



Chas Ve'Shalom!

At the end of the fifth *perek* we learn about a debate between *Akavya ben Mehalalel* and the *Chachamim* regarding whether *mei Sotah*¹ can be administered to a convert or a freed maid-servant; *R' Akavya* argued that it did not apply to these people. The *Chachamim* brought support for their position by bringing a precedent where *Shemaya* and *Avtalyon* gave *mei Sotah* to a freed maid-servant. *R' Akavya* dismissed this proof with the retort that “*dugma hiskuha*”. The *Mishnah* continues explaining that for this response *Akavya* was excommunicated.

What was he response and why was it received so badly? The common theme amongst the commentators is that he slighted the honour of these great sages – *Shemaya* and *Avtalyon*.

The *Bartenura* explains that *R' Akavya* responded that indeed *Shemaya* and *Avtalyon* acted incorrectly. They did so, because they were “*dugmatah*” – also converts like her. Such a claim is a slight on they honour, both regarding their personal standing and in the accusation of their unjust behaviour.

The *Ra'avad* presents a less harsh explanation explaining that *R' Akavya* construed that it was all a charade (“*dugma*”) and *Shemaya* and *Avtalyon* simply gave her plain water. Such a suggestion is still disrespectful since, were it true, they would have acted wrongly. If she was indeed guilty it could have resulted in people dismissing the power of *mei Sotah* having seen it take no affect in this case.

Returning to the *Mishnah*, *R' Yehuda* responds: “*Chas Ve'Shalom!*” He continues explaining that *R' Akavya ben Mehalalel* was never excommunicated for he was a man of the highest stature both in wisdom and fear of heaven. Instead he presented a different incident where the *Chachamim* responded with by excommunication.

The *Tosfot Yom Tov* asks, why should *R' Akavya*'s stature have any bearing on this incident? Whether or not he was the

greatest in the generation, if he acted improperly presumably the *Beit Din* of the time have the right to deal with him accordingly. No one gets special protection in the face of the law! The *Tosfot Yom Tov* present two answers both with different approaches.

The first approach explains that in truth, *R' Akavya* did not do anything wrong. He simply explained that *Shemaya* and *Avtalyon* were putting on this display, using plain water that looked like *mei Sotah*, in order to frighten the maid-servant into admitting her sin. They however never gave her anything to drink. *R' Akavya* perceived that *Shemaya* and *Avtalyon*'s approach was much like *Shlomo Ha'Melech* who famously threatened to slice the disputed child in half in order to reveal the true mother, even though he had no intention of implementing the threat.² *R' Yehuda* therefore argued that such a sterling personality like *R' Akavya* would have never erred and slighted these sages owner and consequently was only arguing in the manner just described.

The second approach however explains that *R' Yehuda* agrees that *R' Akavya* degraded *Shemaya* and *Avtalyon*. Nonetheless, *R' Yehuda* felt it was unfathomable that a *Beit Din* made up of people of a lesser standing could have executed such a devastating edict on him. The *Tosfot Yom Tov* explains that this understanding better suites the text of the *Mishnah*. *R' Yehuda* did not exclaim “*Chas Ve'Shalom* that *Akavya* degraded” (which would have fit better with the first approach) but rather “*Chas Ve'Shalom* that *Akavya* was excommunicated”.³

This second approach presents us with a new understanding. Do not be mistaken, the original assumption that there is no special protection for anyone is still maintained. This however does not mean that we always have the ability or right to apply judgment in our earthly courts. Sometimes, the case itself is beyond our ability and is deferred to a “higher” court.

David Bankier

¹ This concept should hopefully still be familiar as we learnt *Sotah* just under a year ago. It refers to the process under which a married-woman, who had been previously warned not to seclude with a particular man, was caught doing so, but it is not known whether she actually had an affair. Part of the process, if she did not admit to the sin, was the administering of the *Sotah* water, which would have a dire effect if she indeed had an affair. In this debate, *R' Akavya ben Mehalalel* maintained that since the *Torah* introduces the laws of *Sotah* with “*daber el bnei Yisrael*”, it excludes converts and maidservants.

