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 #37: Chapter Six (2)**

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

**Gemara**

**II. The Legitimacy of Interpreting the Mishna According to its Plain Sense**

We ended the previous *shiur* with a question: What justification is there for interpreting Tannaitic sources in a way that seems so far from their plain meaning, and at times even contradicts it? Before we answer this question, however, we must examine its very legitimacy: Is it even possible to say that the Gemara's interpretation of the Mishna contradicts its plain sense? A similar question was raised in Chapter 4, with regard to contradictions between the plain sense of Scripture and the Midrash Halakha. We saw that Biblical commentators often explained the verses in accordance with their plain sense, and saw no problem in doing so. Do we find a similar phenomenon among the commentators to the Mishna? Did they deem it acceptable to interpret a *mishna* differently from the Gemara's understanding, or did they perceive the Gemara's *ukimta* as the sole legitimate interpretation of the *mishna*?

First, it should be noted that in contrast to the Bible, the Mishna is often not studied as a book in itself, but as part of the study of the Gemara. This can be seen in the simple fact that over the course of about thirteen hundred years, from the time of the writing of the Mishna until the beginning of the period of the *Acharonim* (when interpretation of the Mishna began to flourish, as we will see below), almost no commentaries were written on the Mishna,[[1]](#footnote-1) and the Rambam's commentary to the Mishna remained an exceptional work in the literature of the *Rishonim.[[2]](#footnote-2)* Furthermore, even in places where they saw value in studying the Mishna in itself, it was generally seen as a tool for learning Halakha[[3]](#footnote-3) and was therefore studied in accordance with the Gemara's conclusion; no significant value was attached to studying the Mishna in accordance with its plain sense, which does not contribute to knowledge of Halakha. This perspective is also indicated by the absence of manuscripts of the Mishna without the Rambam's commentary, and the fact that in general, manuscripts of the Mishna are very few in number in comparison to manuscripts of the Talmud and other works. This shows that "in the great Torah centers of Europe, at least from the end of the eleventh century and until the fifteenth century, the Mishna was not considered a free-standing literary unit. The Mishna of the orders that have the Babylonian Talmud on them was not studied, nor was it widespread; it was embedded in the Babylonian Talmud as a single unit and integrated into it. The Mishna as a halakhic corpus of its own, not within the framework of the Talmud, was apparently not widespread in reality or in the minds of those who studied it."[[4]](#footnote-4) Later commentators of the Mishna took the same approach.

At the same time, however, the commentators did not completely rule out interpreting the Mishna in accordance with its plain sense, as long as no *halakha* was established based on that interpretation. Below are several examples of interpretations of the Mishna in accordance with its plain sense and against the Gemara, from the *Geonim* to the *Acharonim.*

**1. Interpretations of the *Geonim***

A well-known example of this phenomenon is Rabbi Saadya Gaon's interpretation of a difficult *mishna*:

If a man who was married to three wives died, and the *ketuba* of one was a *maneh*, of the other two hundred *zuz*, and of the third three hundred *zuz*, and the estate [was worth] only one *maneh*, [the sum] is divided equally. If the estate [was worth] two hundred *zuz*, [the claimant] of the *maneh* receives fifty *zuz* [and the claimants respectively] of the two hundred and the three hundred *zuz* [each receive] three gold dinars.[[5]](#footnote-5) If the estate [was worth] three hundred *zuz*, [the claimant] of the *maneh* receives fifty *zuz*, and [the claimant] of the two hundred *zuz* [receives] a *maneh*, while [the claimant] of the three hundred *zuz* [receives] six gold dinars. (*Ketubot* 10:4)

