Tana Hu U’Falig

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1. Rav and Rabi Yochanan agree in Menachos (54b) that Ain Dichui B’Isura – objects subject to sacrificial law that have been pushed out from this category remain rejected even if the underlying reason was rehabilitated – does not apply to prohibitory law. For example, consider Basar that initially was the minimum Shiur necessary to convey Tumah D’Oraisa. If it shrank (e.g., due to the passage of time) it would be reduced to a Tumah D’Rabonim. If it subsequently expanded to its original Shiur (e.g., through acquiring moisture) it once again conveys Tumah D’Oraisa.

However, they disagree in Z’vachim (59a) where Rav says an offering becomes Pasul if the Mizbaiaach comes into disrepair after the animal was slaughtered, whereas Rabi Yochanan says it becomes Pasul even if the animal was only consecrated. The difference between the two views is not slaughtered vs. consecrated, but whether animals that are still alive can become Nidchim. Rav holds they cannot, whereas Rabi Yochanan holds they can.

A Meisivei is brought against Rav’s opinion. A Baraisa states Kadashim consecrated prior to the building of the Mizbaiaich of the Bayis Shaini are Pasulin. The Gemara questions this reading because if the Mizbaiaich had yet to be rebuilt the animals could not have been consecrated. It is suggested the Baraisa be revised to say if the animals were consecrated prior to the Churban, R’L, of the Mizbaiaich of the Bayis Rishon then they are Pasulin for the Bayis Shaini. However, the Gemara would reject this reading as well, because that would make them at least 70 years old, and even if any were to have survived that long B’choros (41a) states old age is an invalidating Moom.

The Gemara then suggests the Baraisa be revised to say if Kadashim were consecrated prior to the Mizbaiaich coming into disrepair, but subsequently the Mizbaiaich became defective, those animals are Pasulin. However, this revision would contradict Rav who maintains the animals only become Pasulin if they had been slaughtered, not merely consecrated. Therefore, the Gemara answers, “V’Lo Tarutzei Ka M’Sartzus? Aima Sh’Ni’Sh’chatu” – because the Baraisa requires revision, when it is revised also edit it to conform to Rav’s opinion that the animals become Pasulin if they were slaughtered, but not if they were only consecrated.

Although Baraisios are more authoritative than an anonymous Gemara (e.g., Z’vachim 96b), unlike a Mishnah they are subject to review. The premise of a Baraisa may be contested by Amora’im (e.g., “Samei Didach M’kamei Didi – erase your [premise] and establish mine,” Menachos 28b). The revision of a Baraisa’s wording, however, is a more serious matter. Baraisios are revised throughout the Shas based on a conflicting Pasuk, Halachah L’Moshe M’Sinai, or Mishnah. Tradition, hermeneutical rules, logic, and other legal devices also may compel the revision of a Baraisa. The obvious question is why, when none of these reasons apply, the Gemara should be compelled to revise the wording of a Baraisa to conform with the view of Rav, who is an Amora?

2. Prior to Matan Torah, Halachic leadership was provided by the academy of Shem and Ever, the Bachorim of each family, the Avos, and their immediate descendants. Moshe Rabeinu inaugurated the post Sinaic age of prophecy, and subsequently the B’nai Yisrael were also guided by the Cohanim. Although the Ne’vi’im and Cohanim continued their
leadership to the beginning and end of the Bayis Shaini, respectively, they were augmented by the Z’kainim, followed by the age of the Shoftim. They, in turn, were followed by the M’lachim.

Beginning with David HaMelech, the Rambam follows naming the leader of each generation (e. g., Melech, Navi, Cohain Gadol, Nasi of the Anshei Knessess HaGedolah) with the phrase “U’Bais Dino” (Hakdamos L’ Mishnah Torah), although it is understood that the institution of the Bais Din existed since Moshe Rabeinu’s court. Dovid HaMelech ruled only over Shavet Yehudah for the first 7½ years following Shaul HaMelech. Ish Boshes, Shaul’s son, ruled unofficially over the other eleven Sh’vatim during the 6th and 7th years of Dovid HaMelech’s rule, until a half year later when Dovid was universally accepted. However, this was only an interruption in political leadership. Nasan HaNavi and other Ne’vi’im, Tzadok Cohain Gadol, and prominent officials (e. g., Adoniyyahu) continued to provide Yisrael with Toradic leadership.

After the Churban, R”L, of the Bayis Rishon the leadership was held by the last of the Ne’vi’im, and the Sofrim. The institution of the Anshei K’nnessess HaGedolah, concluding with Shimon HaTzadik, became the Sanhedrin. Its members were called the Tana’im, and it was led by the Nasi and Av Beis Din, together who were called the Zugos. Many Tana’im were members of the fellowship of the Perushim.