² The *Tosfot Yom Tov* explains that the *Tana Kama* would have still understood that such conduct is still unwarranted because “*shema yotziyu la'az al mei hamarim*” and therefore such a suggestion would still be a slight on their owner.

³ See the *Tosfot Yom Tov* for the proofs he brings from different *gemarot*.

Revision Questions

עדויות ח' י' - ז' ט'

- What were the four *dinim* that were debated between the *Chachamim* and *Akavya ben Mehalalel*? (ז' ח')
- According to *R' Yehuda* on which *Tanna* did they place a *nidui* and why? (ח' ז' ט')
- What did *Akavya ben Mehalalel* request of his son before he died? (ז' ז' ח')
- What did his son request and what was the response? (ח' ז' ח')
- Which animal did *R' Yehuda ben Bava* testify committed a capital offence and was punished with stoning? (ט' ט' ט')
- What were the other four laws that *R' Yehuda ben Bava* presented? (ו' ט' ט')
- Explain the debate regarding whether a limb from a corpse can be a source of *tumah*? (ז' ב' ז')
- (According to *R' Eliezer*) what is a greater source of *temah*, a live person or a corpse? (Explain) (ז' ב' ז')
- What are the three opinions (*R' Eliezer*, *R' Yehoshua* and *R' Nechunya*) regarding *kezayit basar min ha'chai* and *etzem ke'seorah min ha'chai* and explain the rationale behind each of those opinions? (ז' ג' ז' ג')
- Explain the debate regarding a *peter chamor* that is lost. (ט' ז' ז')
- What did *R' Tzadok* testify regarding:
 - *Tzir* from *chagavim te'emeim* and how did it differ from the *mishnah rishona*? (ז' ב' ז' ב')
 - A body of water where the *zochalin* is more than the *notfim* and why is this law important? (ז' ג' ז' ג')
 - *Zochalin* that pass over the “*aleh*” of a nut? (Explain) (ז' ז' ז')
- What is a *kalal shel chatat* and what did *R' Yehoshua* and *R' Yakim* testify regarding if it is placed on top of a *sheretz*? (ז' ז' ז')
- Who disagree with the previous law? (ז' ח' ז' ח')
- If someone accepted two terms of *nezirut* what, *bedi'ived* could be the minimum length of his *nezirut*? (ז' ח' ז' ח')
- Explain the debate regarding what is done with the offspring of a *shlamim* offering? (What case did *R' Papyas* bring as support?) (ז' ט' ז' ט')
- What did *R' Yehoshua* and *R' Papyas* testify regarding *Aruchot shel Nachtomim*? (ז' ז' ז')
- What other case was debated in a similar manner? (ז' ז' ז')
- How late did *R' Yehoshua* and *R' Papyas* maintain that *Beit Din* could declare a year a leap year and how did they differ from the *Chachamim*? (ז' ז' ז')
- What other innovation did they present regarding the law in the previous question? (ז' ז' ז')
- About what two items did *Menachem ben Signai* testify in opposition to the *Chachamim*, one of which *tameh* and the other *tahor*? (ז' ז' ז' ז')
- About which four things did *R' Nechunya ben Gudgedah* testify? (ט' ז' ז' ט')

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Next Week's Mishnayot...

שבת קודש	Friday	Thursday	Wednesday	Tuesday	Monday	Sunday
כ"ו טבת	כ"ה שבת	כ"ד שבת	כ"ג שבת	כ"ב שבת	כ"א שבת	כ"ז ינואר Eduyot 8:1-2
Avodah Zara 1:6-7	Avodah Zara 1:4-5	Avodah Zara 1:2-3	Eduyot 8:7- Avodah Zara 1:1	Eduyot 8:5-6	Eduyot 8:3-4	כ"ז ינואר Eduyot 8:1-2

