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# Tana Hu U'Falig

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# RABBI DR. SHLOMO SAWILOWSKY

## *Tana Hu U'Falig*

Rabbi Dr. Shlomo Sawilowsky

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 *Mizbaiach* 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 *Mizbaiach* of the *Bayis Shaini* are *Pasulin*. The *Gemara* questions this reading because if the *Mizbaiach* 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 *Mizbaiach* 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 *Mizbaiach* coming into disrepair, but subsequently the *Mizbaiach* 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 the *Sh'vatim* and their immediate descendants. *Moshe Rabeinu* inaugurated the post Sinai age of prophecy, and subsequently the *B'nai Yisrael* were also guided by the *Cohanim*. Although the *Ne'vi'im* and *Cohanim* continued their

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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 6<sup>th</sup> and 7<sup>th</sup> 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., *Adoniyahu*) 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'nessess 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 Yochanon 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 Nasan* 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

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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'ailos V'Teshuvos*, and the *Rishonim* and *Acharonim* are also known as the Rabbinite, 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 ensuing *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.

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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 *Baraisas* 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 *Talmidim*, 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 Elazer ben Shamua*, *Rabi Shimon ben Gamliel*, *Rabi Yehoshua ben Karcha*, *Rabi Nechemia*, *Rabi Yochanon*

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*HaSandler, Rabi Yishmael* the son of *Rabi Yochanon ben Baroka*, and their many colleagues (V, 19:39).

*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 *Ravad* 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'Failg* 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

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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

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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 *T'rumah*. *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 *Tenshahmes*. Then, the *Torah* states "*Ā'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 "*Ā'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 "*Ā'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 "*Ā'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.

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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 *Rav 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'Shoom 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'Shame Omro 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

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(see section 7.2 above). Thus, *Tosafos* (*Hu D'Amar*) concludes the *Rabi Yochanan* who cites *ben Azai* is not the *Amora*, but is *Rabi 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 *Rabi Yochanan ben Nuri*. How could *Rabi 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 *Rabi 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*, *Rabi 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'Shoom Reuvain*” doesn't necessarily mean *Shimon* was a direct student of *Reuvain*, but what can be said by the one who maintains “*Me'Shoom*” indicates a direct academic heritage? How could have *Rabi Yochanan* the *Amora* (n. 279 C. E.) been a direct 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 *Rabi Yochanan* in *Nazir* could not have been *bar Nafcha*.

Thus, the question returns: How could *Rabi 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 *Rabi 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 *Rabi 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 *Rabi Yochanan bar Nafcha* held *Rav* was entitled to that status. However, what cannot be debated is the *Gemara* did not accord that status to *Rabi Yochanan bar Nafcha*.

11. *Rav's* real name was *Abba bar Ayyoh (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 *Isi bar Hini* ascended to *Eretz Yisrael*, *Rabi Yochanan* asked him who was the current *Reish Sidra* of *Bavel*. Referring to *Rav*, *Isi 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

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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.