

## The Conversion Controversy in Modern Jewish Law – Lesson 6

“The Role of the Beit Din”

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In the second lesson, we talked about conversion for ulterior motives. Regarding this question (Yevamot 24a), the Tosaphot (some of the medieval French-German commentators) made a very interesting remark regarding the rather black and white answers presented in the Talmud:

What about what we learn in Shabbat 31a where one man came before Hillel and said convert me so that I might become the high priest? Hillel was certain that in the end the conversion would be down for the sake of heaven. A similar episode is recorded in Menachot 44a where a female convert came before Rabbi and said convert me so that I can marry this student.

This passage brings to a fore the major role played by the beit din in the process of conversion. Before we examine the role of judicial discretion which we noted above, let's take a closer look at the sources which serve as the foundation for the role of the beit din in the process.

When a beit din performs a conversion, what is the role it plays in the process? Is it acting in a judicial role? Are the judges acting as witnesses? Who is eligible to be a member of a beit din for conversion? Must its members be rabbis or can lay people serve as well?

Two major Talmudic sources speak to this question, one a baraita and the other a meimra. The baraita (Yevamot 47a) seems to establish the role of the beit din:

ת"ר: (דברים א:טז) 'ושפטתם צדק בין איש ובין אחיו ובין גרו' - מכאן א"ר יהודה: גר שנתגייר בב"ד - הרי זה גר, בינו לבין עצמו - אינו גר.

Our Rabbis taught: ‘And judge righteously between a man and his brother, and the proselyte that is with him’ (Deuteronomy 1:16) ; from this text did R. Judah deduce that a man who becomes a proselyte in the presence of a *Beth din* is deemed to be a proper proselyte; but he who does so privately is no proselyte.

### Questions to Consider

1. The first part of this passage quotes a verse from Deuteronomy 1:16. What is the original meaning of this verse? What is the original meaning of the word “גר”? How is it understood by the sages in this passage?

2. Now that we have determined that this passage is being used to learn rules concerning conversion, what do the sages learn from the word “ושפטתם – and you shall judge”?
3. Can a person convert outside of a beit din?

Similarly, we find the following maimra in the name of Rabbi Jochanan (Yevamot 46b):

אמר רבי חייא בר אבא אמר רבי יוחנן: גר צריך ג', משפט כתיב ביה

Said Rabbi Hiyya bar Aba, said Rabbi Jochanan: A convert requires three, since the word “mishpat – judgment” (Numbers 15:16) is written regarding it.

### Questions to Consider

1. Here, too, look up the verse from the Torah. What is its original meaning?
2. How is it being used here?
3. What are the bottom lines of these two passages?

These two passages would seem to indicate that the Talmud sees the bet din's role in the process of conversions as a legal one, namely, the three participants are acting in the role of a court. The question then becomes for what part of the process of conversion, said court is necessary. In addition, we have yet to determine whether it is necessary for this court to be made up of “experts” or rabbis or may it be made of lay people as well. This question is taken up in another passage from the Talmud.(Yevamot 46b):

אמר רבה: עובדא הוה בי רבי חייא בר רבי, ורב יוסף מתני: רבי אושעיא בר רבי, ורב ספרא מתני: ר' אושעיא בר' חייא, דאתא לקמיה גר שמל ולא טבל, א"ל: שהי כאן עד למחר ונטבלינך. ש"מ תלת: ש"מ גר צריך שלשה, וש"מ אינו גר עד שימול ויטבול, וש"מ אין מטבילין גר בלילה. ונימא: ש"מ נמי בעינן מומחין! דלמא דאיכלעו.

Rabbah stated: It happened at the court of R. Hiyya b. Rabbi — (and R. Joseph taught: R. Oshaia b. <sup>40</sup>Rabbi; <sup>41</sup>and R. Safra taught: R. Oshaia b. Hiyya) — that there came before him a proselyte who had been circumcised but had not performed the ablution. The Rabbi told him, 'Wait here until tomorrow when we shall arrange for your ablution'. From this incident three rulings may be deduced. It may be inferred that the initiation of a proselyte requires the presence of three men; and it may be inferred that a man is not a proper proselyte unless he had been circumcised and had also performed the prescribed ablution; and it may also be inferred that the ablution of a proselyte may not take place during the night.

Let it be said that from this incident it may also be inferred that qualified scholars are required! — Their presence might have been a mere coincidence.

The anecdotal piece from is brought to teach a number of laws concerning conversion. Towards the end of the passage the Talmud asks whether one can infer from this passage that the beit din must be composed of sages. Ultimately since this is not stated explicitly in the story the sages conclude that one could just as easily infer the three sages involved in this story were there on account of happenstance and that one cannot necessarily infer from this passage the court must be made up exclusively of sages.

