

From the Rabbi's Desk
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Mishnah with a Twist [8]

My Son, retract from the Four Matters That I used to Say Insights into Mishnah Eduyot Chapter 5: 6 & 7)

Also: Stories With a Twist # 205



Background to Our Story (What you need to know to better understand the story)

Eduyot



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Tractate *Eduyot* is a unique tractate. Instead of being organized by topic, as is every other tractate, *Eduyot* is organized by the names of the Sages transmitting the *mishnah*. *Eduyot* begins with disputes between Shammai and Hillel, it continues with disputes between the House of Hillel and the House of Shammai, and follows this type of pattern throughout its eight chapters. Most of the *mishnayot* in *Eduyot* are found in other tractates which discuss those specific topics discussed in each individual *mishnah*.

Eduyot is probably the first tractate of the *Mishnah* to have been composed. The *Tosefta*, which is a collection of material that accompanies the *Mishnah*, provides the following background to the compilation of *Eduyot*: "When the Sages gathered in the vineyard of Yavneh, they said, 'In the future a person might look for something from the words of the Torah and not find it, from the words of the *Soferim* (Rabbis) and not find it.' They said, 'Let's begin with Hillel and Shammai.'" In other words, after the Temple was destroyed (70 C.E.) the Sages of Israel gathered in Yavneh to put some organization to the ever-growing Oral Torah. The original organization created in Yavneh was not topical. Rather the *Mishnah* was organized by the name of the teacher. Later Sages, most notably Rabbi Akiva, began to organize the material of the *Mishnah* into topical orders and tractates. As they did so they took *mishnayot* from *Eduyot* and put them into their proper context. With this topically organized work, one could truly search for a topic in the Oral Torah.

Due to its eclectic nature, *Eduyot* is difficult. There will be many background laws to some of its *mishnayot*, and it will take longer to explain them. There are also many issues of ritual purity and impurity which will arise in *Eduyot*. The details of these laws are not easy and will seem foreign to someone not familiar with them. Nevertheless, with patience and effort, we will continue to learn.

Akavya ben Mahalalel



https://en.wikipedia.org/wiki/Akabia_ben_Mahalalel

Akabia ben Mahalalel (Hebrew: עקביא בן מהללאל), was a Jewish religious teacher, probably of the second tannaitic generation (1st and 2nd centuries).

Of his early history nothing is known; there are no references to his teachers and comparatively few of his sayings have been preserved. The *Mishnah* portrays him as a man who fearlessly and persistently maintained opinions on some *halakhot*, even in cases where different traditions were held by the majority of his colleagues, because those opinions were founded on traditions he had received from his predecessors

Akabia's motto in life was: "Remember whence thou hast come, whither thou goest, and before whom thou must be prepared to render an account of thy doings" (*Mishnah Avot* 3:1). Beyond this maxim and the *halakot* enumerated in *Eduyot*, nothing from him has been transmitted. As to his epoch scholars are divided. While some place him in the patriarchate of Hillel I (30 BCE to 10 of the present era), and even somewhat earlier, others bring him down to the first tannaitic generation (10-80); still others believe that he flourished during the patriarchate of Gamaliel II (80-117).

Shmaya



[https://en.wikipedia.org/wiki/Shmaya_\(tanna\)](https://en.wikipedia.org/wiki/Shmaya_(tanna))

Shmaya (Hebrew: שמעיה, or Shemaiah, Samaias or Sameas) was a rabbinic sage in the early pre-Mishnaic era who lived at the same time as Avtalyon. They are known as one of the *zuggot* ("couples"): *Shmaya and Avtalyon*. Both Shmaya and Avtalyon were converts to Judaism and were both descendants of King Sancheriv of Assyria who destroyed the northern Kingdom of Israel.

He was a leader of the Pharisees in the 1st century BCE; president of the Sanhedrin before and during the reign of Herod the Great. He and his colleague Abtalion are termed in *Pesahim*, 66a the *gedole ha-dor* (the great men of the age), and *darshanim* (exegetes) (*ibidem*, 70a).

