23.4.1

32a (מיכן שפותחין בדיני נפשות לזכות) → 33a (מיכן שפותחין בדיני נפשות לזכות)

Note: as our משנה covers a range of distinctions between ד"מ and ד"מ, only a few of which are analyzed on this משנה only list those components of the משנה which are covered here, and then go back and include further list items at their point of analysis

- ז. **מִשְׁפֵּט אֶחָד יִהְיֶה לָכֶם** פַּגֵּר כָּאֶזְרָח יִהְיֶה כִּי אֲנִי ה' אֱלֹהֵיכֶם: *ויקרא פרק כד פסוק כב*
- 2. לא תַעשוּ עָוַל בַּמִשְׁפָּט לא תִשָּׂא פָנֵי דָל וְלֹא תֵהְדַר פָנֵי גָדוֹל בָּצֶדָק תְּשָׁפֹּט עַמִיתָד: ויקרא פרק יט פסוק טו
 - ג **צֶדֶק צֶדֶק תִּרְדּף** לְמַעַן תִּחְיֶה וְיְרַשְׁתָּ אֶת הָאָרֶץ אֲשֶׁר ה' אֱלֹהֶיף נֹתֵן לְדְ: *דברים פרק טו פסוק כ*
- 4. וְהַשְּבִיעַ אֹתָהּ הַכֹּהֵן וְאָמַר אֶל הָאִשָּׁה אָ**ם לֹא שֶׁכַב אִישׁ אֹתָד וְאִם לֹא שֶׁטִית טַמְאָה תַּחַת אִישַׁד ה**ַנְּקִי מָמֵי הַמָּרִים הַמְאָרֵרִים הָאָלָה: ב*מדבר פרק ה פסוק יט*
- ו משנה ממונות: Distinctions between דיני ממונות and דיני נפשות
 - a Both: require דרישה וחקירה (of witnesses) as per v. 1
 - i Challenge: דו"ח don't require דו"ח, as seen by ruling:
 - 1 If: a שט"ח is dated שר"ח מים and שרים testify that the signing witnesses were with them that day
 - (a) Ruling: כשר and כשר it may have been post-dated
 - (b) Explanation: if we require דו"מ for דו"ח, how could we entertain this possibility
 - (i) Note: could have asked a stronger question from שביעית י:א
 - (ii) Defense: our question is stronger, as no one is likely to lend in mid-שמיטה
 - (c) Defense1 (per מה"ת: מ" מה"ת we require מה"ח, but, in order to enable lending, we relax the requirement
 - (i) Challenge: if this is the case, a au"au that errs should not be liable to pay
 - 1. Defense: if we did that, we'd certainly generate נעילת דלת
 - (d) Defense2 (צעילת דלת is referring to דיני קנסות (where there is no concern of נעילת דלת)
 - (e) Defense3 (ב"ש: both refer to loans; our דין מרומה is a case of דין מרומה (where we suspect dishonesty)
 - (i) As per: "ה"ל resolution of vv. 2-3; v. 2 is an "honest" case no דין מה"ת); v. 3 דין מרומה
 - (f) Comment (משנה is defended as per above
 - (i) Vv 2-3: are reconciled as משרה (ruling in re: precedence for ships/camels that require single file)
 - (g) Alternative explanation of v3: follow the best ב"ד (examples listed; e.g. בני ברק וו ר"ע)
 - (i) Tangent: ברור חיל is mentioned; signs of ברית מילה and ברור חיל in משתה in ברור מילה given
 - b Size of court: 3 (ד"ב) or 23 (ד"ב) (discussed in פ"א)
 - c Opening argument: can be pro or con (ד"מ) vs. only pro (ד"נ)
 - i Meaning:
 - 1 אדים we ask the עדים if it is, indeed, as they say
 - (a) Challenge: this will silence them
 - (b) Retort: let them be silenced as we know that עדים are moved around to confuse them
 - (i) Block: in that case, we tire them out to prevent planned lying; here we are really silencing them
 - עדי הזמה we ask the defendant if he has עדי הזמה
 - (a) Challenge: this is opening with עדים of the עדים
 - (i) Block: if they are discredited at this point, no דין הזמה (only after גמר דין)
 - 1. Explanation: had they been silent until גמ"ד, this would be a חובה
 - 3 *דבה*: we ask the defendant if he has any עדי הכחשה
 - 4 עדים we tell the עדים that their words seem to imply acquittal
 - 5 אב" ורבא. we reassure him that if he's not guilty, he has nothing to fear
 - (a) Supporting בזכות ולא חובה בדיני נפשות: v. 4 is a source for ובהייתא
 - 6 אשי we announce that anyone who has information that will acquit should come forward
 - d Size of majority: can be one for דכות or חובה or די"מ) vs. requirement of majority of 2 for דכות covered in פ"א covered in פ"א