The Mishna deals with a case of a man who was married to three wives, each of whom had a *ketuba* with a different obligation: one had a *ketuba* of a hundred silver dinars (a *maneh*), another had a *ketuba* of two hundred, and the third had a *ketuba* of three hundred. The man died and left behind a sum of money that did not suffice to pay off all the *ketubot*. How should this sum be divided among the three women? The Mishna lists three potential cases, in each of which the man left a different amount of money. The table below summarizes the different cases in the Mishna and the law in each of them:

|  |  |  |  |
| --- | --- | --- | --- |
| Ketuba: >>  Inheritance: | 100 | 200 | 300 |
| 100 | 33 1/3 | 33 1/3 | 33 1/3 |
| 200 | 50 | 75 | 75 |
| 300 | 50 | 100 | 150 |

The Mishnah is difficult to understand: In the first case, we divide the money equally between the three women; in the third case, it is divided proportionately to the *ketubot*; and in the middle case, two of the women receive an equal amount despite the difference in their respective *ketubot*. Why?

In response to this difficulty, the Gemara proposes two *ukimtot*:

[The claimant] of the *maneh* receives fifty *zuz*? Should she not be entitled to only thirty-three and a third *zuz*? Shmuel said: [Here it is a case] where the one who is entitled to the two hundred *zuz* gave a written undertaking to the woman who was entitled to one *maneh*: "I have no claim whatsoever upon the *maneh*." But if so, read the next clause: [The claimants respectively] of the two hundred and the three hundred *zuz* [each receive] three gold dinars. Why can she not tell her: "You have already renounced your claim upon it"? Because she can reply: "I have only renounced my claim."

If the estate [was worth] three hundred, etc. [Why should the claimant] of the two hundred *zuz* receive a *maneh*, [when in fact] she should be entitled to only seventy-five *zuz*? Shmuel said: [Our *mishna* refers to a case] where the woman who was entitled to the three hundred *zuz* gave a written undertaking to the one who was entitled to the two hundred *zuz* and the other who was entitled to a *maneh*: "I have no claim whatsoever upon you in respect of one *maneh*."

Rav Yaakov of Nehar Pekod said in the name of Ravina: The first clause deals with two acts of seizure and the last clause deals with two acts of seizure. The first clause deals with two acts of seizure – that is, seventy-five *zuz* came into their hands the first time and one hundred and twenty-five the second time. The last clause deals with two acts of seizure – that is, seventy-five came into their hands the first time and two hundred and twenty-five the second time. (*Ketubot* 93a)

Both *ukimtot* are difficult to understand, and much ink has been spilled to explain them.[[6]](#footnote-6) In general, Shmuel interprets the Mishna as referring to cases where the women made certain commitments to each other, whereas Ravina interprets it as referring to cases where the deceased husband left no free assets, but did have assets in the form of liens on the property of people who had borrowed money from him, and the women collected these debts in two stages. The common denominator of the two *ukimtot* is that under normal conditions – without agreements among the women and where the deceased husband left free assets – the money is not divided up as stated in the Mishna. It should also be remarked that in the end, the Gemara notes that the *halakha* is not in accordance with this *mishna*:

It was taught: This is the teaching of Rabbi Natan. [But] Rabbi [Yehuda Ha-Nasi] says: I do not approve of Rabbi Natan's views in these [cases] for [the three wives] take equal shares.

Rabbi Saadya Gaon proposed an approach that explains the logic of the Mishna without any *ukimta* whatsoever:

Even though we know that the *halakha* is in accordance with Rabbi [Yehuda Ha-Nasi] and not Rabbi Natan, and even though Shmuel sets the *mishna* up as referring to a case where [the women] write to each other renouncing claims, and Rabbi Yaakov in the name of Ravina sets it up as referring to a case where there were two seizures of money – nevertheless, they left room for us as well. We can set the *mishna* up as referring to a case where there was a court stipulation regarding the assets of the deceased husband: Any wife regarding whom the available assets are less than her *ketuba* does not receive more than the wife before her, and when they are more than her *ketuba*, she receives up to the value of her *ketuba* equally, and the rest proportionately. Therefore, when there is a *maneh*, which is less than the *ketuba* of the second and the third wife, they do not receive more than what is given for the *ketuba* of the first wife, and therefore the three of them divide the money equally. And when there is two hundred, the first wife takes fifty, because it is more than her *ketuba*. She takes thirty-three and a third equally with the other women from the first *maneh*, and from the second *maneh* she takes sixteen and two-thirds, which is a sixth proportionately. And the third wife does not receive more than the second wife, but rather they each take seventy-five. And when there is three hundred, it is not less than the largest *ketuba*, and therefore they take proportionately: the first takes fifty, the second a hundred, and the third a hundred and fifty. (*Otzar ha-Geonim*, *Ketubot*, responsum no. 721, p. 310)[[7]](#footnote-7)