The political power to enforce Halachah during the early period of the second Zugos was held by the Bais Din of the Chashmonai. However, the Perushim were relied on especially when the official Sanhedrin was forced underground at the end of the erstwhile righteous reign of Yochanan Cohain Gadol when he deposed them in favor of the Sadducees. The Perushim were subsequently persecuted by an old enemy, the Samaritans (which is why the nations of the world call them “Good”) and Romans. (The legacy of persecution of the Rabonim was then continued by Christianity and Islam).

By the time of Sh’maya and Avtalon, the last of the Zugos, many of the Perushim had been executed or were exiled, leaving the B’nai Bayseira to provide Toradic leadership. They were supplemented with the assistance of Shamai and his academy, and many regional Dayonim (e. g., in the Yerushaliyim district alone there were 394 courts comprised of 25 judges each; most notable among them were Admon ben Gadai & Chanan ben Avi Shalom). Then, Hillel was appointed Nasi of the Sanhedrin, and after a brief tenure by Menachem, Shamai served along with Hillel as the Av Beis Din.

After Shamai, when Akavia ben Mehalalel declined the office of Av Beis Din the position remained vacant. Due to the Romans, the true Sanhedrin continued underground, removed even from the Bais HaMikdash in 3789 (29 C. E.). They were reinstated by the disciple of Hillel, Rabon Yochanan ben Zakai, who reconvened them under the leadership of the Nasi Rabon Gamliel II in Yavne after the Churban of the Bayis Shaini, R”L. Rabon Gamliel II reinstated the Av Bais Din’s office, and created a third prominent position in the Sanhedrin, appointing Rabi Eliezer ben Hyrkanos as the institution’s first Chacham. Soon thereafter, however, Rabon Shimon the son of Rabon Gamliel began curtailing the roles of both the Av Bais Din (held by Rabi Natan of Bavel) and the Chacham (held by Rabi Meir). In response to their antics with his father over this change, Rabon Shimon’s son Rabi Yehudah HaNasi eventually consolidated and assumed those duties into the Nasi’s office.

After the redaction of the Mishnah by Rabi Yehudah HaNasi, the Tana’im were followed by the Amoriam of both Yisrael and Bavel. The redaction of the Talmud Yerushalmi was initiated by Rabi Yochanan (and was essentially completed by Rabi Manah and Rabi Yose ben Rabi Bun). The Talmud Bavli was redacted by Rav Ashi and Ravinah Zutra (II) (and essentially completed
by Mar bar Rav Ashi and Rav Yose). The Talmudic era was followed by the Rabeinu Savorai, Geonim, Ba’alei Dikduk and Piyutim, early and later Rishonim, and early and later Acharonim. The Geonim are also known as the Ba’alei Sha’aiios V’Teshuvos, and the Rishonim and Acharonim are also known as the Rabbinate, or Poskim. Subsequently, among the later Acharonim arose the Chassidim and then the Ba’alei Musar. The Masters and their courts of both disciplines represent the primary influence on C’lal Yisrael in the present T’kufa.

The international leadership of our age is called by some the post-HaShoah Rabonim, or even the age of the M’laktim. Both nomenclatures appear to be on the decline in deference to the new age of Torah leadership flowing from Galus to Yerushaliyim Eir HaKodesh and throughout Eretz Yisrael, which will no doubt receive its cognomen from succeeding generations.

3. Courts served the function of practically applying the law beginning with Shem and the Sheva Mitzvos Shel B’nai Noach. In terms of Rabbinical jurisprudence, the 70 Ziknai Yisrael in Moshe’s court included Aaron, Nadav, Avihu, Eldad, and Meidad. Other noted courts included those of Shmuel HaRamasi and Shlomo HaMelech.

The courts of 71 and 23 were forced by the Romans to repeatedly relocate and eventually were abolished. Ezra HaSofer had previously mandated the court of 3 to convene twice weekly, Yom Shaini v’Yom Chamishi. It continued to do so, after the Roman incursion, as a court of arbitration. In various lands where Jews were concentrated larger Rabbinical institutions arose to serve as regional Batei Dinim. An example was the Va’ad Arba Aratzos which provided Halachic leadership for two centuries in Poland, parts of the Ukraine, and Volyn. Currently, there are national, state/province, and local Batei Dinim formed after the fashion of their respective communities that convene as needed.

During the era of the Tana’im if the court had heard the law it was so pronounced; otherwise it was determined by majority vote. During the era of the Amora’im various rules were invoked by the courts in deciding practical Halachah, such as those articulated in Eruvin 46b. If there is a dispute between:

- Rabi Akiva and his colleagues the law follows Rabi Akiva,
- Rabi Yose and his colleagues the law follows Rabi Yose,
- Rebbi and his colleagues the law follows Rebbe,

according to Rabi Ya’akov and Rabi Z’rika; and

- Rabi Meir and Rabi Yehudah the law follows Rabi Yehudah,
- Rabi Yehudah and Rabi Yose the law follows Rabi Yose,
- Rabi Meir and Rabi Yose the law follows Rabi Yose,

according to Rabi Ya’akov bar Idi in the name of Rabi Yochanan; and

- Rabi Yose and Rabi Shimon the law follows Rabi Yose,
- Rabi Yehudah and Rabi Shimon the law follows Rabi Yehudah,
- Rabi Meir and Rabi Shimon the law follows no rule.

