YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**"My Children have Defeated Me"**

**Fundamental questions in the study of the Oral Law**

**Rav Amnon Bazak**

**Shiur #36: Chapter Six (1)**

**The Plain Meaning of the Mishna and Its Interpretation in the**

**Gemara**

**I. Introduction**

Anyone who studies Talmud often will encounter a noticeable gap between the simple understanding of a Mishna or other Tannaitic source and the way it is interpreted by the Gemara, called the *ukimta* – the specification of a (class of) case(s) in which a particular law applies.[[1]](#footnote-1) I will illustrate this phenomenon with several examples:

1. When someone has information associated with a monetary claim and the affected person demands that he testify on his behalf, but the witness denies having such knowledge and takes a false oath to that effect – referred to as an “oath of testimony” – he becomes obligated to bring a guilt-offering:

How so the oath of testimony? If one said to two [persons]: Come and bear testimony for me; [and they replied:] We swear we know no testimony for you; or they said to him: We know no testimony for you, and he said: I adjure you, and they said, Amen – they are liable. (*Shevuot* 4:3)

The Mishna then states:

If both [persons] denied [knowledge] together, they are both liable; if one after another, the first is liable, and the second is exempt. If one denied, and the other admitted, the one who denied is liable. If there were two sets of witnesses, and the first denied, and then the second denied, they are both liable, because the testimony could be upheld by [either of] the two. (*Shevuot* 4:4)

It seems from a simple understanding of the Mishna that if one of the two witnesses has already denied knowledge, and the second witness denied only afterwards, the second witness is exempt because his testimony would no longer have been useful, since two witnesses are necessary for the claim to be accepted. On the other hand, if there were "two sets of witnesses," then even if the first set denied knowledge, the witnesses comprising the second set are still liable if they too denied knowledge; they could have upheld the testimony even without the first set, so their refusal to testify has significance. The conclusion that arises from this understanding of the Mishna is that in order to become liable, the testimony that the witness could have offered must have potential practical force.

However, the Gemara presumes this condition does not suffice,[[2]](#footnote-2) and interprets the Mishna as applying only in a very unusual case:

Here we are discussing [a case] where, for example, the second set, at the time of the denial of the first set, were related through their wives; and their wives were dying: you might have thought [that the second set are liable, because] the majority of dying people actually die; therefore he teaches us [that they are not, because as yet the wives are not dead and the witnesses are unable to testify together]. (*Shevuot* 33a)

The Gemara restricts the law stated in the Mishna to an extremely unusual case, in which the two witnesses of the second set are married to two sisters, which disqualifies them from testifying together – but at the time of the denial of the first set of witnesses, the two sisters were dying. One might have thought that since "the majority of dying people actually die," the second set of witnesses could be seen as a qualified set – for with the death of the sisters, the familial bond between the witnesses will be severed. In that case, perhaps the first set should already be considered a set of witnesses whose testimony is not required to obligate the defendant, and therefore they should be exempt from penalty for their denial. The Mishna therefore comes to teach that as long as the sisters are alive, the second set are seen as relatives who are disqualified from testifying together, and only the first set can obligate the defendant.

Restricting the law in the Mishna to such an unusual case is very difficult in terms of the plain meaning of the Mishna. How are we to understand this *ukimta*?

2. Let's move on to a simpler example. The Mishna deals with the damages that people may cause each other while walking or running in the public domain:

If two [persons] were passing one another in the public domain – one [of them] running and the other walking, or both of them running – and they were injured by each other, both of them are exempt. (*Bava Kama* 3:6)

According to a plain reading of the Mishna, there does not seem to be a difference between running and walking: in any case of mutual damage between a runner and a walker, or between two runners, both parties are exempt. However, the Gemara reports that Rabbi Yochanan rules in accordance with the *Tanna* Isi ben Yehuda, who says a walker is *not* like a runner; if the walker and the runner injure each other, the runner is liable, because he deviated from the usual course of conduct in the public domain:

For it has been taught: Isi ben Yehuda said: The runner is liable, since his conduct was unusual. Isi, however, agrees [that if it were] on a Shabbat eve at twilight, there *would* be exemption, for running at that time is permissible.[[3]](#footnote-3) (*Bava Kama* 32a)

Rabbi Yochanan's ruling presents a difficulty, for it was Rabbi Yochanan who established the rule that *halakha* is established in accordance with the anonymous *Tanna* of a Mishna, and ostensibly there is a contradiction between this general principle and ruling in accordance with the view of Isi ben Yehuda (against the Mishna). For this reason, the Gemara argues that the Mishna actually reflects the view of Isi ben Yehuda:

Our Mishna [deals with a case] of Shabbat eve at twilight. (Ibid.)