Rabbi Saadya Gaon explains that the rule underlying the Mishna, which is in the realm of a "court stipulation," is that if the sum left by the deceased is less than the *ketuba*, the money is divided equally among the three women; and if it is greater than the *ketuba*, then they divide up to the value of the *ketuba* equally among them, and anything above that is divided proportionately. Therefore, when the deceased left a *maneh*, that is, a sum equal to the smallest *ketuba*, the three women divide the money equally among them. When he left two hundred, the first woman receives fifty: the first hundred, which is not more than her *ketuba*, she divides equally with the other two women and receives a third, i.e., thirty-three and a third dinars; and from the second hundred, which is above the value of her *ketuba*, she receives a share in proportion to the total value of the various *ketubot*, that is, a sixth, which is sixteen and two-thirds dinars; in total she receives fifty dinars. The second and third women, regarding whom the second hundred is not more than the value of their *ketubot*, divide their shares equally. In the third case, the deceased husband left three hundred dinars, a sum that is not less than the largest *ketuba*, and therefore the women divide up the money proportionately: the first receives fifty, the second a hundred, and the third a hundred and fifty.

This explanation is not without its difficulties, but what is important for our purposes is that Rabbi Saadya Gaon sees no problem in interpreting the *mishna* in accordance with its plain meaning, as he understands it – and not like the *ukimtot* of the Gemara. He explicitly notes that the *Amoraim* interpreted the *mishna* as referring to special cases, but he sees no problem with proposing a different interpretation in accordance with the plain meaning of the *mishna*: "nevertheless, they left room for us as well."[[8]](#footnote-8) In this way, he clears the way for other explanations of the Mishna in accordance with its simple meaning, and not like the *ukimtot* in the Gemara.[[9]](#footnote-9)

Let us move on to another example. The Mishna states:

Whatever is poured out [from one vessel to another] is ritually pure,[[10]](#footnote-10) except for *zifin* honey and honey batter. (*Makhshirin* 5:9)

What is "*zifin* honey"? The Gemara offers two interpretations:

What means "*zifin*"? Rabbi Yochanan said: Honey used for adulteration [*ziyyef*]; and Resh Lakish said: It is named after its place, as it is written: "Zif, Telem, and Be'alot" (*Yehoshua* 15:24). (*Sota* 48b)

According to the first interpretation, *zifin* is thick honey, which "is used for adulteration"; "since it is good and thick, people mix water and wine into it, and they cannot be detected" (Rashi). According to the second interpretation, it is honey brought from the region of Zif. However, in *Peirush ha-Geonim le-Seder Taharot*[[11]](#footnote-11) on this *mishna*, we find:

*Zifin* – they are similar to bees [*devorin*], and there are four: *devorin*, *zifin*, *gazin*, and *tzorin*.

According to this interpretation, *zifin* is a type of bee, rather than a type of honey. The *Arukh*[[12]](#footnote-12) cites the two explanations proposed by the Gemara, and then mentions the interpretation of the *Geonim* as "another explanation" – even though it is not in accordance with what is stated in the Gemara.