Now that we have reviewed the material as it is found in the Talmud, let's see how these passages from the Talmud play themselves out in legal tradition. We will examine how the law is presented in the Shulchan Aruch Yoreh Deah 368:3-4:

### סעיף ג

כל ענייני הגר, בין להודיעו המצות לקבלם בין המילה בין הטבילה, צריך שיהיו בג' הכשרים לדון, וביום. מיהו דוקא לכתחלה, ט (ג) אבל בדיעבד אם לא מל או טבל אלא בפני ב' (או קרובים) (הגהות מרדכי) ובלילה, אפילו לא טבל לשם גרות, אלא איש <ח> שטבל לקריו ואשה שטבלה לנדתה, הוי גר ומותר בישראלית, טו] <ט> חוץ מקבלת המצות שמעכבת אם אינה ביום ובשלושה. ולהרי"ף ולהרמב"ם, אפילו בדיעבד שטבל או מל בפני שנים או בלילה, מעכב, ואסור בישראלית, אבל אם נשא ישראלית (ה) והוליד ממנה בן, לא פסלין ליה.

All aspects of conversion, be it informing the convert of the commandments in order to receive them, circumcision or ritual immersion require three who are capable of judging, and must be during the day. However, this refers to ab initio (beforehand) [requirements], but after the fact, if he had been circumcised and immersed before two or at night, even if the immersion was for a purpose other than conversion, for instance a man for an emission or woman who immersed herself after menstruation, the person would be a convert and permitted to marry. However, the acceptance of the commandments is impeded if it is not done during the day and with three. Rabbi Isaac Alfasi and Maimonides, however, hold that even after the fact if immersion or the circumcision was done before two or at night, it impedes [the conversion] and the convert is prohibited to marry, but if such a convert does marry a Jewish woman and he sires a son from her, we do not render the son not Jewish.

### סעיף ד

הואיל וטבילת גר צריך בית דין של ג', אין מטבילין אותו יג בשבת ולא בי"ט יד ולא בלילה. ואם טבל, הרי זה גר.

Since the immersion of a convert requires a court of three, one should not do the immersion on Shabbat or Yom Tov nor at night. But if he immersed at night, he is a convert.

### Things to ponder

1. Compare these formulations of the law with the above passages from the Talmud. Draw conclusions regarding the formulation of the law from the Talmud.
2. On what points is the law drawn directly from the Talmud and on what points is there dispute?
3. Does the law treat all aspects of the conversion as legal functions? Is this opinion unanimous?

In the end though, the most critical role that the beit din plays regards the assessment of potential converts and their acceptance as converts which brings us to the stories mentioned at the beginning of this lesson. These two episodes illustrate cases where the rabbis involved decided cases in ways which seem to contradict presumed law. In order to get a handle on this problem and to understand better the place of the beit din (court) in the process of conversion, we should examine both of these episodes:

### שבת לא:א

תנו רבנן: מעשה בנכרי אחד שבא לפני שמאי, אמר לו: כמה תורות יש לכם? אמר לו: שתיים, תורה שבכתב ותורה שבעל פה. אמר לו: שבכתב - אני מאמינך, ושבעל פה - איני מאמינך. גיירני על מנת שתלמדני תורה שבכתב. גער בו והוציאו בנזיפה. בא לפני הלל - גייריה, יומא קמא אמר ליה: א"ב ג"ד, למחר אפיך ליה. אמר ליה: והא אתמול לא אמרת לי הכי? אמר לו: לאו עלי דידי קא סמכת? דעל פה נמי סמוך עלי!

שוב מעשה בנכרי אחד שבא לפני שמאי, אמר לו: גיירני על מנת שתלמדני כל התורה כולה כשאי עומד על רגל אחת. דחפו באמת הבנין שבידו. בא לפני הלל, גייריה. אמר לו: דעלך סני לחברך לא תעביד - זו היא כל התורה כולה, ואידך - פירושה הוא, זיל גמור.