Interpreting the Mishna as applying only on Shabbat eve means that at other times, there is indeed a difference between a runner and a walker, and the runner is liable. It is difficult to argue that this is the meaning of the Mishna, which makes no mention of Shabbat. On the contrary, the Mishna emphasizes that there is no difference between a runner and a walker. Thus, the Gemara’s interpretation clearly contradicts the plain meaning of the Mishna. Moreover, the source of the *baraita* citing Isi ben Yehuda is the Tosefta – and there, his view is presented as disagreeing with an opinion that seems to be identical with the view in our Mishna:

If two [persons] were passing one another in the public domain, one [of them] running and the other walking, or both of them running, or both of them walking, or both of them walking slowly, and they were injured by each other, both of them are exempt, for this one is permitted to pass [there] and the other one is permitted to pass [there]. Isi the Babylonian said: The runner is liable, since his conduct was unusual. Isi, however, agrees [that if it were] on a Shabbat eve at twilight, there would be exemption. (*Tosefta Bava Kama* 2:11, p. 9)

Interpreting the Mishna as being in accordance with the opinion of Isi ben Yehuda seems therefore far from the plain meaning of the Mishna.[[4]](#footnote-4) Indeed, the Jerusalem Talmud (*Bava Kama* 3:7, 3d) cites the disagreement without suggesting that the Mishna accords with the dissenting opinion.[[5]](#footnote-5)

3. The Gemara contrasts two *baraitot* that seem to contradict each other on the matter of kneeling while reciting the *Modim* blessing in the *Amida* prayer:

One *baraita* taught: To kneel in the thanksgivingblessing [*Modim*] is praiseworthy, while another taught: It is reprehensible. There is no contradiction: one speaks of the beginning, the other of the end.[[6]](#footnote-6) (*Berakhot* 34b)

The Gemara reconciles the two *baraitot* by distinguishing between the beginning of the blessing and its end, but immediately afterward relates a story that seems to contradict that solution: "Rava knelt in the thanksgiving blessing at the beginning and at the end." The Gemara raises an objection from the *baraita* that says the practice is reprehensible, which according to the Gemara's explanation must be criticizing either kneeling at the beginning of the blessing or kneeling at the end of the blessing:

But it has been taught: To kneel in the thanksgivingblessing is reprehensible! That refers to the thanksgiving blessing in *Hallel*. But it has been taught: To kneel in the thanksgivingblessing and in the thanksgiving blessing of *Hallel* is reprehensible! The former statement refers to the thanksgiving blessing in *Birkat ha-Mazon.* (*Berakhot* 34b)

In the end, then, the Gemara concludes that, according to Rava, the *baraita* that states that "to kneel in the thanksgiving blessing is reprehensible," is referring to the thanksgiving blessing in *Birkat ha-Mazon* – that is, the *Nodeh lekha* blessing. This answer, however, is very far from the plain meaning of the *baraita*: everywhere else in Rabbinic literature, the *Nodeh lekha* blessing is referred to as "the blessing of the land,"[[7]](#footnote-7) and wherever mention is made of the thanksgiving blessing, the reference is to the *Modim* blessing in the *Amida* prayer.[[8]](#footnote-8) Nowhere is that term used in reference to the second blessing of *Birkat ha-Mazon.*

4. The Tosefta discusses a case of two rooms, in one of which lies a corpse, with a window between them. The corpse defiles everything that is together with it under the same roof, and if two rooms are connected by a window, no smaller than a handsbreadth by a handsbreadth, the impurity passes through the window into the other room. However, if some object that is not susceptible to impurity rests in the window and reduces its dimensions to less than a handsbreadth by a handsbreadth, the impurity does *not* pass from room to room. The Tosefta lists things that can reduce the window's dimensions and things that do not:

Grass which has been plucked up and placed in the window, or which has grown there of itself, a bird nesting in the window, rags less than three by three [handsbreadths],[[9]](#footnote-9) a limb or flesh hanging from an animal, a beast, or a fowl,[[10]](#footnote-10) a non-Jew,[[11]](#footnote-11) an animal, a child born at the eighth month,[[12]](#footnote-12) a clay vessel[[13]](#footnote-13)… and a Torah scroll, and salt – these reduce [the dimensions of the window]; but snow, hail, ice, hoar frost, and water do not reduce [the dimensions of the window]. (Tosefta, *Ohalot* 14:6, p. 611)

According to the plain sense of the Tosefta, in order to reduce the size of the window, two conditions must be met: the object must have permanent substance – to the exclusion of snow, hail and the like, which will eventually melt – and it must be something that does not contract ritual impurity.

