

One who defiles or mixes

המטמא והמדמע –

OVERVIEW

The גמרא asks that אבות נזיקין should include [ומנסך] אשעיא ר' מטמא ומדמע in his אבות נזיקין. The states¹ clearly that מטמא ומדמע are חייב only if they did it במזיד; if however it was done בשוגג they are פטור.²

הוא מצי למימר דלא תנא להו משום דלא מיחייב בשוגג:

The גמרא could have answered that the reason אשעיא ר' did not teach מטמא ומדמע is because they are not obligated to pay if they did it (ומנסך) in his אבות נזיקין is **because they are not obligated** to pay if they did it **unintentionally**. All the other אבות נזיקין, however, are obligated to pay whether it was במזיד or בשוגג.

SUMMARY

Another reason why מטמא ומדמע are not included in the אבות דר' אשעיא is because they are פטור בשוגג.

THINKING IT OVER

According to תוספות why does אשעיא ר' include בושת. The rule by בושת is that you are not obligated to pay if there was no intent.³

¹ נב,ב.

² See the גמרא there (נג,א) that according to the opinion that היזק שאינו ניכר שמיה היזק, he should be חייב even בשוגג; however the חכמים exempted him from payment to insure that he would report this accident to the owners (they should be aware that their טהרות are טמא). According to the opinion that היזק שאינו ניכר לאו שמיה היזק, he should be פטור even במזיד; however the חכמים made a תקנה that a מזיד should be חייב to prevent people from being מטמא intentionally the טהרות of their neighbor.

³ See אמ"ה and רש"ש.