

14.7.7

76a (ואליבא דר' יוחנן) → 77a (א"ר יהודה אמר שמואל)

I Continuation of discussion re: burden of proof and חזקת הגוף

a שמואל:

i case: men trade an ox for a donkey (not present) & D pulls the ox, when O goes to get the donkey, it's dead:

ii ruling: D must prove that the donkey was alive at the time that he pulled the ox

iii addendum: the תנא brings a proof from (our case of) כלה

1 query: which case of כלה?

(a) Possibility #1: כלה בבית אביה (clause 1 of our משנה)

(i) Rejection: dissimilar –

1. here the father brings proof and gets the כתובה,

2. in that case, the one bringing proof keeps the cow

(b) Possibility #2: כלה בבית בעלה (clause 2)

(i) Rejection: dissimilar –

1. here the husband brings proof to challenge her חזקת הגוף

2. in that case, the one bringing the proof supports his חזקת הגוף (donkey was alive)

(c) answer (רנב"י): 1st clause, regarding the father's right to keep the קידושין

(i) Note: even the מ"ד that קידושין may not be kept if never consummated, this only applies to certainly errant קידושין; but in our case, (טעות), the father must still prove the timing to keep them (if he can prove that the מומין post-dated אירוסין)

b Challenge: ruling that if a needle was found in the 2nd stomach after שחיטה, where the clotting leaves doubt as to whether the wound happened before or after שחיטה, - המוציא מחברו עליו הראיה, meaning that if the butcher had already paid for the animal, he must prove that the wound pre-dated the שחיטה to get his money back

i Explication: if we follow שמואל's ruling above, the seller of the animal should have the burden of proof that his animal was healthy at time of sale

ii Answer: case where the butcher had not yet paid (so burden of proof is on the seller)

iii Challenge: can we assume this to be the reality?

iv Rather: we reject report of שמואל's ruling,

v Instead: he ruled that the burden of proof rests on the person in whose domain the doubt arose

1 Addendum: he brings proof from our case of כלה

2 Challenge: case of טריפה (above)

3 Answer: case where butcher already paid, which is the norm

II Brief addition to משנה's ruling about "covert" מומים

a ר' נחמן – epilepsy is considered a "covert" מום

i caveat: only if she has a set, predictable time to have a seizure; otherwise, it is considered overt

III משנה ט': blemish/deformities of a man

a if a man develops מומין, we don't force him to divorce

i ר' חייא בר רב reads "develops"; רב יהודה reads "had"

1 רב יהודה would certainly agree that if he "had" them earlier, he cannot be forced to divorce

2 רב חייא בר רב may hold that if they developed, he can be forced to divorce

ii רשב"ג: only if they are "small"; in case of "large" מומין, (e.g. blind, amputee) we do force him to divorce

1 suggestion: use this clause to determine text – "develops" or "had" – must be "develops", since if he already had them and she agreed to marrying him, why distinguish between "large" and "small"?

2 rejection: she may have thought she could accept them and found that she couldn't

iii ruling

1 הלכה כרשב"ג: ר' יוחנן

(a) Implication: ר' יוחנן doesn't automatically rule like רשב"ג

(b) in spite of tradition that ר' יוחנן accepted every ruling of רשב"ג in the משנה except for ערב צידן, ראייה אחרונה, this represents a different tradition about ר' יוחנן

2 הלכה כחכמים: ר' נחמן