

14.7.6

75a (משנה ח') → 76a (ונופייס הוא)

- I משנה ח': defining liability for מומין (note: if מומין occurred after betrothal, he is "stuck" with them, as there was no fraud)
- a if she is still in her father's house, assumption that מומים pre-date אירוסין unless she can prove otherwise
 - b if she is already in her husband's house, assumption that מומים post-date אירוסין unless he can prove otherwise
 - i ר"מ: this applies to any מום
 - ii חכמים: he cannot make such a claim regarding a מום that is visible (i.e. on an exposed part of the body)
 - 1 addendum: even a covert מום isn't actionable if there is a bathhouse in town – he checks her out with his female relatives
- II Analysis
- a 1st clause requires father to bring proof that the מום was post-אירוסין, otherwise, husband's claim is accepted
 - i inference: this follows ר' יהושע (פ"א) –
 - b 2nd clause require husband to bring proof –
 - i inference: this follows ר' גמליאל
 - ii solution 1 (ר' אלעזר): indeed, authorship of משנה is split
 - iii solution 2 (רבא): all in accord with ר' יהושע, who accepts חזקה דגופא as long as it doesn't challenge דממונא
 - 1 proof: ר' יהושע regards ספק in a case of sequencing of צרעת to be טהור
 - 2 however: we'd prefer to associate this משנה with רבן גמליאל...
 - 3 therefore: in each case, we follow חזקה דגופא only, assuming that the מומין appeared when she first came to the place where they were discovered – כאן נמצאו וכאן היו
 - (a) Challenge: in the 2nd clause, the husband must prove that the מומים were seen before אירוסין – but if he can prove that they were seen in the father's house, why don't we apply כאן נמצאו וכאן היו
 - (b) Answer: once she is betrothed, we apply a חזקה that he won't "drink from a cup w/o checking it" and he must have seen them and accepted them
 - (c) Challenge: then why is his claim accepted if he can prove they were pre-אירוסין – why not say that he accepted them
 - (d) Answer: we have another presumption – that no man is מתפייס למומין
 - (e) Challenge: back to the case of proving post-אירוסין defects
 - (f) Answer: in that case, we have 2 חזקות:
 - (i) חזקת הגוף (מומין happened as recently as possible)
 - (ii) that he won't "drink from a cup w/o checking it" – he must have seen and accepted them
 - 1. potential challenge: why not counter with חזקה that no man is מתפייס למומין
 - 2. answer: that's 2 חזקות vs. 1 – the 1 is ignored
 - (g) however: where he has עדים that the מומים were seen before אירוסין, חזקת הגוף is gone, so we have the חזקה that a man won't "drink from a cup w/o checking it" vs. the חזקה that no man is reconciled to מומין and therefore the חזקת ממון keeps the money with him
 - iv solution 3: (רב אשי) – supporting authorship of ר"ג
 - 1 1st clause – her claim is that he owes her father מנה (since כתובת ארוסה לאביה) – her חזקת הגוף is irrelevant
 - 2 2nd clause – her claim is that he owes her money (כתובת נשואה לעצמה)
 - 3 challenge: ר"מ agrees that even מומים found in בית הבעל if they likely started in father's house, the father has to prove that they were post-אירוסין – even though this is a case of כתובת נשואה
 - 4 answer: case is an extra digit which could not have its genesis in husband's house
 - 5 block: if that's the case, he saw it and was reconciled