Whereas the ensuring Gemara (through 47b) demonstrates Rabi Yochanan accepts these rules, Rav M’sharsheya’s examination of the Piskei Dinim of Rav indicates these rules are not absolute.
As in the age of the Tana’im, in the absence of a rule during the era of the Amora’im the majority vote prevails. A deduction from a Mishnah overrules an explicit Baraisa (e.g., Eruvin 16b). When there are conflicting Baraisos the law follows the principle of “Hay Me’neye’hu Acharita – Which of these was the later?” (e.g., Menachos 52a). This establishes the principle that the P’sak Din of the most recent Bais Din is followed, because it is presumed to have the latest information necessary to apply the law. Hence, in our times we do not purchase pastries without a Hechsher, whereas in the Rambam’s time he ruled there was no reason why pastries couldn’t be purchased on the street. In his community the ingredients were known to be Kosher, but in our community the ingredients require verification.

4. In contradistinction, following the absolute dictum that a later prophet cannot add or subtract to the prophecy of Moshe Rabeinu, the authority of theoretical Rabbinical jurisprudence favors the earlier court. A Bais Din of a later era cannot overrule the Ikar HaDin of an earlier era’s Bais Din. Of course, within an era, a later generation’s court may excel both quantitatively and qualitatively in comparison with an earlier generation’s court. For example, with regard to the era of the Amora’im, the Talmud relates a query of Rav Pappa to Abaye:

What was the difference regarding earlier [generations in this era of Amora’im] who had miracles performed for them, whereas for us they are not performed? Was it because of [the quantity of their] learning? [That cannot be because earlier] in Rav Yehudah’s time their curriculum was [restricted primarily to] the tractate N’zikin, whereas [in our curriculum] we learn all six tractates.

[Was it because of the quality of their learning? That also cannot be the reason], because when Rav Yehudah [a student of Shmuel] would arrive at [the tractate] Uktzin… he would say “I see [this subject matter is so nuanced] it requires the expertise of [those prior to us who were greater in learning, such as] Rav and Shmuel [to understand it],” [whereas we fully comprehend this subject matter.] (B’rachos 20a)

5. The age of the Tana’im closed with the redaction of the Mishnah and the P’tirah of Rabi Yehudah HaNasi. The transition raises questions on the status of his elder Talimit, many of whom were fully established as Roshei Yeshivos. (There were also independent Roshei Yeshivos and Chasidim, students of Rabi Meir and others of that generation, such as Rabi Shimon ben Menasia, Rabi Pinchas ben Yair, and Rabi Eleazar HaKapur.) For example, Rabi Yehudah HaNasi once changed his ruling to conform to the legal opinion of his disciple Rabi Chiya, who is subsequently referred to as his Talmid-Chaver. Nevertheless, Rabi Chiya is considered an Amora. Doros HaRishonim explains:

The fundamental concept that must be clarified regarding [the end of the age of the Tana’im] is to conceptualize that the last generation to have received the Mishnah [in its pre-redacted form] was not when Rebbi [served as the leader] as is commonly assumed. Instead, it was the [prior] generation, which was that of Rabi Meir, Rabi Yehudah, Rabi Yose, Rabi Shimon, Rabi Elazar ben Shamua, Rabi Shimon ben Gamliel, Rabi Yehoshua ben Karcha, Rabi Nechemia, Rabi Yochanan
Rabi Meir, Rabi Yehudah bar Ilai, Rabi Yose bar Chalafta, Rabi Shimon bar Yochai, and Rabi Elazar ben Shamua were students of Rabi Akiva. Rabi Yehudah HaNasi’s initial teacher was his father Rabon Shimon ben Gamliel II. He then studied under Rabi Yehudah, Rabi Yaakov ben Kurshai, Rabi Shimon, Rabi Yose, and Rabi Elazar. Being the last of the disciples of Rabi Meir’s generation Rabi Yehudah HaNasi was the last of the Tana’im. (In Sefer HaKabalah, Rabbi Avraham ibn Daud HaLevi maintains Rabi Chanina bar Chama, not Rabi Efes as recorded in Kesuvos 103b, succeeded Rabi Yehudah HaNasi. Hence, the Radvad considers Rabi Chanina to be the last of the Tana’im.)

