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 #43: Chapter Six (8)**

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

**Gemara**

**IV. The Logic Behind *Ukimtot***

If we accept the idea expressed in the above sources, that some of the Gemara’s *ukimtot* serve as a tool that allows *Amoraim* to disagree with Tannaitic sources, we must try to understand the logic behind this phenomenon. For if an *Amora* is indeed permitted to disagree with a *Tanna*, why does he need the *ukimta*; and if fundamentally an *Amora* cannot disagree with a *Tanna*, except in rare cases, how can the *ukimta* enable such disagreement?

In order to answer this question, we must first examine the fundamental question of the authority of the Mishna with respect to the *Amoraim*. This question was raised in connection with the Rambam's ruling (*Hilkhot Mamrim* 2:1): "When, using one of the rules of exegesis, the Great Sanhedrin derived a law through their perception of the matter and adjudicated a case accordingly, and afterwards, another court arose and they perceived another rationale on whose basis they would revoke the previous ruling, they may revoke it and rule according to their perception." In light of this ruling, Rabbi Yosef Karo asked:

If you say: If so, why can't *Amoraim* disagree with *Tannaim*, for in all places objections are raised against an *Amora* from a *mishna* or a *baraita*, and he must say: "I said [what I said] in accordance with this *Tanna*," and if he does not say that, the objection is deemed valid, but according to the words of our master, [*Amoraim*] are permitted to disagree with the words of the *Tannaim*? (*Kesef Mishneh*, *ad loc*.)

Rabbi Yosef Karo finds it difficult to reconcile the Rambam’s statement with the basic assumption that underlies the great majority of Talmudic passages – that an *Amora* cannot disagree with a *Tanna*, at least as long as he does not have another Tannaitic opinion supporting him. If it is within the authority of a court in every generation to revoke a ruling of a previous court, why can't an *Amora* disagree with a *Tanna*? Rabbi Yosef Karo answers as follows:

It may be suggested that from the day that the Mishna was sealed, it was accepted that the later generations cannot disagree with the earlier [generations]. The same thing happened when the Gemara was sealed, that from the day that it was sealed, nobody is permitted to disagree with it.

In the *Kesef Mishneh's* opinion, an *Amora* cannot disagree with a *Tanna*, because at the time of the sealing of the Mishna, the determination was accepted that "the later authorities cannot disagree with the earlier ones," and a similar determination was accepted at the time of the sealing of the Gemara.

Even though the circumstances in which this decision was reached are unknown to us,[[1]](#footnote-1) and the literature of *Chazal* contains no hint to the matter, nevertheless, the existence of such a decision is indeed a necessary basis for understanding the principles of Talmudic discourse. Rabbi Yosef Karo's wording implies it was a formal determination,[[2]](#footnote-2) not a rule that stems from an essential principle;[[3]](#footnote-3) therefore, we must carefully define what was included in that formal determination.

In light of what we have seen, it seems that the rule was not that it is impossible for an *Amora* to disagree with a *Tanna*. Rather, the rule was that it is impossible to say about a Tannaitic source that it is wrong (other than in exceptional cases, as we saw above). It is, however, possible to interpret a Tannaitic source by way of an *ukimta* that greatly reduces the practical scope of the law stated in the source, which allows us to say that the law is usually not in accordance with that Tannatic source. The benefit of this approach is that it creates a balance between preserving tradition on one hand, and advancing innovation and change on the other. Commitment to earlier sources makes it impossible to reject them, but there is still a need for renewal and change within that respectful attitude towards our ancient tradition. The need to establish an *ukimta* for the Tannatic source allows for space, but at the same time sets limits, and where the *Amora* fails to establish a reasonable *ukimta* for the Tannaitic source, his opinion is rejected. Rabbi Shlomo Fischer formulated this idea as follows:

