

Josephus Flavius Contra Opionem 24(202)

Parshat Mishpatim
Abortion - 3000 Years Ago
and Today

Melton Geshet at Shegriith - Feb 20, '12
JSI at Akiba Academy - Feb 21, '12

"He that kicks a woman with child, so that the woman miscarries, let him pay a fine in money, as the judge shall determine, as having diminished the multitude by the destruction of what was in her womb; and let money also be given to the woman's husband by him that kicked her."

Josephus Flavius Antiquities of the Jews
IV 8,23

"The law orders all offspring to be brought up and forbids women either to cause abortion or make away with the foetus; a woman convicted of this is considered a murderess, because she destroys a living creature and diminishes the race."¹⁵

Septuagint Exodus 21:22

"If two men wrestle with one another and hit a pregnant woman, and the child comes forth and is not formed yet, then the penalty shall be a money penalty . . . But if it was formed, then thou shalt give life for life."

Philo of Alexandria, The Special Laws, III, 108-109

But if any one has a contest with a woman who is pregnant, and strike her a blow on her belly, and she miscarry, if the child which was conceived within her is still unfashioned and unformed, he shall be punished by a fine, both for the assault which he committed and also because he has prevented nature, who was fashioning and preparing that most excellent of all creatures, a human being, from bringing him into existence. But if the child which was conceived had assumed a distinct shape in all its parts, having received all its proper connective and distinctive qualities, he shall die; for such a creature as that is a man, whom he has slain while still in the workshop of nature, who had not thought it as yet a proper time to produce him to the light, but had kept him like a statue lying in a sculptor's workshop, requiring nothing more than to be released and sent out into the world.

אנשים לפי שהוא אומר ואיש כי יכה כל נפש אדם
שומע אני אף בן שמונה במשע תלך וביינצו אנשים
בניד שאינו חייב עד שיהיה בן קיימא]

[What then is the purpose of saying: "And if men strive together?" Because it says: "And he that smiteth anybody mortally." (Lev. 24:17), which I might understand to mean even if he kills a child born after only eight months of pregnancy. Therefore it says: "And if men strive together," thereby telling us that one is not guilty of death unless he kills a viable child.]

Tractate Baba Kama
Chapter 5

Mishnah 4

If an ox, intending [to gore] its fellow ox, struck a woman and her young came forth, [its owner] is exempt from payment for [the value of] the young.² [But if a man, intending [to strike] his fellow, struck a woman and her young came forth, he must make payment [for the value of] the young.³ How does one make payment for [the value of] the young? They appraise how much the woman was worth [if sold as a slave] before the miscarriage and how much she is worth after the miscarriage.⁴ Rabban Simon⁵ ben

EXODUS XXI 24

22. [And if men strive together, and hurt a woman with child, so that her fruit depart, and yet no harm follow, he shall be surely fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine.
23. But if any harm follow, then thou shalt give life for life.]²⁴ eye for eye, tooth for tooth, hand for

שמות משפטים כא
[בגירתינצו אנשים וינצו]

אשה הרבה היצא ילדיה ולא נהרג אסון קטנה יקרא פשרת עליה בעל האשה ויחייב לפי שוה: ואם אסון הרבה יקרא פשרת ויחייב עין בעין ויד יד וטות טות ונפש נפש: ונפש חיה תשלם ונפש חיה תשלם:

בבא קמא פרק ה'
בשנה ג'
שור שהיה מנספחן שנתו וזוהי ונהיה את אצלו
ילדים ג' - פטור מלמך וקדמות לאדם
קמברי, והנה את האשה ונצא וקדמה - שלשם דמי
וקדמות, כיצד שלשם דמי וקדמות? שמין את האשה
קמה היא יפה עד שרא יקדמה וכמה היא יפה מלפניו.

Moshe's Rec'd

משה ג'
הינתן פת יום אחד משפחה בנדה. פת עשרה ימים
משפחה בנדה. [מינוק בן יום אחד] משפחה בנדה,
ומשפחה בנדה, ומשפחה משפחה מת, ויוקק לבנים,
ופוטר בן הימים, ומאכל במרוקיה, ופוסל בן
המרוקיה. ונתל ופוסל ופוסל, [המרוקיה] ופוסל בן
מאכל ופוסל ופוסל, ופוסל בן
לאביו ולאמו ולא קרוביו ולא קרוביו ולא קרוביו ולא קרוביו

Tractate
Nidah
Chapter
5

MISHNAH. A GIRL ONE DAY OLD IS SUBJECT TO THE UNCLEANNESS OF MENSTRUATION. ONE WHO IS TEN DAYS OLD IS SUBJECT TO THE UNCLEANNESS OF ZIBAH. [A BOY ONE DAY OLD] IS SUBJECT TO THE UNCLEANNESS OF ZIBAH, AND TO THE UNCLEANNESS OF LEPROSY AND THAT OF CORPSE-UNCLEANNESS. HE SUBJECTS [HIS DECEASED BROTHER'S WIDOW] TO THE DUTY OF LEVIRATE MARRIAGE.¹ HE EXEMPTS [HIS MOTHER] FROM THE LEVIRATE MARRIAGE.² HE ENABLES HER TO EAT TERUMAH AND HE ALSO CAUSES HER TO BE DISQUALIFIED FROM EATING TERUMAH.⁴ [44a] HE INHERITS AND TRANSMITS.⁵ [HE WHO KILLS HIM IS GUILTY OF MURDER] AND HE COUNTS TO HIS FATHER, TO HIS MOTHER AND TO ALL HIS RELATIVES AS¹ A FULLY GROWN MAN.⁶