Rabi Yehudah HaNasi’s students did not study under the Sages of Rabi Meir’s generation. Thus, they represent the first generation of the age of the Amora’im. His elder disciples, compilers of the Tosefta (prefaced when cited in the Gemara as “Tanu Rabanan”) and related Baraisios, include Rabi Chiya (who received his education while in Bavel during his youth), bar Kapara (author of the Mishnas bar Kapara, a collection of Baraisios), and Levi ben Sisi (who “Tanei V’Masnisei – taught in his Mishnayos,” Kesuvos 53b, which Rashi explains are Baraisios that follow the six orders of the Mishnah). Indirectly, the list also includes Rabi Hoshaiyah Rabbah who co-authored Baraisios (prefaced with “Tanya” or “Tanu Tuna” when cited in the Gemara) with his teacher Rabi Chiya.

The Rambam indicates these were just a few among “Alafim U’R’vavos.” Among the many other notable students were Rabi Efes, Rabi Chanina bar Chama, Rabi Yanai, Rabah bar bar Chana, Rav (D’Bay Rav – the academy of Rav – redacted the Sifra according to the Rambam, although the Malbim asserts it was redacted by Rabi Chiya; and a Sifre, both of which when cited in the Gemara are prefaced with “Tanu Rabanon;” Rav subsequently was a student of Rabi Yanai), Shmuel ben Abba HaCohain Yarchinai who also served as his personal physician (and subsequently was a student of Rabi Chanina ben Chama), Rabi Shimon the middle of Rabi Yose Chalafta’s five sons, and Rabi Yehudah HaNasi’s sons Gamliel (who succeeded him as Nasi) and Shimon.

Some, like Rabi Yehoshua ben Levi, are mentioned in the Mishnah, but have no Tana’ic status. The Rambam states that 37 of the 128 Sages mentioned by name in the Mishnah are in this category. They are mentioned either because as young students they happened to be present at a Ma’aseh Sh’haya, or they are cited for posterity due to a moral or ethical statement as opposed to their standing in the legal community.

6. A few of Rabi Yehudah HaNasi’s students bridge the divide between the two eras. Primarily, they explain the law as an Amora and are subject to being overruled by other Amora’im. However, they have the ability to rule with the authority of a Tana, albeit rarely. When they do so the Talmud designates their status with the phrase “Tana Hu U’Falig” – a “Tana who disagrees” with other Tana’im on the legal point in question.

This is the answer to the question of why a Baraisa that requires editing should also be revised to concur with the view of Rav, who is one of the Sages whose authority spans both eras. The instances of Tana Hu U’Falig in the Talmud Bavli, pertaining to Rav, Rav Chiya the uncle of Rav, and Rabi Yishmael the eldest of Rabi Yose ben Chalafta’s five sons (and author of a Mechilta), are discussed below
7.1: Rav. Does a failed attempt to establish a Halachically valid Shabbos residence nullify the current T’chum? Rav is Machmir contrary to a Baraisa.

Eruvin 49b – 50b: The Mishnah describes a situation of a traveler on Erev Shabbos who realizes it is not possible to reach home. Suppose an attempt is made to designate a certain tree (or fence) within the T’chum of the current location to serve as the Shabbos residence (i.e., 2,000 Ahmos beyond the Daled Ahmos). The person could then travel yet another 2,000 Ahmos from the Shabbos residence (the tree) after Shabbos arrives and could actually reach home if it is within that distance. Unfortunately, a general designation such as a tree does not specify Halachically valid partitions, and thus “Lo Amar Cloom.”

There is a Machalokes in the ensuing Gemara between Rav and Shmuel as to what is meant by “Lo Amar Cloom.” Rav is Machmir: Not only has the tree not been established as the Shabbos residence, but the failed attempt also nullifies the current location as a Shabbos residence. Hence, the traveler is stuck in the current Daled Ahmos for the entirety of Shabbos. Shmuel is Maikel: The faulty attempt to establish the tree as the Shabbos residence does not nullify the current position as the Shabbos residence. Hence, the traveler can continue at least to the tree if it is within the T’chum, although travel beyond that point is not permitted.

The Gemara (50b) brings a Baraisa that if a precise Daled Ahmos, such as a certain tree’s trunk, is designated as the Shabbos residence it is valid and the traveler acquires the right to travel 2,004 Ahmos; otherwise the traveler is stuck within Daled Ahmos of the current location. The latter clause supports Rav’s ruling. Sh’muel could reply, however, that Baraisa refers to a case where an imprecise location was designated (i.e., the tree), and the tree trunk is 2,004 Ahmos from where the traveler is currently located. The reason the traveler must remain at the current location is not because the current Shabbos residence has been invalidated. It is due to the likelihood of mistaking the area underneath the branches on the far side of the trunk as being permissible for the Shabbos residence, when in fact it is beyond the T’chum.

The Gemara then brings a different Baraisa supporting Shmuel’s position, and asks if it refutes Rav’s ruling. The Gemara answers: Rav Tana Hu U’Falig, which ends the discussion.

7.2: The groom, but not mourners, may help constitute the Minyan required to recite Sheva B’rachos? Rav invalidates a Minyan contrary to a Baraisa.