With this you can understand the forced explanations and *ukimtot* that the *Amoraim* propose when objections are raised against them from the words of the *Tannaim*, this being a matter that many have questioned. Since the *Amoraim* know that the truth is with them, and it is only the prohibition to disagree [with the Tannaitic source] that stands in their way, therefore they offer a forced explanation of the wording of the *Tannaim*, so their words will be consistent with the truth. (*Beit Yishai*, *Derashot* no. 15)[[4]](#footnote-4)

Let us illustrate both sides of this approach. On one hand, the possibility of disagreeing with a Tannaitic source with the help of an *ukimta* can be illustrated through the examples with which this chapter opened. In the first example, we saw a *mishna* whose plain meaning is that in order to be liable for an oath of testimony, it suffices that the testimony have potential practical force. However, the Gemara starts with a different assumption, according to which liability only applies if it would have been impossible to obligate the defendant without these specific witnesses.[[5]](#footnote-5) This position is clearly contradicted by the plain meaning of the *mishna*. Therefore, in order to retain the basic premise of the Gemara, on one hand, and remain committed to the Mishna, on the other, the solution was to find an exceptional case in which it is possible to rule in accordance with the Mishna without contradicting the principle of the Gemara, and for that purpose, the Gemara brings the *ukimta*: "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." This limitation is not even hinted in the Mishna, and effectively means that in the vast majority of cases, the law will not be as stated in the Mishna. The *ukimta* offers a way to maintain the basic premise of the Gemara without saying the *mishna* is completely incorrect.

The same is true in the second example. The plain meaning of the *mishna* that states: "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," is that in any case of mutual damage between a runner and a walker, or between two runners, both parties are exempt, and there is no difference between a runner and a walker. The Gemara that interprets the *mishna* as referring to a case of running on "Shabbat eve at twilight" is not explaining the plain meaning of the *mishna*, but wishes to rule in accordance with a different Tannaitic opinion, which distinguishes between a runner and a walker. Instead of disagreeing with the Mishna directly, it exploits this *ukimta*, which allows us to reconcile the *mishna* with the *halakha*.

This is also how we can understand the Talmudic passage regarding kneeling in the thanksgiving blessing in *Shemoneh Esrei*. Rava maintains that one should kneel at the beginning and at the end of the blessing, as he saw was the custom of his teachers. This custom stands in opposition to an explicit statement in a *baraita*: "It is reprehensible." The Gemara interprets the *baraita* as dealing with the thanksgiving blessing in *Birkat Ha-mazon*, thus allowing us to rule in accordance with Rava, even though his position runs counter to the plain meaning of the Tannaitic source, without rejecting the Tannaitic source*.*

With regard to the Tosefta regarding the nature of an object that can reduce the dimensions of a window between two rooms, and thus prevent the transfer of impurity from one room to the other, the plain meaning of the Tosefta indicates that it suffices that the object have permanent substance and that it not be able to contract ritual impurity. Rav Yosef, however, maintained that it must also be clear that the object will remain there for an extended period of time. Rav Yosef cannot directly say that what is written in the Tosefta is wrong, but he can find a way to interpret the Tosefta as referring to very exceptional cases, and in that way he can rule against what is implied by the plain meaning of the Tosefta.

On the other hand, when the Tannaitic source directly contradicts the words of the *Amora*, and it cannot be interpreted by way of an *ukimta*, the opinion of the *Amora* is rejected. This phenomenon is found in hundreds of cases in which the Gemara uses the term, "*teyuvta*," "refutation." Thus, for example, the Mishna (*Berakhot* 1:2): "If one recites the *Shema* later [than the time of its obligation], he loses nothing, being like one who reads in the Torah." Rav Chisda is of the opinion that this applies only to the *Shema* itself, but not to its blessings:

Rav Chisda said in the name of Mar Ukva: Provided he does not say the blessing of "Who forms the light." (*Berakhot* 10b)

However, the Gemara then raises an objection from an explicit *baraita*:

An objection was raised: He who recites the *Shema* later loses nothing; he is like one reading in the Torah, but he says two blessings before it and one after. (Ibid.)