שוב מעשה בנכרי אחד שהיה עובר אחורי בית המדרש, ושמע קול סופר שהיה אומר +שמות כח+ ואלה הבגדים אשר יעשו חשן ואפוד. אמר: הללו למי? אמרו לו: לכהן גדול, אמר אותו נכרי בעצמו, אלך ואתגייר, בשביל ששימוני כהן גדול. בא לפני שמאי, אמר ליה: גיירני על מנת שתשימי כהן גדול. דחפו באמת הבנין שבידו. בא לפני הלל - גייריה. אמר לו: כלום מעמידין מלך אלא מי שידוע טכסיסי מלכות? לך למוד טכסיסי מלכות. הלך וקרא, כיון שהגיע +במדבר א+ והזר הקרב יומת אמר ליה: מקרא זה על מי נאמר? אמר לו: אפילו על דוד מלך ישראל. נשא אותו גר קל וחומר בעצמו: ומה ישראל שנקראו בניי למקום, ומתוך אהבה שאהבם קרא להם +שמות ד+ בני בכרי ישראל - כתיב עליהם והזר הקרב יומת, גר הקל שבא במקלו ובתרמילו - על אחת כמה וכמה! בא לפני שמאי, אמר לו: כלום ראוי אני להיות כהן

גדול? והלא כתיב בתורה והזר הקרב יומת! בא לפני הלל, אמר לו: ענותן הלל, ינחו לך ברכות על ראשך שהקרבתני תחת כנפי השכינה. לימים נדווגו שלשתן למקום אחד, אמרו: קפדנותו של שמאי בקשה לטורדנו מן העולם, ענותנותו של הלל קרבנו תחת כנפי השכינה.

Our Rabbis taught: A certain heathen once came before Shammai and asked him, 'How many Torah<sup>6</sup> have you?' 'Two,' he replied: 'the Written Torah and the Oral Torah.'<sup>7</sup> 'I believe you with respect to the Written, but not with respect to the Oral Torah; make me a proselyte on condition that you teach me the Written Torah [only]. [But] he scolded and repulsed him in anger. When he went before Hillel, he accepted him as a proselyte. On the first day, he taught him, Alef, beth, gimmel, dalet; the following day he reversed [them] to him. 'But yesterday you did not teach them to me thus,' he protested. 'Must you then not rely upon me? Then rely upon me with respect to the Oral [Torah] too.'

On another occasion it happened that a certain heathen came before Shammai and said to him, 'Make me a proselyte, on condition that you teach me the whole Torah while I stand on one foot.' Thereupon he repulsed him with the builder's cubit which was in his hand. When he went before Hillel, he said to him, 'What is hateful to you, do not do to your neighbour: that is the whole Torah, while the rest is the commentary thereof; go and learn it.'

On another occasion it happened that a certain heathen was passing behind a *Beth Hamidrash*, when he heard the voice of a teacher<sup>14</sup> reciting, And these are the garments which they shall make; a breastplate, and an ephod. Said he, 'For whom are these?' 'For the High Priest,' he was told. Then said that heathen to himself, 'I will go and become a proselyte, that I may be appointed a High Priest.' So he went before Shammai and said to him, 'Make me a proselyte on condition that you appoint me a High Priest.' But he repulsed him with the builder's cubit which was in his hand. He then went before Hillel, who made him a proselyte. Said he to him, 'Can any man be made a king but he who knows the arts of government? Do you go and study the arts of government!'<sup>16</sup> He went and read. When he came to, and the stranger that cometh nigh shall be put to death, he asked him, 'To whom does this verse apply?' 'Even to David King, of Israel,' was the answer. Thereupon that proselyte reasoned within himself a *fortiori*: if Israel, who are called sons of the Omnipresent, and who in His love for them He designated them, Israel is my son, my firstborn, yet it is written of them, 'and the stranger that cometh nigh shall be put to death': how much more so a mere proselyte, who comes with his staff and wallet! Then he went before Shammai and said to him. 'Am I then eligible to be a High Priest; is it not written in the Torah, 'and the stranger that cometh nigh shall be put to death?' He went before Hillel and said to him, 'O gentle Hillel; blessings rest on thy head for bringing me under the wings of the *Shechinah*!' Sometime later the three met in one place; said they, Shammai's impatience sought to drive us from the world, but Hillel's gentleness brought us under the wings of the *Shechinah*.

While the intention of these Hillel/Shammai stories is didactic, namely, their purpose is to teach a lesson in behavior, the Tosaphot saw in Hillel's behavior an example of how a bit din operates.

### **Things to Consider**

1. The Tosaphot see in these stories an indication of the capacity of a beit din to exercise judicial discretion. Rabbi Joseph Karo learns from this:

ומכאן יש ללמוד דהכל לפי ראות עיני בית דין.

And from here there is to learn: Everything is according to the discretion of the court  
(literally: according to the sight of the court)

Describe how that is indicated in the above stories.

2. Use these sources to construct how you see the role of the beit din in the process of conversion. What would you look for in a convert?