The Gemara in *Bava Batra* (19b) cites Rav Tobi bar Kisna: "A thin wafer does not reduce the dimensions of a window," and explains that this is because a person "does not nullify it." According to the Gemara, Rav Tobi bar Kisna attaches another condition: only an object that has no use can reduce the dimensions of the window; an object that a person will eventually use does not, because it will not remain there permanently. This seems to contradict the Tosefta cited above, as none of the items mentioned there will remain in the window for an extended period of time. In order to reconcile this serious difficulty, the Gemara asserts that the list in the Tosefta is comprised of exceedingly unusual cases in which the items will in fact remain in the window for an extended period of time:

"Grass" – fit for his cattle? [We speak here] of *afrazta*.[[14]](#footnote-14)

"Or which has grown there of itself" – since it is bad for the wall, will he not remove it? Rabba said: [We are dealing here] with the wall of a ruin…

"Rags" – are they not useful for mending clothes?[[15]](#footnote-15) [We are dealing here] with thick rags.[[16]](#footnote-16) They are useful for a blood-letter?[[17]](#footnote-17) [We speak here] of sackcloth[[18]](#footnote-18)…

"A limb or flesh hanging from an animal or a beast" – will not the animal go away? Where it is tied. But it can be slaughtered [for food]? [We speak] of an impure animal. It can be sold to a non-Jew? Where it is too scraggy…

"A bird nesting in the window" – will it not fly away? Where it is tied. It can be slaughtered [for food]? Where it is impure. It can be sold to a non-Jew? Where it is a *kelanita*.[[19]](#footnote-19) It can be given to a child? It will scratch. A *kelanita* does not scratch? *Like* a *kelanita*.

"A non-Jew” sitting in a window – will he not get up and go? Where he is tied. Someone will come and untie him? Where he is a leper. Another leper will come and untie him? Rather, where he is a prisoner of the government.

"A child born in the eighth month” placed in the window" – will not its mother come and lift it up? On Shabbat, as it was taught: A child born at eight months is like a stone and may not be carried on Shabbat, though his mother may bend over him and nurse him…

"Salt" – is it not fit for him? [We speak] of bitter salt. This is useful for [tanning] skins? Where there are thorns in it…

"A Torah scroll" – is it not fit for reading? Where it is worn out. Does it not need to be stored away? That is the place where it is stored away. (*Bava Batra* 20a-b)

It is clear that the Gemara utterly removes the *baraita* from its plain meaning: The fowl that reduces the dimensions of a window is tied, impure, and scraggy, and also scratches; the non-Jew is a prisoner who was left in the window and no one will let him out; the child born at eight months – only on Shabbat. There is not a hint in the Tosefta to any of these conditions; on the contrary, it implies the opposite, that even items that have a use and are likely to be removed are considered to reduce the dimensions of a window.

As stated, this phenomenon has countless examples, and many people have difficulty understanding it. Did the *Amoraim* actually believe that the *ukimta* they were proposing followed from the plain meaning of the Mishna? If so, why isn't this evident to anyone else who examines the Mishna? And if not, what is the meaning of this phenomenon? What justification is there for interpreting Tannaitic sources in a way that seems so far from their plain meaning, and at times even contradicts it?

(Translated by David Strauss)

1. This topic has been discussed at length in many places. Ch. Gafni devoted his book to it (*Peshuta shel Mishna*, Tel Aviv 5751), and especially to a controversy that took place in the nineteenth century on the matter. Among the articles that have been written on the topic, see: M. Fish, "*Parshanut Dechuka ve-Textim Mechayavim: Ha-Ukimta ha-Amorait ve-ha-Filosofiya shel ha-Halakha*," in: A. Ravitzky and A. Rosenak (eds.), *Iyunim Chadashim be-Filosofiya shel ha-Halakha*, Jerusalem 5768, pp. 311-344; Sh. Ariel, "*Bein Makor u-vein Parshanuto*," *Tzohar* 15, 5753, pp. 65-76; M. Avraham, "*Mabat Aplatoni al ha-Ukimtot*," *Akdamot* 28, 5773, pp. 115-141. [↑](#footnote-ref-1)
2. The Gemara assumes that another condition must be met: liability for a guilt-offering only applies if, were it not for these *specific* witnesses, it would have been impossible to obligate the defendant. This assumption is contradicted by the plain meaning of the Mishna, for the Mishna implies that if the first set of witness denied knowledge, they are liable even though the case can still be made based on the testimony of the second set. This assumption gives rise to the Gemara's question: "Granted, the second set should be liable, because the first denied, but the first – why [should they be liable]? The second set are still there!" (*Shevuot* 32b-33a).