Abtalion



<https://en.wikipedia.org/wiki/Abtalion>

Abht'alyon, also Avtalyon, Avtalion and Abtalion (Hebrew: אבטליון) was a rabbinic sage in the early pre-Mishnaic era who lived at the same time as Sh'maya.

A leader of the Pharisees during the 1st century BCE and by tradition vice-president of the great Sanhedrin of Jerusalem. He was of heathen descent (*Bab. Yoma*, 71b; *'Eduy. v.6*; *Git. 57b*; *Yer. M. ק. iii.81b*; see Weiss, *Dor Dor we-Dorshaw*, i.1, and Landau, p. 319). Despite this fact, Abtalion, as well as his colleague, Shemaiah, the president of the Sanhedrin, was one of the most influential and beloved men of his time.

Excommunication (Cherem)



[http://en.wikipedia.org/wiki/Herem_\(censure\)](http://en.wikipedia.org/wiki/Herem_(censure))

Herem (or *Chērem* הרם) is the highest ecclesiastical censure in the Jewish community. It is the total exclusion of a person from the Jewish community. It is a form of shunning, and is similar

to *vitandus* excommunication in the Catholic Church. Cognate terms in other Semitic languages include the Arabic term *ḥarām* (forbidden, taboo, off-limits, sacred or immoral), and the Ethiopic *`irm* (meaning accursed).

Arguably the most famous case of a herem is that of Spinoza, the seventeenth century philosopher.

Other famous subjects of a herem were early Russian communists Leon Trotsky and Grigory Zinoviev. Sometime in 1918, while Ukraine was under German occupation, the rabbis of Odessa pronounced herem against Trotsky, Zinoviev, and other Jewish Bolshevik leaders in the synagogue.

Although developed from the Biblical ban, excommunication, as employed by the Rabbis during Talmudic times and during the Middle Ages, it became a rabbinic institution, the object of which was to preserve Jewish solidarity. A system of laws was gradually developed by Rabbis, by means of which this power was limited, so that it became one of the modes of legal punishment by rabbinic courts. While it did not entirely lose its arbitrary character, since individuals were allowed to pronounce the ban of excommunication on particular occasions, it became chiefly a legal measure resorted to by a judicial court for certain prescribed offenses.

The Talmud speaks of twenty-four offenses that, in theory, were punishable by a form of *niddui* or temporary excommunication. Maimonides (as well as later authorities) enumerates the twenty-four as follows:

1. insulting a learned man, even after his death;
2. insulting a messenger of the court;
3. calling an Israelite a "slave";
4. refusing to appear before the court at the appointed time;
5. dealing lightly with any of the rabbinic or Mosaic precepts;
6. refusing to abide by a decision of the court;
7. keeping in one's possession an animal or an object that may prove injurious to others, such as a savage dog or a broken ladder;
8. selling one's real estate to a non-Jew without assuming the responsibility for any injury that the non-Jew may cause his neighbors;
9. testifying against one's Jewish neighbor in a non-Jewish court, and thereby causing that neighbor to lose money which he would not have lost had the case been decided in a Jewish court;
10. a Kohen shochet (butcher) (all the more so an Israelite^[61]) who refuses to give the foreleg, cheeks and abomasum of kosher-slaughtered livestock to another Kohen;
11. violating the second day of a holiday, even though its observance is only a custom;
12. performing work on the afternoon of the day preceding Passover;
13. taking the name of God in vain;
14. causing others to profane the name of God;
15. causing others to eat holy meat outside of Jerusalem;
16. making calculations for the calendar, and establishing festivals accordingly, outside of Israel;
17. putting a stumbling-block in the way of the blind, that is to say, tempting another to sin (Lifnei iver);
18. preventing the community from performing some religious act;
19. selling forbidden ("terefah") meat as permitted meat ("kosher");
20. failure by a "shochet" (ritual slaughterer) to show his knife to the rabbi for examination;
21. masturbation;
22. engaging in intercourse with one's divorced wife;
23. being made the subject of scandal (in the case of a rabbi);
24. declaring an unjustified excommunication.