Kesuvos 8a: Rav Nachman (7a) says Huna Bar Nasan taught a Baraisa that states ten men are required to recite Sheva B’rachos based on Rus (4:2). Boaz took ten men to serve as Eidim to marry Rus and to acquire property she inherited from her ex-husband. Ten must have been required for the purposes of the marriage (i.e., Sheva B’rachos), because property law requires only two Eidim. Rabi Abahu (7b) learns the requirement of ten from T’hilim 68:27. A Makheilos is required to invoke G-d’s blessing on matters pertaining to Me’M’kor Yisrael (i.e., birth). By definition, an assembly requires at least a Minyan.

Rav Nachman (8a) adds, in the name of Rav, that the Minyan may be constituted by counting the groom, but not mourners. The Gemara questions Rav’s view with a “Meisivei” – a Baraisa states both the groom and mourners are counted. The Gemara answers “Masnisa Ka Ramis Alei D’Rav? Rav Tana Hu U’Falig,” which ends the discussion.

7.3: HaMakdish Avdo sets free or only pledges monetary value? A Machalokes between Rav’s Talmidim cannot be resolved by citing a Tana.

Gitin 38b: According to Rabah, Rav deciphers the intent of consecrating a slave as an act of emancipation. According to Rav Yosef, Rav interprets consecration only as a pledge of
monetary value. A *Nafka Minah* arises regarding *Mafkir*: According to *Rabah*, if consecrating a slave is an act of emancipation, then *Cal Sh’Cain* declaring the slave ownerless is an act of emancipation. However, according to *Rav Yosef*, if consecrating only pledges monetary value, there is no *Halachic* implication that making a slave ownerless is an emancipating action.

*Rabah* wonders if his tradition from *Rav* is defective because it appears to contradict the following “*Mosvinan Ashma’tin*”: If *N’chasav* (i.e., all possessions) are consecrated, and *Avadim* are included in the estate, the intent is interpreted as a pledge of their monetary value. Hence, contrary to *Rabah*, consecration does not convey the right to the *Gizbarin* to declare the slaves emancipated. (They are authorized to sell them to others who may in turn emancipate the slaves. *Rabi Yehudah Hanasi* extends this right to the *Avadim* to buy themselves, and in turn execute the right embedded in any sale to emancipate themselves after taking possession.) The *Gemara* answers that the contrary *Tana’ic* teaching does not deprecate *Rabah*’s tradition from *Rav*: “*Masnisin Ka Ramis Alei D’Rav? Rav Tana Hu U’Falig,*” which ends the discussion.

7.4: Do all business transactions become public knowledge? *Rav* differentiates between a deed and witnesses.

*Bava Basra* 41b: *Rav* says three successive occupiers of property are *Mitzarfin* to establish a *Chazakah* as regards the original owner, but only if their purchases were conducted via a *Shtar*. If the purchases were conducted via *Eidim* there is no *Chazakah*, because there is no *Kala* (voice). The original owner is expected to know about and hence protest against squatters when their actions are public knowledge. This occurs on transactions publically recorded via a deed, but not through a sale executed via private witnesses.

The *Gemara* questions why *Rav* says there is no *Kala* via *Eidim* here, but elsewhere not. The case is when property is sold, via witnesses, with a guarantee it has no lien. According to *Rav*, if the purchaser later loses the land due to an undisclosed lien against that land, the guarantee permits the purchaser to obtain restitution from any other land owned by the seller at the time of the sale, even if it was subsequently was sold to someone else. The reason is because the purchaser of the second sale agreed to the risky nature of the transaction by not ruling out the existence of a guarantee.

The *Gemara* (42a) answers that there is no contradiction. Even though a real estate transaction conducted via private witnesses does not by itself become public knowledge, a purchaser of real estate must perform due diligence. *Rav* awards the land to the guaranteed purchaser, because the subsequent purchaser of other property should have actively inquired if there are any potential liens against it, such as, for example, if it might be encumbered to protect a previously guaranteed sale.

Nevertheless, the question arises how *Rav* could rule property can become encumbered from a prior sale via witnesses. This ruling contradicts a *Mishnah* (*Bava Basra* 175a) that states a *Malveh* can collect an unpaid loan from encumbered properties if the loan was executed via a *Shtar*. If the loan was executed via *Eidem*, however, the *Malveh* can only collect from available properties owned by the *Loveh*. A purchaser of land is not expected to have known about any outstanding loans a seller might have, either through public knowledge or active inquiry.

