

*Josephus Flavius Contra Opionem 24(202) Parshat Mishpatim
Abortion - 3000 Years Ago*

Melton Gesher at Shearith JTSI at Akiba Academy Feb 20, '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 Antigities 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 murderer, because she destroys a living creature and diminishes the race."^{ns}

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.

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,¹ [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 Rabbah Simons' ben

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ONE DAY OLD] IS SUBJECT TO THE UNCLEANNESS OF ZIBAH, A BOY 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,¹ HE ENABLES HER TO EAT TERUMAH AND HE ALSO CAUSES HER TO BE DISQUALIFIED FROM EATING TERUMAH;² [44a] HE INHERITS AND TRANSMITS; [HE WHO KILLS HIM IS GUILTY OF MURDER,³ AND HE COUNTS TO HIS FATHER, TO HIS MOTHER AND TO ALL HIS RELATIVES AS] A FULLY CROWNED MAN.⁶

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Tractate
Nidah
chapter
5

HE WHO KILLS HIM IS GUILTY OF MURDER, since it is written,
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AND HE COUNTS TO HIS FATHER, TO HIS MOTHER AND TO ALL HIS RELATIVES AS A FULLY GROWN MAN. In respect of what law?—R. Papa replied: In respect of that of mourning. [In agreement with whose view is our Mishnah?] It cannot be, can it, in agreement with R. Simeon b. Gamaliel who ruled: Any humanⁱⁱ childⁱⁱ that survived for thirty days cannot be regarded as a miscarriage,ⁱⁱ from which it follows that if he had not lived so long he would have been a doubtful case!—Here we are dealing with the case of a child concerning whom it is established that the months of his pregnancy were duly fulfilled.]

(7) Lev. XXIV, 17.

Tractate Sankhedrin
Chapter 9

Mishnah 2

WISDOM 2

[If one intended to kill a beast¹ and killed a human being,² or [if he meant to kill] an untimely birth³ and killed one that might have lived,⁴ he is exempt.⁵] If he intended to strike one on the loins, but not [with such force] as to kill him [with a blow] upon the loins, but [the blow] lighted upon his heart [with such force] as to cause death [when it lighted] on his heart, and he died, he is exempt. If he intended to strike him upon the heart [with such force] as to slay him [if it hit] the heart, but it lighted on his loins and [the blow had] not enough [force] to cause death through the loins, and nevertheless he died, he is