This *baraita* clearly contradicts the position of Rav Chisda, for it explicitly states that even after the time of *Shema* has passed, one can recite not only the *Shema* itself, but even its associated blessings. Here, it is impossible to propose a reasonable *ukimta*, and therefore the Gemara rejects the position of Rav Chisda, saying: "Is not this a refutation of Rav Chidsa? It is [indeed] a refutation."

Sometimes, the Gemara rejects an *ukimta* that seems excessively forced. For example, the *mishna* at the beginning of tractate *Shabbat* brings several examples of cases in which there is liability for carrying an object from one domain to another, such as:

The poor man stands outside and the master of the house stands inside: if the poor man stretches his hand within and places [an article] into the hand of the master of the house, or if he takes [an article] from it and carries it out, the poor man is liable, and the master of the house is exempt. (*Shabbat* 1:1)

The Gemara (*Shabbat* 4a) has difficulty with these and other examples, because it assumes that liability in a case of carrying from one domain to another is limited to a case where the person removes the article from a place that is four handbreadths by four handbreadths, and then deposits it in a similarly sized place. "Why is he liable? Surely, removal and depositing must be from [and into] a place four [handbreadths] square, which is absent here?" This principle appears to contradict the plain meaning of the *mishna*, and the Gemara (ibid. 4a-5a) offers several solutions. Among others, it brings the answer proposed by Rabbi Abahu, which gives rise to a short discussion:

Rather, Rabbi Abahu said: It means that he lowered his hand to within three handbreadths [of the ground] and accepted it. But it is taught: "He stands"! It refers to one who bends down. Alternatively, [he is standing] in a pit; another alternative: this refers to a dwarf. (Ibid. 5a)

Rabbi Abahu interprets the *mishna* as referring to a case where the poor man lowers his hand to a height less than three handbreadths from the ground, in which case the object is considered as if it is resting on the ground. Ostensibly, this is an *ukimta* with the same goal as those in the cases we saw above – to reconcile the law accepted by the *Amoraim*, that removal and depositing must be from and into a place four handbreadths square, with a *mishna* that appears to contradict this rule. The goal is achieved by interpreting the *mishna* as dealing with an exceptional case, which implies that in the usual case, when an article is placed in a person's hand, there is no liability for carrying from one domain to another. The Gemara, however, has difficulty accepting this *ukimta*, because the *mishna* explicitly states that the poor man is "standing," and when a person stands, his hands are not less than three handbreadths from the ground. In order to answer this question, the Gemara suggests three possibilities: Either that the poor man is bending down, so that his hand is close to the ground; or that the poor man is standing in a pit, so his hand is in fact within three handbreadths of the ground; or that the poor person is a dwarf, whose hand reaches close to the ground. The Gemara raises the following objection:

Rava said: Does the *Tanna* trouble to inform us of all these?!

Rashi there (s.v. *ikhpal*) explains: "Did the *Tanna* trouble himself with all this? He should not have informed us that one who carries an article from one domain to another is only liable in these situations, which are not the normal way. Let him teach: If he stretched the corner of his garment inside, which gives rise to four [cases]." In other words, it is not at all reasonable that the *Tanna* would illustrate the foundation of the law of carrying from one domain to another with such unusual cases, rather than offering much more common examples. For this reason, the Gemara rejects the *ukimta*[[6]](#footnote-6) – demonstrating that the path of *ukimta* does not allow raising unreasonable possibilities – and therefore also rejects the view of the *Amora*.[[7]](#footnote-7)

To summarize, we have examined a prevalent type of *ukimta* that deliberately interprets Tannaitic sources not in accordance with their plain meaning, as part of the dynamism of the Oral Law. Many comments in the writings of the *Rishonim* and *Acharonim* indicate that while it is true that as a rule, *Amoraim* cannot disagree with Tannaitic sources in a direct manner, they can interpret those sources by proposing certain *ukimtot*, which allows them to disagree with the fundamental law appearing in the Tannaitic sources. The *ukimta* in such cases does not pretend to reflect the original meaning of the Tannaitic source, but rather it is a means that allows the *Amora* to disagree with that source in a way that accepts the formal authority of the source.

