14.3.4 32b (היכן ריבתה תורה) → 34a (ולא בשוגג)

- - I Continuation of analysis of dispute between מלקות v. ממון) עולא and עולא v. ממון)
 - 1. ממון relies on עדים זוממין 's observation that the תורה stressed ממון in case of עדים זוממין (and חבלה)
 - a. source: vv. 1-2 (עדים זוממין), v. 3 (חבלה)
 - 2. reason עולא rejects עולא analysis:
 - a. Suggestion #1: it will defeat v. 4 (מכות will get מכות, no מכות)
 - 1. Challenge: same should apply to דבלה וע"ז
 - 2. Rather: חבלה leads to מכות with מכות could lead to מכות with testimony of ב"ג with testimony of מכות
 - a. Similarly: אחותו could lead to בוגרת if she's a
 - b. Suggestion #2: בושת ופגם requires אביי החת for אבי's inference בושת ופגם in addition to קנס
 - 1. response: עולא will derive that from בר"פ ;הנאת שכיבה just for בר"ם; הנאת שכיבה added
- II Alternate explanations for ממון ממון in cases of מלקות in cases of מדים זוממין and חבלה
 - (עדים זוממין) reason: not subject to התראה (various suggestions as to how to give them התראה היא העראה)
 - a. Reason: since they wanted to subject others to punishment w/o התראה, so happens to them
 - 1. cover: even in cases where they are punished because of לא תענה (e.g. ב"ג) due to v. 7
 - 2. (חבלה) רב שישא בריה דרב אידי (חבלה) from v. 8; clearly a case where מיתה is possible (→ אהראה was there)
 - a. Reason: warning of a graver punishment subsumes warning for lesser liability
 - 1. explanation: he was warned for מכות (for הכאה), nonetheless pays
 - 2. challenge: perhaps מותרה לדבר מותרה isn't מותרה לדבר קל;
 - a. added challenge: even if it is, perhaps מכות is more severe than death?
 - i. Proof (rejected): חנניה, מישאל ועזריה
 - 3. challenge: only valid to רבנן, who agree that נפש (v. 8) means capital punishment
 - a. however: to נפש as financial liability, case could be w/o התראה
 - b. rather: source is from v. 9; attacker held until we see if victim lives (→must've been התראה)
 - 1. explanation: arn מכות but doesn't get מכות, rather, he pays
 - a. challenge (as per above)
 - b. challenge: perhaps ונקה refers to גלות and there was no קשיא התראה
- III Alternate resolution to contradiction re: ר"ל)
 - 1. authorship of our ממון, who obligates ממון with greater punishment
 - a. challenge: if so, the משנה should list בתו מיתת ב"ד (e.g. בתו
 - 1. suggestion: perhaps he only does so if the greater punishment is מיתה, not מיתה
 - 2. rejection: מיתת ב"ד finds liability for 4/5 in case of שחיטה which carries מיתת ב"ד (e.g. ע"ז)
 - 3. block: that is only if the שחיטה is via another person (שליח expand to include שליח expand to include שליח
 - 4. challenge: if it was done by another, why do חכמים exempt him?
 - 5. answer: שחיטה are ש"ש who exempts from 4/5 if the שחיטה is invalid
 - a. Challenge: that works for שחיטת שבת but, but שחיטת is edible
 - b. Answer: he follows ר' יוחנן הסנדלר who maintains that if done אסור, it's אסור
 - i. Source: v. 11