Your law in order to protect your teaching". From this interpretation the rabbis understood that there will be times that in order to save the law, one must break the law. This is very radical. Rambam is using it to break the ruling in the Talmud in order to convert the woman and allow her to marry the man.

Questions to Ponder

1. Compare Rambam's rulings in his legislative work, the Mishnah Torah (above) to his ruling in the in his teshuva.

2. The Rambam's teshuva represents the lenient school regarding the question of conversion for ulterior motives. What makes it lenient?
3. What are the virtues of his teshuva? What are its disadvantages?
4. What drives his response? Is it policy driving halacha or halacha driving policy?

We will pause here in this lesson and take up other opinions on this question in our next lesson. Stay tuned.