

35.5.1

18a (משנה א) → 19a (בבעלת מום עסקינן)

<p>1. נפש כי תמעל מעל וחסא בשגגה מקדשי ה' והביא את אשמו לה' איל תמים מן הצאן בערפך כסף שקלים בשקל הקדש לאשם: ויקרא ה, טו</p> <p>2. דבר אל בני ישראל ואמרת אליהם איש איש כי תשטה אשתו ומעלה בו מעל: במדבר ה, יב</p> <p>3. ומעלו באלהי אבותיהם ויזנו אחרי אלהי עמי הארץ אשר השמיד אלהים מפניהם: דה"א ה, כה</p> <p>4. ושמרו את משמרתי ולא ישאו עליו חטא ומתו בו כי יחללו אני יקוק מקדשם: ויקרא כב, ט</p> <p>5. איש אשר ירקח כמהו ואשר יתן ממנו על זר ונכרת מעמיו: שמות ל, לג</p> <p>6. ואיש כי יאכל קדש בשגגה ויטף חמשתו עליו ונתן לפהו את הקדש: ויקרא כב, יד</p>
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- I א משנה: dispute ר"ע/חכמים (פגם) for liability-מעילה
- a א anyone who benefits from the value of פ"פ is liable, even without ד"ע
- b ב חכמים anything which is subject to פגם has no מעילה until he has damaged it
- i But: anything which is not subject to פגם incurs liability at moment of הנאה
- c Examples of the latter: if she put a gold jewel or ring (of הקדש) on her or if she drank from a golden goblet of הקדש
- i Then: מעילה attaches immediately, as these are not actions that will damage or cause immediate wear to the הקדש
- 1 Note: ר' זבדי (answering ר"כ) – those cases where gold jewels were quickly devalued – due to insufficient care
- d Examples of the former: wearing clothes of הקדש, using a tool (קרדום – 2-sided tool [axe-shovel]) – only once he causes פגם
- e Application to חטאת while alive – only at פגם; after dead – immediately at הנאה of פ"פ
- i כלי שרת ד"פ must be בע"מ; else, while alive, should be violation at הנאה just like using a שרת כלי
- f חכמים ר"ע agrees with חכמים regarding those items subject to פגם (!)
- i Question: if so, in what case do they disagree?
- ii Answer: in case of things which do not have immediate פגם, such as “middle-clothes” (not those worn on the outside, which have immediate פגם from elements nor those worn against skin which also have immediate פגם) or fancy, delicate clothes which are kept carefully so as not to incur פגם but are eventually devalued
- II ברייתא (from תורת כהנים) interpreting v. 1:
- a א includes any individual, even נשיא or גדול
- i Justification: we would think, following v. 5, that only those considered זר for המשחה are considered for מעילה – קמ"ל – מעילה
- b ב מעילה means “deviation”, per vv. 2-3
- i Following that: we might think that פגם alone (w/o הנאה, per ע"ז) or הנאה alone (w/o פגם, per נאוף) is sufficient
- ii And: what is the ruling about מחובר לקרקע and if a שליח properly fulfills his task (to violate הקדש → מעילה)?
- iii Answer: חטא: חטא (vv. 1, 4) from תרומה
- 1 Just as: תרומה involves devaluation and pleasure; the same person who devalues (by eating) gets the הנאה, the same object which is devalued gives him the pleasure and they happen as one
- (a) And: only applies to תלוש (תרומה doesn't begin until the produce is harvested)
- (b) And: שליחות is a meaningful link to the משלח (if properly fulfilled)
- 2 Similarly: מעילה only applies with both פגם and הנאה with all the above criteria; only to תלוש and שליחות is a valid link
- c Expansions: of rules of מעילה beyond the model of תרומה (which was narrowly constructed above)
- i Expansion1: beyond eating to those things which don't usually get immediately devalued
- ii Including: the violator eating ½ פ"פ and giving to another to eat ½ פ"פ, or both getting הנאה, or a combination – over time
- 1 Per: תמעול מעל
- iii Expansion2: to multiple אכילות, even over several days – per תמעול מעל
- iv Expansion3: separated אכילה and פגם (he and another) – even over a long period of time – per תמעול מעל
- v Expansion4: even if kept within קודש (e.g. using קן to weigh money to buy חטאת) – per תמעול מעל
- 1 Note: ר"ש – מעילה takes place when he spends the money; יהודה – ר' – at זרה"ד of the bought קרבנות
- d Summary: תורה compared מעילה to
- i סוטה (v2): to allow for violation without devaluation
- 1 Application: wearing gold as jewels
- ii עבודה זרה (v3): until it is improperly used
- 1 Application: using axe of הקדש – when used to cut חולין-wood
- iii תרומה (v4): requires eating (v. 6) – excludes מזיק
- 1 Application: any food of הקדש, if he is מזיק – no liability