   This underlying assumption appears as the opinion of Rabba in a parallel case dealing with an oath of deposit – a false oath that a person took to deny a monetary claim brought against him. The law in such a case is that he must pay the principle and an added fifth, and also bring an offering; see Rambam, *Hilkhot Shevuot* 1:8-9. The Gemara (*Shevuot* 37a) assumes that according to Rabba, "one who denies money for which there are witnesses is exempt," for his denial has no meaning when there are witnesses who testify against him. The Gemara there raises an objection to Rabba from the Mishna that deals with two sets of witnesses and seems to imply that there *is* liability for an oath of testimony even in a case where there were other witnesses who could obligate payment – and it then again interprets the Mishna as referring to a case of two brothers who are married to two sisters, as below. [↑](#footnote-ref-2)
3. The Gemara there explains that on the eve of Shabbat one is permitted to run in order to greet the Shabbat. [↑](#footnote-ref-3)
4. The Gemara bases its interpretation of the Mishna on a redundancy in the Mishna: "one [of them] running and the other walking, or both of them running." If the runner is exempt even in the first case, what is the novelty of the second case, when they are both running? "If in the case where one was running and the other walking there is exemption, could there be any doubt where both of them were running? It must mean thus: Where one was running and the other walking, there is exemption – in what case? On a Shabbat eve at twilight. For if on a weekday, [in the case of] one running and the other walking, there would be liability, [whereas if] both of them were running, even on a weekday they would be exempt." However, the problem of the Tosefta remains, for there it is clear that the redundancy cannot be explained in this way, since the dispute is explicitly presented in the *baraita* itself. According to the plain meaning, this redundancy is simply characteristic of the Tannaitic style, as we see in the previous *halakha* in the Tosefta as well. (See S. Lieberman, *Tosefta ki-Peshuta*, *Bava Kama*, New York 5748, p. 27.) [↑](#footnote-ref-4)
5. Rabbi Shlomo Adani (1567-ca.1630, Yemen-Hebron) also cited the Tosefta in its entirety in his commentary to the Mishna, *Melekhet Shlomo*. Presumably, he wished to demonstrate that the plain sense of the Mishna is not in accordance with the view of Isi ben Yehuda. [↑](#footnote-ref-5)
6. In other words, the *baraita* that states that one who kneels is praiseworthy refers to kneeling at the beginning of the thanksgiving blessing, whereas the *baraita* that states that it is reprehensible speaks of kneeling at the end of the blessing (based on Rashi, *ad loc*., s.v. *bi-techila*; see also *Meromei Sadeh*, *ad loc*., s.v. *ha-kore'a*). [↑](#footnote-ref-6)
7. See, for example, Tosefta *Berakhot* 3:9, p. 14; 6:1, p. 32; *Berakhot* 16a; 46a; 48b; Jerusalem Talmud, *Berakhot* 7:1, 11a. [↑](#footnote-ref-7)
8. See, for example, *Berakhot* 5:2; *Rosh ha-Shana* 4:5; *Berakhot* 29b; 34a; *Shabbat* 24a. [↑](#footnote-ref-8)
9. A cloth measuring three by three handsbreadths or larger is susceptible to ritual impurity, and therefore cannot reduce the dimensions of the window. [↑](#footnote-ref-9)
10. That is, limbs that have been partially torn from the animal, but are still attached to its body. [↑](#footnote-ref-10)
11. By Torah law, a non-Jew is not susceptible to ritual impurity, and therefore he can block the passage of impurity – even though a non-Jew *is* susceptible to impurity by Rabbinic decree (see *Tosafot Bava Kama* 20a, s.v. *ve-oved*). [↑](#footnote-ref-11)
12. This refers to a child born in the eighth month of pregnancy. Since according to the reality of that time, such a child would have no chance of survival, he is not considered a person from a halakhic point of view, and therefore is not susceptible to impurity. [↑](#footnote-ref-12)
13. Which does not contract impurity from the outside (Rashi, *Bava Batra* 20a, s.v. *u-keli*). [↑](#footnote-ref-13)
14. A poisonous grass that is unfit for an animal to consume (Rashi, s.v. *be-afrazta*). [↑](#footnote-ref-14)
15. To be used for patches (Rashi, s.v. chazi). [↑](#footnote-ref-15)
16. A thick fabric, which is unsuitable for clothing (Rashi, s.v. *bi-semikhta*). [↑](#footnote-ref-16)
17. To place on the site of the blood-letting (Rashi, s.v. *le-omana*). [↑](#footnote-ref-17)
18. Material that scratches the skin, and therefore cannot be used to clean a wound (Rashi, s.v. *be-riska*). [↑](#footnote-ref-18)
19. A type of bird that is so bony that it is unfit for human consumption (Rashi, s.v. *kelanita*). [↑](#footnote-ref-19)