For all practical purposes, most of these conditions no longer were considered as grounds for a ban since the end of the Talmudic era, around 600 CE

The Niddui

The *niddui* (Hebrew: נִידוּי) ban was usually imposed for a period of seven days (in Israel thirty days). If inflicted on account of money matters, the offender was first publicly warned ("hatra'ah") three times, on Monday, Thursday, and Monday successively, at the regular service in the synagogue. During the period of niddui, no one except the members of his immediate household was permitted to associate with the offender, or to sit within four cubits of him, or to eat in his company. He was expected to go into mourning and to refrain from bathing, cutting his hair, and wearing shoes, and he had to observe all the laws that pertained to a mourner. He could not be counted in the quorum for the performance of a public religious function. If he died, a stone was placed on his hearse, and the relatives were not obliged to observe the ceremonies customary at the death of a kinsman, such as the tearing of garments, etc.

It was in the power of the court to lessen or increase the severity of the niddui. The court might even reduce or increase the number of days, forbid all intercourse with the offender, and exclude his children from the schools and his wife from the synagogue, until he became humbled and willing to repent and obey the court's mandates. According to one opinion, the apprehension that the offender might leave the Jewish fold on account of the severity of the excommunication did not prevent the court from adding rigor to its punishments so as to maintain its dignity and authority (Shulkhan Arukh, Yoreh De'ah, 334, 1, Rama's gloss, citing Sefer Agudah). This opinion is vehemently contested by the Taz (ibid.), who cites earlier authorities of the same opinion (Maharshal; Maharam; Mahari Mintz) and presents proof of his position from the Talmud. Additionally, the Taz notes that his edition of the *Sefer Agudah* does not contain the cited position.

The Herem

If the offense was in reference to monetary matters, or if the punishment was inflicted by an individual, the laws were more lenient, the chief punishment being that men might not associate with the offender. At the expiration of the period the ban was raised by the court. If, however, the excommunicate showed no sign of penitence or remorse, the niddui might be renewed once and again, and finally the "herem," the most rigorous form of excommunication, might be pronounced. This extended for an indefinite period, and no one was permitted to teach the offender or work for him, or benefit him in any way, except when he was in need of the bare necessities of life.

The Nezifah

A milder form than either niddui or herem was the "nezifah" ban. (In modern Hebrew, "nezifah" generally means "a dressing-down" or "reading (someone) the riot act", i.e., a stern verbal rebuke.) This ban generally only lasted one day. During this time the offender dared not appear before him whom he had displeased. He had to retire to his house, speak little, refrain from business and pleasure, and manifest his regret and remorse. He was not required, however, to separate himself from society, nor was he obliged to apologize to the man whom he had insulted; for his conduct on the day of nezifah was sufficient apology. But when a scholar or prominent man actually pronounced the formal niddui on one who had slighted him, all the laws of niddui applied. This procedure was, however, much discouraged by the sages, so that it was a matter of proper pride for a rabbi to be able to say that he had never pronounced the ban of excommunication.

Handwashing in Judaism



Jewish law today prescribes several kinds of hand washing (Hebrew: נטילת ידיים, *n'tillat yadayim*):

- Washing of hands when one wakes from his sleep (known in Yiddish as נעגל וואַסער, *negel vasser*), poured out from a vessel three times, intermittently, over each hand. This washing is said to remove an evil spirit from one's fingers
- Washing of hands before prayer
- Washing of hands when one touches his privy parts, or the sweat from his body (excluding his face), or when one crops his fingernails
- Washing of hands when one leaves the latrine, lavatory or bathhouse
- Washing of hands when one leaves a cemetery
- Washing of hands before breaking bread served in one's supper, and only bread made from one of the five chief grains (wheat, cultivated barley, spelt, wild barley, and oats)
- Washing of hands after eating a meal where the salt of Sodom was served at that table^l
- Washing of hands (practiced by the Cohanim, or priests, of some communities) prior to going up to bless the people, as prescribed in the Sacerdotal Blessing (Heb. ברכת כהנים).
- Washing of hands when, prior to eating, one dips a morsel of food within a liquid (e.g. water, honey, oil, etc.) which then clings to that morsel, with the one exception of fruits, seeing that they do not require hand washing.