The *Gemara* suggests it is not possible to resolve *Rav*’s contrary position against that *Mishnah* by invoking “*Rav Tana Hu U’Falig.*” After all, *Rav* (and for that matter, even *Shmuel*) later states (*Bava Basra* 175b) a *Malveh* cannot collect from *Yorshim* or *L’kuchos* based on an unrecorded loan executed by private witnesses. The *Gemara* concludes, however, that the *Mishnah* regarding heirs and purchasers is irrelevant, because it refers to the lack of a *Kala* for a
loan, whereas this case refers to the lack of a Kala for a purchase. Borrowing often takes place in secret and one is unlikely to find out about it even if one inquired. Even though real estate sales conducted via private witnesses may not automatically become public knowledge, due diligence by the purchaser should reveal the existence of liens. Hence, Rav Tana Hu U’Falig, and rules the Malveh can collect from encumbered properties even if the loan was executed via Eidem.

7.5: Lashes instead of death by Heaven? Rav interprets a Pasuk contrary to a Baraisa. Sanhedrin 83b: Rav says lashes are given to a non-Cohain who eats Trumah. Rav Kahana and Rav Asi asked if he meant to say that the penalty was death (Bedei Shamayim) based on Vayikra 22:9-10. Rav answers the phrase “I am HaShem” at the end of Pasuk 9 teaches the punishment of Mesah in that verse does not carry forward to violations enumerated in the next Pasuk. The Gerama questions Rav’s view with a “Meisivei” – a Baraisa states the punishment is the same for violations listed in both Pasukim. The Gemara answers “Masnisa A’D’Rav Ka Ramis? Rav Tana Hu U’Falig,” which ends the discussion.

7.6: Is the chameleon really there? Rav teaches a different version of a Mishnah than the Tana Kama.

Chulin 122b. Flesh of the eight Sheratzim convey Tumah. The first three Sheratzim are listed in Vayikra 11:29, which are the Choled, Achbar, and Tzav after its kind. Pasuk 11:30 concludes the list with the final five: the Anakah, Koach, Leta’ah, Chomet, and Tensha’hmes. Then, the Torah states “A’leh HaT’mai’im” – “These are the unclean” (Vayikrah 11:31). Noting the use of the definite article, the Rabonim (Chulin 112b) taught the” equates their hide with their flesh in that it too conveys Tumah.

The Talmud Chulin (112b, 120a) previously limited the parts of the animals that convey Tumah to those that are soft, edible, or food-like (e.g., juice). This would be contradicted by the definite article in Pasuk 11:31 implying even the skins of Sheratzim that are hard and non-edible convey Tumah. Therefore, the Pasuk states “A’leh,” meaning only “these” (i.e., with soft skins, but not those with hard skins) contaminate.

The Gemara raises a difficulty with this explanation: The limiting term “A’leh” appears after all eight Sheratzim were articulated. The simple explanation, therefore, is all eight are contaminators. Rav answers the difficulty in noting that after mentioning the third Sheretz the Torah interrupts the list with the phrase “L’Me’neihu” – “after its kind.” This separates the three types listed in Pasuk 11:29 from the five types listed in Pasuk 11:30. Hence, the term “A’leh” only refers back to these five, not those earlier three in the prior verse.

Rav’s explanation appears to be problematic. The motivating Mishnah (Chulin 122a) only lists four of the five Sheratzim from Pasuk 11:30. If Rav’s explanation is correct, why did the Mishnah omit the Tenshemes? Rav Shmuel bar Yitzchak answers “Rav Tana Hu.” Rav differs from the Tana Kama, and does indeed include the Tenshemes in his version of the Mishnah.

8. Rabi Chiya, the uncle of Rav. Is every partial admission a partial admission? Rabi Chiya invokes a Modeh V’Miktzos contrary to a Baraisa.

B’rachos 5a. The plaintiff claims a debt of a Maneh (100 Zuz or Dinar), but the defendant counters that there is no debt (B’rachos 3a). Plaintiff’s witnesses testify they are aware of a debt of only 50 Zuz. Rabi Chiya rules the defendant pays 50 Zuz and takes an oath that the other 50 is not owed. The reason is if the defendant had admitted half was owed it would have to be paid, then Cal V’Chomer if witnesses testified half was owed it would have to be paid.
The father of Rabi Aftoriki (B‘rachos 5a), however, taught a Baraisa that a Modeh V’Miktzos oath is only invoked when it is the defendant who admits to the partial debt. Sh’mos (22:8) states “On any loss, that he says.” This means the oath is administered only if he admits to it, but not if the Bais Din only hears about it via testimony from witnesses.

The contradiction is deflected: “Masnita Ka Ramis Alei D’Rabi Chiya? Rabi Chiya Tana Hu U’Falig. Rabi Chiya is a Tana and has the authority to disagree with a Baraisa. Nevertheless, the Gemara pursues the issue. Even if the Baraisa can be disputed, how can Rabi Chiya ignore a Pasuk? The Gemara responds on his behalf: Rav Chiya could answer that the context of the Parasha happens to be about a person who admitted to half and hence the verse states “he.” Nevertheless, the underlying principle of the Modeh V’Miktzos oath can be applied whenever there is a partial admission heard by Bais Din, whether it is from the defendant or witnesses.