(Translated by David Strauss)

1. Early commentaries on the Mishna were usually written on those sections for which there is no Babylonian Talmud, i.e., *Zera'im* and *Taharot.* Among these commentaries, the following works are the most well known. (For a review of the commentaries to the Mishna, see Ch. Albeck, *Mavo le-Mishna*, Jerusalem-Tel Aviv 5739, pp. 237-253.)

   a. *Peirush ha-Geonim le-Seder Taharot* [*Commentary of the Geonim to the Order of Taharot*], (ed. Epstein, Jerusalem 5742), which was at first attributed to Rav Hai Gaon, but was subsequently proven to be a collection of commentaries of various *Geonim.* In several places it mentions a commentary to the order of *Zera'im*, which is not extant.

   b. The commentary of Rav Natan Av ha-Yeshiva, which was written on the entire Mishna as a short and concise commentary that explains the meanings of difficult words. (The work was written in Arabic and translated by Rabbi Y. Kafih; published in *Shisha Sidrei Mishna*, ed. El ha-Mekorot, Jerusalem 5715-5718.) This commentary draws upon different sages. However, it was not known at all in medieval Europe, and had no influence on later interpretations of the Mishna (I. Ta-Shma, *Ha-Sifrut ha-Parshanit la-Talmud* *1000-1200*, Jerusalem 5759, p. 186).

   c. The commentary of Rabbi Yitzchak ben Melchitzedek (*Ribematz*, Italy, ca. 1090-1160) on the order of *Zera’ím*.(He refers to his commentary to the order of *Taharot*, but it is not extant.)

