

Ex. 21:22

When men fight, and one of them pushes a pregnant woman and a miscarriage results [literally: *her yeladim come out*], but no other damage ensues, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning. 23 But if other damage ensues, the penalty shall be life for life, 24 eye for eye, tooth for tooth, hand for hand, foot for foot, 25 burn for burn, wound for wound, bruise for bruise.

DCH: **יצא** of foetus, **come out early, abort** (Ex 21₂₂ Ps 144₁₄),

נפל: miscarriage [but translated by NJPS in all three occurrences as “stillbirth”]

Psa. 58:9 like a woman's stillbirth, may they never see the sun!

Job 3:16 Or why was I not like a buried stillbirth, like babies who never saw the light?

Ecc. 6:3 Even if a man should beget a hundred children and live many years—no matter how many the days of his years may come to, if his gullet is not sated through his wealth, I say: The stillbirth, though it was not even accorded a burial, is more fortunate than he.

נפיל and **נפיל** Gn 6₄: **נפל**, tantum pl.; SamP. (*an-*)*nēfilam*; MHeb. **נפיל** giant, DJD 1:36:16, 3: **נפיל**; and JArm. **נפיל** giant, monster, deformed baby; MHeb. pl. + **נפיל** salamander; JArm. pl. Orion; **נפל** MHeb. hif. and JArm. af. to abort: **giants**, arising from miscarriages or hurled down from heaven

נפל —5. to **be born** Is 26₁₈

Is. 26:18 The inhabitants of the world have not “come to life!” *Meaning of Heb. uncertain.*

Psa. 144:1

14 our cattle are well cared for.

There is no breaching and no sortie,
and no wailing in our streets.

אֵין־פָּרֵץ וְאֵין יוֹצֵאת
וְאֵין צְוֹהֶה בְּרַחֲבֵינוּ:

Nahum Sarna, *Exodus* (JPS Torah Commentary)

a miscarriage results Literally, “her children emerge.” The common Hebrew stem *y-ts-*, “to go out, emerge,” is used of parturition. ⁵³ [Gen. 25:25; 38:28; cf. Num. 12:12; Job 1:21; 3:11; 38:8.]

Gen. 25:25 The first one emerged red, like a hairy mantle all over; so they named him Esau.

Gen. 38:28 While she was in labor, one of them put out his hand, and the midwife tied a crimson thread on that hand, to signify: This one came out first.

Num. 12:12 Let her not be as one dead, who emerges from his mother's womb with half his flesh eaten away.

Job 1:21 He said, “Naked came I out of my mother's womb, and naked shall I return there; the Lord has given, and the Lord has taken away; blessed be the name of the Lord.”

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Job 3:11 Why did I not die at birth, Expire as I came forth from the womb?
Job 38:8 Who closed the sea behind doors When it gushed forth out of the womb.

Nahum Sarna, *Exodus* (JPS Torah Commentary)

Unfortunately, the Hebrew text is replete with difficulties, which are further compounded by the attachment of the law of talion (vv. 23–25). For example, it is not clear why the phrase expressing expulsion of the fetus should speak of “children” in the plural; nor do we know whether stillbirth, premature birth, or term delivery is intended. Nor is it certain to what and to whom the Hebrew *ʿason*, here rendered “other damage,” refers.

The legal consequences of causing a woman to miscarry are treated also in the Sumerian law fragments, in Hammurabi’s collection, in the Middle Assyrian Laws, and in the Hittite laws. All call for monetary compensation for the loss of the fetus. Only the Sumerian laws distinguish between accidental and intentional assault. Hammurabi’s provide for vicarious punishment: Should the parties involved belong to the upper class, the assailant’s daughter is put to death if the victim dies. The Middle Assyrian laws are particularly harsh. They too mandate vicarious punishment and vary the penalty according to social status, but, in addition, they inflict multiple torments on the aggressor. The Hittite laws, alone, take into account the age of the fetus in estimating the fine imposed on the assailant. In none of the cuneiform parallels do the particulars correspond exactly to the details of the case presented here in the Torah, so they shed little light on the complexities of our text.

אָסוֹן: אַסָּה, BL 498f; etym. ?; Arb. *ʿasiya* to be distressed, adj. *ʿaswan* (Nöldeke *Neue Beitr.* 104) or euphemistically related to Arm. **אַסִּי** (→ אַסָּה), Arm. lw. Wagner 23): **fatal accident** Gn 42^{4,38} 44²⁹ Ex 21^{22f} Sir 31/34²² 38¹⁸ 41⁹. †

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