23.4.2

33a~(דיני ממונות מחזירין) $\rightarrow 34a~($ דיני ממונות מחזירין)

1. מִדְבַר שָׁקֶר תִּרְחָק **וְנָקִי וְצַדִּיק אֵל תִּהָרֹג** כִּי לֹא אַצְדִּיק רָשָׁע*י. שמות כג, ז* 2. לֹא תאבֶה לוֹ וְלֹא תִשְׁמִע אֵלִיו וְלֹא תָחוֹס עֵינְךּ עָלִיו **וְלֹא תַחְמֹל וְלֹא תְכְּסֶה עָלִיו: כִּי הָרֹג תַּהַרְגָּנּוּ** ...: *דברים יגט- י* 3. כָּל מַכֵּה נֶפֶשׁ לְפִי עֵדִים יִרְצַח אֶת הָרֹצֵחַ **וְעֵד אֶחָד לֹא יַעְנֶה בְנֶפֶשׁ לָמוּת**: ב*מדבר לה, ל*

- I Continuation of 'משנה: Distinctions between דיני ממונות and דיני נפשות
 - e Reopening the case: for either זכות סובה (ד"מ);only for ד"נ)
 - i Challenge:ruling that if a טיהר את הטמא את הטהור errs in judgment including טימא את הטהור –
 - ii *Then*: the ruling is not overturned, but the ב״ד must pay the losses to the wronged litigant
 - 1 Resolution#1 (כב יוסף): if it is a מומחה we reopen case; if not settled and he must pay
 - (a) Challenge: in case of a מומחה, the ruling is that he needn't pay \rightarrow we don't reopen case
 - (i) Defense (גדול ממנו): if there was a great גדול ממנו), he could force it to be reopened
 - 2 Resolution #2 (דבר משנה): if error was a matter of code (דבר משנה)- reopened
 - (a) But: if it was a "judgment call" (שיקול הדעת) not reopened and he must pay
 - (b) Definitions:
 - (i) *דבר משנה* even Amoraic rulings (e.g. ר' אשי ורבינא even רב ושמואל –
 - (ii) שיקול הדעת. if there is a dispute without an explicit ruling, but most דיינים rule one way
 - (c) Challenge (טריפה declared a cow that had had a hysterectomy to be a טריפה
 - (i) Then: based on Theodos, the doctor's information that every cow (and sow) leaving Alexandria is neutered (→ not a טריפה as they live on) he was worried that he would have to pay the owner
 - 1. Consolation (מומחה לרבים, since he is a מומחה, he is exempt
 - 2. Explanation: if טעה בדבר משנה is reopened, why didn't איי say that to him?
 - a. Defense: "y" gave him both reasons to be consoled
 - (ii) Question (אנב"י לרבא): what was the challenge? Here, the cow was fed to dogs nothing to reopen
 - 1. Answer: had טעה בדבר משנה been "אינו חוזר" → the ruling stands (hence he was afraid)
 - a. But: if משנה חוזר \rightarrow ruling is null (even though the cow was destroyed)
 - 3 Resolution#3 (ד' חסדא): if the דיין handed over the money, he is liable; else, it is reopened
 - (a) Challenge: in the ינכה את החייב, we read ינכה את החייב no money changed hands where is the ינכה את ונתן ביד?
 - (i) Answer:ruling that he was exempt is tantamount to handing over the money
 - 1. Block: in the משנה (which is a parallel), we have חוזר לחובה which could only have meant that the originally ruled "exempt"; yet it is reopened because the דיין isn't liable
 - a. Defense (ת"ח): the משנה only referred to one case- לזכות שהיא חובה
 - i. Refutation: then ד"ג are no different; (possibility of חובת גואל הדם is rejected)
 - ii. Plus: the use of בין לזכות בין implies that either is reopened
 - b. Defense (מלווה i.e. really מלווה held a pledge, which the דיין handed to לווה (i.e. really) (נשא ונתן ביד
 - 4 Final issues in שרץ he took the item and pushed a שרץ on it (to demonstrate its טומאה he took the item and pushed a שרץ
 - (a) And: טיהר את הטמא he mixed it in with his פירות
 - iii ברייתא sources for reopening זכות for זכות and not ברייתא העב: (v. 1) –apply to חייבי גלות חייבי מלקיות מלקיות מלקיות
 - 1 Note: opposite applies to מסית as per v. 2
 - iv Limitation (מקרא): if the mistake ד"ג ni לזכות was a matter explicit in מקרא, we reopen
 - 1 Note: in re: עריות, it will always be reopened (מפורש במקרא), except for e.g. ביאה שלא כדרכה
 - f Who can reopen case: anyone (ד"מ) or a limited group (ד"ג)
 - i Observation: seems to run contra ר' יוסי ב"ר יהודה who ruled (v. 3) that an לזכות may argue לזכות
 - 1 Interpretation: לא יענה...למות but he may argue לחיות
 - (a) הממה he would seem to be an interested party (as he is blocking his own accusation in case of הזמה
 - 2 Defense (מ"ב"): could be referring to one of the תלמידים present, with which even "would agree
 - 3 And: לזכות interpret v. 3 as referring to a student who may not argue לזכות, the עד may not even argue לזכות