   d. The commentary of Rabbi Shimshon of Sens (France-Eretz Israel, ca. 1150-1230) on the orders of *Zera'im* and *Taharot*. [↑](#footnote-ref-1)
2. The Rambam attached great value to the study of Mishna as an inseparable part of the knowledge of *halakha*. In a harsh critique of a certain scholar who in his opinion had erred in some point of the law, he said: "That which caused all this distress is insufficient memory of the Mishna and study of what is written in it. How correct are the words of the Sages (*Ta'anit* 7b-8a): If you see a student to whom his studies are as hard as iron, it is because his Mishna is not well organized in his mouth" (commentary of the Rambam to *Mikva'ot* 4:4). Ta-Shma (previous note, p. 187) notes: "This position is completely different from that of the sages of western Europe, according to whom independent interpretation of the Mishna is required only for those orders regarding which the Mishna is studied – not by our choosing – by itself, because there is no Babylonian Talmud on it… Indeed, we have sufficient evidence that already in the twelfth century there was no independent study of the Mishna in Ashkenaz." [↑](#footnote-ref-2)
3. As the Rambam emphasized in the introduction to his commentary to the Mishna. Regarding the purpose of this work, see the comprehensive article of Y. Sinai, "*Peirush ha-Mishna le-Rambam*," in: Tz. Haber and K. Cohen (eds.), *Mei-Birkat Moshe* 1, Ma'aleh Adumim 5772, pp. 219-200. [↑](#footnote-ref-3)
4. Y. Sussmann, "*Kitvei Yad u-Mesorot Nusach shel ha-Mishna*," *Divrei ha-Kongress ha-Olami ha-Shevi'i le-Mada'ei ha-Yahadut – Mechkarim be-Talmud, Halakha u-Midrash*, Jerusalem 5741, p. 222. [↑](#footnote-ref-4)
5. A gold dinar is worth twenty-five silver dinars. [↑](#footnote-ref-5)
6. The Rif (*Ketubot* 51a in Alfasi) noted that "this *mishna* and the Gemara on it was discussed by the early authorities, but they did not come to a satisfactory understanding," and he went to great lengths in an attempt to explain the Gemara. The *Tosafot* (*ad loc*.) leave the issue with a question: "The reason for this has not been explained well" (s.v. *de-amra*); "My master did not know what the Mishna comes to teach us" (s.v. *be-kotevet*). [↑](#footnote-ref-6)
7. This interpretation is also brought in *Teshuvot ha-Geonim – Sha'arei Tzedek*, part IV, *sha'ar* IV, no. 52. [↑](#footnote-ref-7)
8. This sentence is based on a phrase used in the Gemara to indicate the authority given to a Torah scholar to introduce a new law. The Gemara (*Chullin* 6b) Rabbi Yehuda Ha-Nasi’s ruling to exempt Beit Shean from *terumot* and *ma'aserot* because it is not considered part of Eretz Israel. This allowance aroused opposition: "Thereupon his brothers and other members of his father's family combined to protest, saying: The place which was regarded as subject to tithes by your parents and ancestors, will you regard as free?" Rabbi Yehuda Ha-Nasi, in response, "expounded to them the following verse: 'And he [Chizkiyahu] broke in pieces the brazen serpent that Moshe had made; for until those days the children of Israel did offer to it; and it was called Nechushtan' (II *Melakhim* 18:4). Now, is it at all likely that Asa did not destroy it? Or that Yehoshafat did not destroy it? Surely Asa and Yehoshafat destroyed every form of idolatry in the world! It must be therefore that his ancestors left something undone whereby he [Chizkiyahu] might distinguish himself; so in my case, my ancestors left room for me to distinguish myself." That is to say, a person is permitted and obligated to complete that which previous generations were not able to accomplish, as Rashi writes (ad loc. 7a, s.v. *makom*): "When our sons come after us, if they do not find something to fix, how will they make a name for themselves?" (See also Maharsha, *ad loc*.) [↑](#footnote-ref-8)
9. Prof. Israel Oman proposed a more complex solution, based on a principle that emerges from the Mishna at the beginning of *Bava Metzia*, that each side receives half of the amount in dispute, together with principles taken from "game theory" of modern mathematics; see Y. Oman, "*Be-Inyan Mi she-Haya Nasui Shalosh Nashim*," *Moriya* 22, 3-4, 5759, pp. 98-107. Oman's approach was attacked in *Kovetz Beit Aharon ve-Yisrael* in two articles: Sh. M. Halevi Segel, "*Be-Veirur Ofen Chalukat Ba'alei Chovot u-be-Din Shelosha Ochazin be-Talit*," no. 127, pp. 48-53; N. Perlman, "*Be-Inyan Ketubata shel Zo Maneh ve-shel Zo Matayim ve-shel Zo Shelosh Mei'ot*," no. 129, pp. 121-127. Both articles question the comparison to the Mishna in *Bava Metzia*, but also fervently reject the very idea of interpreting a Mishna not in accordance with the Gemara. The first one writes: "It is strange to relate to an attempt to be clever and stray from the ways of the Gemara in the interpretation of the Mishna and to walk in ways that our Rabbis never imagined"; and the second one: "He dared to interpret the Mishna against the words of the Gemara and the *Rishonim* and the *poskim*, opposite the way of the true Torah, which our fathers and holy Rabbis never imagined." They fail to consider the fact that their sharp critiques of such an interpretation are valid to the same degree with respect to Rabbi Saadya Gaon's interpretation of this *mishna*, as well as the great commentators whose interpretations are quoted below, who followed in the path of Rabbi Saadya Gaon and also believed in the rationale of "they left room for us." In the response that Oman wrote to his critics – "*Teguva be-Inyan Mi she-Haya Nasui Shalosh Nashim*," *Ha-Maayan* 50, 2, 5770, pp. 3-13, he argues that his position accords with the Talmudic passage according to one understanding in the *Rishonim*, but he does not directly address the legitimacy of interpreting the Mishna in accordance with its plain sense. [↑](#footnote-ref-9)
10. The Mishna is referring to pouring something from a higher vessel to a lower one. It asserts that "if one pours from a pure vessel into an impure vessel, that which is in the upper vessel remains pure" (Rabbi Ovadya of Bartenura), because the flow from vessel to vessel is not considered a connection that conducts ritual impurity. [↑](#footnote-ref-10)
11. See above, note 1. [↑](#footnote-ref-11)
12. The *Arukh* was compiled by Rabbi Natan son of Rabbi Yechiel of Rome (Italy, 1035-1106). It is a dictionary of words found in the Talmud, and it relies in many places on the interpretations of the *Geonim*. [↑](#footnote-ref-12)