(Translated by David Strauss)

1. On the transition between "*Tannaim*" and "*Amoraim*," as part of a wider phenomenon of divisions between different periods in terms of halakhic authority, see Sh. Z. Havlin, "*Al ha-Chatima ha-Sifrutit ki-Yesod ha-Chaluka li-Tekufot be-Halakha*," in *Mechkarim be-Sifrut ha-Talmudit*, Jerusalem 5743, pp. 148-192. For our purposes, Havlin notes: "We have no direct or explicit information whatsoever about the sealing of the Mishna and the Talmud, how this was done. Nowhere is it reported about deliberate actions or deeds or about gatherings, meetings, decisions, or agreements regarding the sealing [of these works]… All we can do is examine and study the meaning of this sealing and its halakhic force from the attitude toward these actions in the sources of Rabbinic literature and the words of the *Rishonim* and *Acharonim*." Rabbi Tz. H. Chajes, *Torat Nevi'im: Ma'amar Torah she-be-Al Peh*, in: *Kol Sifrei Mahratz Chajes*, Jerusalem 5718, p. 109, already commented: "I wish I knew where to find in the two Talmuds that the ancients came to this absolute agreement, there being no hint of it in the Mishna or the Talmud." [↑](#footnote-ref-1)
2. The *Acharonim* disagree about how to understand this formal determination (see at length Havlin [note 1 above, pp. 169-183]). Rabbi Elchanan Wasserman (1874-1941, Lithuania) argued that the authority for this determination lay in a gathering of the majority of the sages of Israel, who have the power to establish such determinations, but he noted that at the time of the gathering that took place for the sealing of the Talmud, the sages were once again capable of changing the determination regarding the authority of the *Tannaim*. It was only between these two gatherings that it was impossible to disagree with the *Tannaim*: "For the sealing of the Mishna was also by way of a gathering of all or a majority of the sages of Israel, who have the authority of the Great Sanhedrin, whom nobody is permitted to dispute, unless those coming to disagree also have the authority of the Great Sanhedrin. It is possible that at the time of the sealing of the Talmud, they had the authority to disagree even with the *mishnayot*, like any Great Sanhedrin, which can disagree with a Great Sanhedrin that preceded it, even if it was inferior to the earlier one in wisdom and in numbers. But between the sealing of the Mishna and the sealing of the Gemara, between these two times, there was no gathering together of all the sages of Israel, and they did not have the authority of a Great Sanhedrin, and thus they could not disagree with the *mishnayot* that were taught with the agreement of the majority of the sages of Israel" (*Kovetz Shiurim*, "*Kuntrus Divrei Soferim*," no. 2). Rabbi Avraham Yeshayahu Karelitz (the *Chazon Ish*, 1878-1953, Lithuania-Bnei Brak) strongly disagreed, arguing that according to this approach, "there is no difference at all between a *Tanna* and an *Amora*, only that it happened that during the time of the Mishna, the sages of Israel gathered" (*Kovetz Inyanim*, Bnei Brak 5735, p. 194). This apparently summarizes the main point of contention; see also the next note. [↑](#footnote-ref-2)
3. The *Chazon Ish* (see the previous note) maintains that the *Kesef Mishneh's* determination is based on the fundamental principle of "the decline of the generations": "But the truth is that the generation after the Mishna saw the diminishment of knowledge in relation to the masters of the Mishna, and they knew with certainty that the truth is always with the earlier ones. Since they understood that they could not possibly arrive at truth that had not been arrived at by any of the *Tannaim*, they were not permitted to disagree, and they would only teach all the words of the Tannaim who preceded them… And that which our master [= the *Kesef Mishneh*] wrote, that they accepted this upon themselves – they did not do a favor or kindness for the earlier [sages], but rather the truth obligated them, for how can we do something on our own, when we know that our knowledge is limited and the truth is not with us?" However, the words of the *Chazon Ish* do not accord with the wording of the *Kesef Mishneh*, for the *Kesef Mishneh's* entire discussion started from the fact that the Rambam's source for saying a later Sanhedrin can disagree with an earlier Sanhedrin is the fact that later *Tannaim* disagreed with earlier *Tannaim*, and so too *Amoraim*: "Our master learned this from the fact that we find that later *Tannaim* disagreed with those who came before them, and similarly later *Amoraim* disagreed with those who came before them," and he says this even though between the generations of *Tannaim* or *Amoraim*, each period considered separately, there is liable to be a much greater gap in years than between the end of the Tannaitic period and the beginning of the Amoraic period. This issue was noted by the *Beit Yishai* (*Derashot*, no. 15): "That which the *Chazon Ish* wrote… is very puzzling, how this happened suddenly in one generation; for a late *Amora* is permitted to disagree with an *Amora* who preceded him by several generations, and similarly, a late *Tanna* is permitted to disagree with a *Tanna* who preceded him by several generations, but an *Amora* cannot disagree with a *Tanna* even if he preceded him by only one generation?" (See there regarding additional difficulties with the *Chazon Ish's* approach.)