In two of these hand washings, water is poured out over one's hands with the aid of a vessel, *viz.*, 1) whenever one wakes from his sleep, and 2) before eating bread. These hand washings are nearly always accompanied with a special blessing prior to concluding the actual act of washing (see *infra*). Although the minimal quantity of water needed to fulfill one's religious duty is 1/4 of a *log* (a liquid measure of capacity equal to the bulk or volume of one and half medium-sized eggs), and must be sufficient to cover at least the middle joints of one's fingers, water poured out in excess of this amount is considered praiseworthy in Jewish law. The hand washing made when one leaves the lavatory or latrine, or when one touches his privy parts, or sweat, may be done simply with running tap water (faucet).

The most developed and, perhaps, important of these washings is the washing of hands before eating bread. Such washing of hands is called in Hebrew, *netilat yadayim*, meaning "the lifting up of the hands." It is looked upon with such rigidity, that those who willfully neglect its practice are said to make themselves liable to excommunication, and bring upon themselves a state of scarcity, and are quickly taken out of the world.

The Text: Mishnah Eduyot Chapter 5: 6 & 7

Akavya the son of Mehalelel testified about four things. They [the Sages] said to him: Akavya, retract the four things you have said and we will make you the head of the court of Israel.

He [Akavya the son of Mehalelel] said to them: Better I be called a fool all my days, so long as I do not do wickedness for even a single moment before the

Omnipresent, so that they will not say "he retracted because [he wanted] power."

He [Akavya the son of Mehalelel] used to declare impure the leftover hair [from leprous skin], and green [or yellow] blood. And the Sages declared [these things] pure. He [Akavya the son of Mehalelel] would permit the [use of] wool that had fallen from a blemished firstborn animal and had been placed in a cavity [for safekeeping] and [the animal] was afterwards slaughtered, but the Sages forbade [the use of the wool]. He would say: One may not make a converted woman nor a freed maidservant drink [from the "bitter waters" that were drunk by a woman suspected of adultery as a test]. But the Sages say: [They are] made to drink. They [the Sages] said to him: There was the case of Karkamit, a freed maidservant in Jerusalem, who was made to drink by Shama'ya and Avtalyon! He said to them: They made her drink an "example" [i.e. the "bitter waters" they made her drink were not authentic]. They excommunicated him, and he died in excommunication, and the Court stoned his coffin.

Said Rabbi Yehudah: God-forbid [one should say] that Akavya was excommunicated! For the [Temple] courtyard is never locked for any man of Israel who has wisdom and fear of sin like Akavya the son of Mehalelel [had]. So who did [the Court] excommunicate? It was Elazar the son of Khanoch, who mocked the [laws of] purity of hands. And when he died, the Court went and placed a stone on his coffin, teaching that anyone who was excommunicated and died in excommunication, they "stone" his coffin [i.e. they place a stone on his coffin]

In the hour of [Akavya's] death, he said to his son: My son, retract the four things that I used to say. [His son] said to him: And why did you not retract [these statements]? He said to him: I heard them from the mouths of many people, and they [i.e. the other Sages] heard [the opposite] from the mouths of many people. I stood by what I heard, and they stood by what they heard.

But [now], you [only] heard [these things] from the mouth of a single person [i.e. me], and [the opposite] from the mouths of many people. It is better to leave the words of the single person, and to grab hold of the words of the many.

[His son] said to him: Father, commend me to your colleagues [either referring to those on earth, or those in heaven]. He said to him: I cannot commend [you]. He said to him: Perhaps you do not find in me worthiness? He said to him: No! Your [own] actions will draw you near, or your [own] actions will distance you.



