

13.3.7

33b → 35a (מסנה י) (סיים הפרק)

Note: there is a dispute between ר' אליעזר ור' יהושע regarding someone who intended to fulfill a מצוה and inadvertently trespassed; e.g. if someone had 2 babies to circumcise, one born on שבת and one on א' יום and he mistakenly circumcised the 7-day old on שבת. ר' א' holds him liable and יהושע ר' exempts him. This case is referred to as טעה בדבר מצוה. One of the considerations going into ר' יהושע's ruling is that מילה must be done that day and, as such, the father/מוהל may be somewhat "panicked"; if so, his exemption may not apply to a case where there is time for level-headed thinking.

1. וידע אונן כי לא לו יהיה תזרע והיה אם בא אל אשת אחיו ושחת ארצה לבלתי נתן זרע לאחיו: וידע בעיני ה' אשר עשה ויקמת גם אתו: בראשית פרק לח פסוק ט-י
 2. ואשה אשר ישכב איש אתה שכבת זרע ורחצו במים וטמאו עד הערב: ויקרא פרק טו פסוק יח

- I משנה י
- a אשת איש on account of חייב
 - b אשת אח – חייב also on account of אח
 - c אחות אשה – חייב also on account of אחות
 - d if they are נדה – חייב (whichever or both) on account of נדה
 - i observation: follows ר"מ who maintains איסור חל על איסור מוסף in איסור כולל ואיסור מוסף and חל על איסור ר"מ
 - 1 support: ר"מ's ruling re the possibility of eating one thing and being חייב up to 5 חטאות and 1 אשם – see note
 - (a) Question: following which of his teachers (ר' יהושע/ר"א) is he ruling (מצוה) ר' יהושע's ruling – טעה בדבר מצוה
 - ii alternatively: might even be שמעון ר' – and each of the cases could be constructed as איסור בת אחת
 - 1 easy: the first 3 (אחות אשה, אשת אח, אשת איש) when קידושין שליחים exchanged
 - 2 more challenging: נדה – if she was menstruating as grooms became גדולים/as כלות became גדולות
 - e they must be separated for 3 months to ensure that they aren't pregnant from the wrongful intercourse
 - i challenge: a woman cannot become impregnated from first intercourse
 - ii defense #1: the errant husbands had 2 בנאות
 - iii challenge: if so, ר"א's accounting of the number of חטאות in this משנה should be doubled – 32
 - iv response: according to ר"א, there are multiple חטאות for each נדה in the ביאה
 - v challenge to (iii): תמר became impregnated (from יהודה) with her first ביאה
 - 1 explanation: ער ואונן (her first husbands) performed anal sex (v. 1)
 - (a) ער – so she shouldn't become pregnant and lose her beauty
 - (b) אונן – as per v. 1 – because the child wouldn't be reckoned "his"
 - vi defense: תמר used her finger to prepare the ביאה
 - f If they are minors – they may return immediately to their husbands (no concern of pregnancy)
 - i (א) שמואל: all need to wait 3 months (in case of זנות) except for minor converts and freed slavegirls
 - 1 Reason: גזרה as a precaution against גדולה – but not in the case of our משנה which is so unlikely (it probably never happened) and they weren't נזור
 - ii (ב) שמואל: all need to wait 3 months except minors (any minors)
 - 1 reason: זנות is uncommon among קטנות and potential converts are careful not to get pregnant
 - 2 Support: ר' יהודה; ברייתא ר' יוסי in ר' יוסי who disagrees is concerned that she didn't take proper precautions and may be pregnant → wait 3 months for הבחנה
 - g If they are בנות כהן, they are banned from תרומה
- II Exceptions to טומאת שכבת זרע (v. 2)
- a (following bold and italicized words in v. 2) העראה, ביאה שלא כדרכה
 - b ביאה from 1st – also first יהודה – ר' יהודה (inferring above from שכבת זרע and 1st ביאה)
 - i reason: first ביאה cannot impregnate
 - c tangential note: if a woman waits 10 years between husbands, she can no longer become pregnant
 - i exceptions: if she had ביאה in the meantime (בזנות) or anticipated marrying