9. Rabi Yishmael b‘Rabi Yose ben Chalafta. Is a courtyard always less stringent than the public thoroughfare? Rabi Yishmael permits women to wear certain items in a Chatzer contrary to a Mishnah. Shabbos 64b. The Mishnah states a woman can wear an ornamental woolen cap or wig into a Chatzer, but not into the R’sheus HaRabim. Rav Anani Bar Sason says in the name of Rabi Yishmael this restriction applies to all of the other items listed in this Mishnah (e.g., braided extensions made from the hair of another person or an animal, bangles sewn onto her hat, etc.).

The Gemara counters that the Mishnah specifically mentioned the Chatzer with regard to the cap or wig, implying the other items listed cannot be worn even in a courtyard. How can Rabi Yishmael contradict a Mishnah? The Gemara responds Rabi Yishmael B‘Rabi Yose Tana Hu U’Falig, which ends the discussion.

10. Rabi Yochanan “ben/bar.” How is a newly discovered Meis relocated from its temporary grave to a permanent cemetery? Rabi Yochanan insists with three Etzba’os of surrounding soil. Nazir 65a. Rabi Elazar ben Pedas explains a Mishnah dealing with relocating a Meis to require three fingers’ width of surrounding soil to be taken when transferring it from a temporary grave to a permanent cemetery. An objection is raised from a Baraisa citing Rabi Elazar ben Tzadok who does not require transferring the extra dirt. Rabi Elazar ben Pedas can answer he also has Tana’ic support for his opinion from a different Baraisa that cites the view of Rabi Yochanan Me’Soom ben Azai.

Rabi Elazer ben Pedas, a student of Rav and then Rabi Chanina bar Chama, obtained S’michah when he repaired to Eretz Yisrael. One of his saying was, “Cal HaOmer Davar B’S’hame Omvro Mavee Geulah LaOlam – Anyone who says a word in the name of the one who said it brings redemption to the world” (Megilah 15a). Hence, the question arises: Which Rabi Yochanan is being referred to in the Baraisa cited for his support? From Tosafos (Hu D’Amar) the possibility arises that it is the Amora Rabi Yochanan bar Nafcha, who preceded Rabi Elazar ben Pedas as the Rosh Mesivta in Tevaria. (Rabi Elazer ben Pedas was elected to head the academy following Rabi Yochanan’s tenure even though he wasn’t one of his disciples.)

If so, perhaps it could also be said Rabi Yochanan Tana Hu U’Falig? Based on Tosafos (Rav Tana Hu) to Kesuvos 8a, if Tanu Hu U’Falig is a defense for Rav in his disagreements with a Mishnah or Baraisa, then is it possible the same can be said of Rabi Yochanan bar Nafcha? Yet, the Gemara in Kesuvos does not raise this as a defense on the matter being debated there.
(see section 7.2 above). Thus, Tosafos (Hu D'Amar) concludes the Rabbi Yochanan who cites ben Azai is not the Amora, but is Rabbi Yochanan ben Nuri the Tana.

Rabi Yochanan ben Nuri was in the generation following Rabbi Yochanan ben Zakai. The Igeres of Rav Sherira Gaon writes of him and his colleagues, “VaLifnaihem Shimon ben Azai” which puts ben Azai in the generation succeeding Rabbi Yochanan ben Nuri. How could Rabbi Yochanan ben Nuri cite a law in the name of someone from the following generation?

Perhaps, then, it is necessary to return to the previous proposition that the Rabbi Yochanan cited in Nazir is the Amora. It is standard practice for a Sage of a later generation to cite a Sage of an earlier generation. By virtue of his appearance in a Baraisa where he states the law in the name of ben Azai, Rabbi Yochanan the Amora should be elevated to the level of a Tana U’Falig.

It is not a difficulty to the one who maintains “Shimon Me’Schoom Reuvain” doesn’t necessarily mean Shimon was a student of Reuvain, but what can be said by the one who maintains “Me’Shoom” indicates a direct academic heritage? How could Rabbi Yochanan the Amora (n. 279 C. E.) been a student of ben Azai? Ben Azai (a) initially was a student of Rabi Tarfon and then Rabi Yehudah ben Chananiah (n. = 131 C. E.), (b) knew Rabi Eleazer ben Azariah HaNasi, and (c) pre-deceased his father-in-law Rabi Akiva (n. = 135 C. E.). Therefore, it must be concluded that the Rabbi Yochanan in Nazir could not have been bar Nafcha.

Thus, the question returns: How could Rabbi Yochanan ben Nuri cite ben Azai? A third possibility follows the view that “Shimon Me’Shoom Reuvain” doesn’t necessarily mean Shimon was a student, directly or otherwise, of Reuvain. For example, Menachos (82b) states “Shmuel Me’Shoom Rabi Eliezer,” even though Shmuel was not a student of Rabi Eliezer.