Explaining the Story

What is the sequence of events in the story?



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The four statements that Akavia made and with which the Sages disagreed.

The first is with regards to a certain type of hair found in someone afflicted with a leprous like disease. A white hair found on the leprous patch is impure. If the disease disappears and the white hair stays and then the disease returns, Akavia considers the hair to be impure, since it is likely to be the same disease merely returning. The Sages consider the disease to be a new affliction and therefore, since in order for the hair to be impure, the disease must precede the formation of the hair, the hair is pure.

The second: If a woman has a vaginal discharge which is green (yellow), Akavia considers it to be similar to blood which everyone holds is impure and therefore the yellow discharge is also impure. The other Sages disagree and hold that a yellow discharge is not blood and is therefore pure.

The third: It is forbidden to shear a first born animal; even one that has a flaw and is therefore is not fit for sacrifice. (First born animals that have no flaw are sacrificed and their flesh belongs to the priests. First born animals that have a flaw belong to the priests but are not sacrificed.) Since it is forbidden to shear this animal, the Sages decreed that it is forbidden to use any wool that comes from it, even if it falls off on its own. If some wool falls off while it is alive and someone puts it away for safekeeping, but does not use it, and then the animal is slaughtered to be eaten (which is permitted since it has a flaw) Akavia permits this wool to be used. Since the slaughtering permits the wool that is on the dead animal to be used (it is only forbidden to shear the live animal), it also permits the wool that fell off the animal before it died to be used. The Sages hold that this wool is not permitted.

The fourth: According to Numbers 5, a woman who is suspected of adultery is to be tested by drinking the "bitter waters" (5:24). In verse 12 of this chapter, in the introduction, it states, "speak unto the children of Israel." From here Akavia learned that in order to drink the bitter waters the woman must be born an Israelite. According to Akavia, the chapter was taught to Israelites but not to non-Jews. This would exclude a woman who converted or a Canaanite slave who was freed (by being freed a Canaanite slave becomes a Jew). The Sages disagree and state that these women do drink. Although they were not born as Israelites, since they

are currently full Jews they have the same ability and liability to drink the bitter waters if they are accused of adultery.

The Sages support their opinion that the freed slave drinks by mentioning the precedent of Karkemith, a freed slave, who was given the "bitter waters" by Shemaiah and Avtalion, two early Sages. Akavia disagrees and states that they didn't give her the real bitter waters, but rather a simulated version. The reason that they didn't give her the real bitter waters is that in the process of making the bitter waters God's holy name is written on a scroll and then erased into the water, something which under normal circumstances is forbidden. To avoid unnecessarily erasing God's name, Akavia claims that Shemaiah and Avtalion gave the freed slave, Karkemith, some other type of waters.

Comprehension and Analysis Questions

Bonus ? Why did the Sages want Akavya the son of Mehalelel to retract the four things he had said?

? Why didn't Akavya the son of Mehalelel retract?

? Why did the Sages excommunicate Akavya the son of Mehalelel?

Said Rabbi Yehudah: God-forbid [one should say] that Akavya was excommunicated! What could have prompted Rabbi Yehudah's statement pointing out that somebody else was excommunicated, and not Akavya the son of Mehalelel?

Bonus ? Why did Akavia instruct his son to retract the four things he used to say?

Answer 1 _____

Answer 2 _____

Answer 3 _____

Answer 4 _____

Bonus ? Why do you think did Akavia instruct his son right before his passing?

Answer 1 _____

Answer 2 _____

Answer 3 _____

? Why did Akavia's son ask his father to commend him to Akavia's colleagues?

Bonus ? If Akavia thought his son was worthy, why did he refuse to commend him to his colleagues?

"The Twist" – Or the Lessons We Can Learn from This Text.

! • "You don't have to fight my battles!" – The first [liberating] gift of Akavia ben Mehalalel to his son.

! • "You are on your own, son, and you can do it!" – The second gift of Akavia ben Mehalalel to his son.