Moreover, the words of the *Rishonim* imply, contrary to the view of the *Chazon Ish*, that there is nothing in principle that prevents an *Amora* from disagreeing with a *Tanna*. The *Kovetz Shiurim* (*Bava Batra*, letter 633) cites Rabbeinu Yona (*Aliyot de-Rabbeinu Yona*, *Bava Batra* 131b, s.v. *ela Tannai*): "Even though it is not the way of *Amoraim* to disagree with *Tannaim*, that is only with regard to something that was established in a *mishna* or a *baraita,"* along with similar statements in the name of the Ramban there and additional sources, that indicate the problem exists only when an *Amora* disagrees with a Tannaitic opinion recorded in an authorized source – not when he disagrees with a statement brought in the name of *Tannaim*. Therefore, the *Kovetz Shiurim* summarizes: "The reason for this distinction seems to be that the *mishnayot* and the *baraitot* were arranged with the agreement of all the sages of the generation… but a statement was made only on the authority of the *Tanna* who made it; according to this, it turns out that the distinction is not between *Tannaim* and *Amoraim*, but between a *mishna* and *baraita,* and a statement." The words of the *Chazon Ish* are also not consistent with the words of the Rosh (*Sanhedrin* 4:6): "The later *Amoraim* sometimes disagree with the early *Amoraim*, and, to the contrary, we relate to the words of the later *Amoraim* as being the most correct, for they knew the rationales of the early *Amoraim* and their own rationales, and they decided between them and understood which is correct. Similarly, we find that we do not learn normative Halakha from the Mishna, but we do learn practical rulings from the words of the *Amoraim*, even though the *Tannaim* were greater than the *Amoraim*." [↑](#footnote-ref-3)
4. Rabbi Fischer adds there that the Rif and the Rambam "usually reject *ukimtot* and discard them from Halakha," as we saw above, whereas the *Tosafot*, the Rosh, and the Mordechai accept the *ukimtot*, which is understandable according to his explanation, that the *ukimtot* reflect the normative halakhic decisions ofthe *Amoraim*. Rabbi Fischer also adds an interesting comment regarding the words of the *Chazon Ish* brought in the previous notes: "And the *Chazon Ish* himself acts in the same way with the formulations of the *Rishonim.*" [↑](#footnote-ref-4)
5. As noted in a previous *shiur*,this assumption is stated in the Gemara (*Shevuot* 37a) in the name of Rabba. However, the Gemara then (37b) rejects Rabba's approach and accepts the opinion of Rabbi Yochanan, that a person who falsely denies knowledge associated with a monetary claim is liable for a guilt-offering *even if* it would have been possible to obligate the defendant without him. In light of this, the *Rishonim* ask why the Gemara on 32a interprets the *mishna* with such a limited *ukimta*, when it could have accepted the *mishna* according to its plain sense, that there is liability for an oath of testimony even if it would have been possible to obligate the defendant based on the testimony of others? In fact, the Ritva there writes (s.v. *bishlama*): "But according to Rabbi Yochanan, who says there that one who denies [on oath] money for which there are witnesses is liable, the *mishna* here should be understood in accordance with its plain sense, and we do not need the answer given by the Gemara here, and the *halakha* is also in accordance with him, as we will explain there. And the fact that we ask and answer here, it is the way of the Talmud to do that, as I have written in several places." Other *Rishonim* resolve the difficulty in other ways; see, for example, *Tosafot* *ad loc.*, s.v. *ha kayma*; Ramban, s.v. *ha de-akshinan*; *Tosafot ha-Rosh*, s.v. *kayma*. [↑](#footnote-ref-5)