The Igeres states, “Ve’Sh’nai’im LaHem Talmidim V’Chaveirim.” This means Rabbi Yochanan ben Nuri was an older contemporary, not from a prior generation, of the younger ben Azai. Perhaps it is because ben Azai was not ordained (although he was given the title Rabi as an honorific in the Mishnah to Yevamos 49a), the Igeres uses the term “VaLifnaihem.” (This is supported by the continuation of the Igeres’ list with Shimon ben Zoma who also was not ordained, although he too was given the title Rabi as an honorific in B’rachos 6b and Chulin 83a). Thus, there is no contradiction in having Rabbi Yochanan ben Nuri cite a law in the name of a younger contemporary, especially someone of the stature of ben Azai who once bested his father-in-law, Rabi Akiva, in a Halachic debate (Tosefta to Bava Metzia 3).

As noted above (section 7), the Gemara in various places states Rav Tana Hu U’Falig. It can be speculated, based on Tosafos in Nazir, as to whether Rabbi Yochanan bar Nafcha held Rav was entitled to that status. However, what cannot be debated is the Gemara did not accord that status to Rabbi Yochanan bar Nafcha.

11. Rav’s real name was Abba bar Ayvoh (Ibo) ben Rabi Acha Karsela of Cafrei. (His father married Ima, the daughter of Rabi Chiya Rabbah’s mother from her first marriage, and hence Rabi Chiya was Rav’s uncle). When Issi bar Hini ascended to Eretz Yisrael, Rabi Yochanan asked him who was the current Reish Sidra of Bavel. Referring to Rav, Issi bar Hini affectionately called him Abba Arichah because Rav was very tall. Rabi Yochanan defended Rav’s honor:

Abba Arichah you call him? I recall sitting seventeen rows behind Rav, [who in turn was sitting] before Rebbe. Sparks of fire emanated from the mouth of Rav to the mouth of Rebbe, and from the mouth of Rebbe to Rav’s mouth, but I was
unable to comprehend the discussion! And yet, you call him [with the familiar]
*Abba* the Tall? (Chulin 137b)

*Otzar HaGeonim* (VIII, Part 1, *Otzar HaTeshuvos* to *M’seches Kesuvos*, p. 30, s’ 98, & footnote 2) cite *Rav Chai Gaon*, who states there are three places in the *Talmud* where *Rav* is mentioned as a *Tana* by his title and given name: *Rabi Abba*. However, it appears that there are actually only two such occurrences. One is a *Baraisa* in *B’rachos* 49a where he indicates the *Nodeh L’Cha* paragraph of *Bircas HaMazon* must include *Hoda’ah* at the beginning and end of the *B’racha* (and so rules the *Rambam*). In our *Shas* his name is written *R’ Abba*, which *Mesuros HaShas* (1) confirms is *Rabi Abba*.

The other occurrence is a *Baraisa* in *Kesuvos* 81a, where he asks *Sumchos* about the legal process for a *Yavam* who wants to sell his deceased brother’s property. Here, too, in our *Shas* his name is written *R’ Abba*, which *Mesuros HaShas* (4) confirms is *Rabi Abba*.

The apparent third occurrence cited is *Shabbos* 135a pertaining to the *Yalid Bayis* (*B’rashis* 17:12,13) who was first immersed and then she gave birth. However, in our *Shas* this discussion takes place on side b of the *Daf* in the name of *Rav Chama*. His title was the Babylonian “*Rav*,” indicating he never ascended to *Eretz Yisrael* to be ordained.

*Otzar HaGeonim* (II, Part 2, *Otzar HaPirushim* to *M’seches Shabbos* 135b, p. 86, s’ 312) may help. In three places a *Tana* has the Babylonian appellation *Rav*. The first two cases refer to *Abba Arichah* who is known as *Rav*, and the third case is *Rav Chama*. However, this does not account for (a) why *Rav Chai Gaon* writes “*Rav Abba* says… if he [first] immersed her and then she gave birth,” instead of “*Rav Chama* says… if he [first] immersed her and then she gave birth,” as indicated in our *Shas*. Perhaps it is a Tei’as Sefer/Dafos or *Rav Chai Gaon* has a different Girsah.

Nor does it explain (b) why his title is “*Rav*” instead of “*Rabi*.” Perhaps the lesser title is used because *Rav* only had a partial *S’michah*. *Rabi Chiya* asked *Rabi Yehudah HaNasi* if *Rav* could *Pasken Shailos* pertaining to *Yoreh Yoreh* v’*Yadin Yadin* when he descended to Bavel. The response was in the affirmative with the exception of *B’choros* (*Sanhedrin* 5a). The *Gemara* (5b) explains *Rav* was an unparalleled *Baki* in recognizing *Moomim*. *Rabi Yehudah HaNasi* was concerned a certain type of permitted blemish that only *Rav* could recognize and *Matir* might confuse and mislead his Babylonian peers into permitting a debilitating blemish that to them was indistinguishable to *Rav*’s example.