6. The Gemara ultimately accepts Rava’s explanation to reconcile the *mishna* with the principle (that in order for there to be liability, the removal and depositing must be from and into a place four handbreadths square): "A man's hand is accounted to him as [an area] four by four." According to this, there is, of course, no need for any *ukimta*. [↑](#footnote-ref-6)
7. Another example of an *ukimta* that is rejected because it is exceedingly unreasonable: As discussed in (chapter 5, section 3), the Mishna states: "If a man was standing in his threshing-floor, and he had no money, he may say to his fellow: 'This produce is given to you as a gift,' and then he may say again: 'Let this produce be exchanged for money which I have in the house'" (*Ma'aser Sheni* 4:5). That is to say, if a person wishes to circumvent the law and redeem his own second-tithe without adding the required fifth, and he has no money with him that he could give to another person to redeem his produce (for one who redeems second-tithe belonging to another person is exempt from the fifth), he can give the produce to the other person as a gift and then redeem it with the money in his house, and thus he can redeem the second-tithe without a fifth. The Gemara points out that this *mishna* implies a coin cannot be acquired by way of the mode of transaction known as *chalipin*, a form of symbolic barter: "But if you say that coin may be acquired through barter, let him [the tithe-owner] give possession of the money [he has at home] to the other person by means of a scarf, and then let the latter redeem it" (*Bava Metzia* 46a). Rejecting this proof, the Gemara says: "The latter has no scarf. Then let him give possession thereof through land! He has no land." That is to say, the Gemara suggests an *ukimta* – that we are dealing here with a person who has no way to purchase the money, for he has no scarf or land. However, the Gemara then rejects this interpretation of the *mishna*, which would relate to such an exceptional situation: "And does the *Tanna* take the trouble of teaching us about a naked man, who possesses nothing!" This leads to the conclusion: "Hence, it must surely be that coin cannot be acquired by way of *chalipin*. This proves it." Since the opinion that a coin can be acquired by way of *chalipin* is unable to propose a reasonable *ukimta* for the *mishna*, which implies just the opposite, that opinion is rejected.

For additional cases in which sages testify about *ukimtot* that are exceedingly forced and therefore unacceptable, see *Kiddushin* 63b ("we strain the *mishna* by giving two different connotations [to the same phrase], so that it agrees with one *Tanna*, rather than give it one connotation by making it reflect [the views of] two *Tannaim*"), *Bava Kama* 106a ("I might answer you that [though in the case of] the first clause [the oath was taken] outside the court, [in that of] the last clause [it was taken] in the court. But I am not going to give you a forced answer"), and others. [↑](#footnote-ref-7)