

A בס"ד

Intro

Today we will Be"H learn כ"ח דף and begin חזקת הבתים, the third Perek of בבא בתרא.

Some of the topics we will learn about include:

חזקת קרקעות

How one establishes ownership of real property.

If the last known owner protests and claims that he never sold the property, and the current occupant claims that he bought it but lost the document of sale, and he also cannot produce witnesses that he bought it;

He must bring witnesses that he occupied and used the property in its normal manner for a given period.

This חזקה supports the occupant's claim, and is sufficient proof that he is the current owner of this property.

The Mishnah differentiates between

עושין פירות תדיר

Properties that produce benefit continuously; and

עושין פירות פעם א' בשנה

Properties that yield only one crop a year;

The Gemara discusses several details of these חזקות, including:

חזקה שאין עמה טענה

The חזקה only works to bolster a valid claim of how he acquired this property.

B מחאה שלא בפניו

The previous owner can protest the current occupant's use of the property at any point within the three years and invalidate the חזקה, because

חברך חברא אית ליה

We assume that such news spreads and the occupant became aware of the protest, and should have been careful to retain proof of his ownership of the property.

The Gemara offers two sources for חזקת ג' שנים:

1.

שור המועד

Just as an ox that gores three times loses its status of תם, and is now classified a מועד; after three years of use, the property ceases to be the possession of the seller and is now the property of the buyer.

2.

ירמי' הנביא

The Pesukim warn of the upcoming exile and advise the people to retain their sale documents in anticipation of being unable to complete their חזקות.

A

חזקת קרקעות

עושין פירות
פעם א'
בשנה

עושין פירות
תדיר

חזקה
שאינ עמה טענה

B

מחאה שלא בפניו

Two sources for

חזקת ג' שנים

ירמי'
הנביא

שור
המועד

1 So let's review...

The Perek begins by discussing the Halachah of חזקת קרקעות, how one establishes proof of ownership of real property.

As Rashi explains

אם ערערו עליה בעלים הראשונים
זוה אומר מכרת לי ואבד שטרי
חזקתו מועלת לו

If the last known owner protests and claims that he never sold the property, and the current occupant claims that he bought it but lost the document of sale, and he cannot produce witnesses that he bought it;

He must bring witnesses that he occupied and used the property in its normal manner for a given period. This חזקה supports the occupant's claim, and is sufficient proof that he is the current owner of this property.

Zugt di Mishnah

חזקת הבתים

The חזקה of houses,

והבורות והשיחין והמערות

And of various forms of water reservoirs,

והשובכות והמרחצאות

And of dovescotes or bathhouses,

ובית הבדין ובית השלחין והעבדים

And of olive presses, irrigated fields, or slaves,

וכל שהוא עושה פירות תדיר

And any other properties which produce benefits continuously;

חזקתן שלש שנים מיום ליום

Their חזקה is established through three entire years of continuous use.

Regarding בית השלחין Rashi explains

מתוך שהמעין בתוכו

שמשקים אותה ממנו תדיר

עושה פירות תדיר

Since these fields contain a spring from which they are irrigated regularly, they yield produce continuously.

Therefore,

חזקתן שלש שנים

מיום ליום

1

חזקת קרקעות

How one establishes proof of ownership of real property

אם ערערו עליה בעלים הראשונים
זוה אומר מכרת לי ואבד שטרי
חזקתו מועלת לו

מאריך

חזקה...

והשובכות
והמרחצאות
*Dovecotes
or bathhouses*

והבורות והשיחין
והמערות
*Various forms
of water reservoirs*

הבתים
Houses

והעבדים
Slaves

ובית השלחין
Irrigated fields

ובית הברין
Olive presses

וכל שהוא עושה פירות תדיר

Properties which produce benefits continuously

חזקתן שלש שנים מיום ליום

Their חזקה is established through three entire years of continuous use

Regarding בית השלחין Rashi explains

מתוך שהמעין בתוכו שמשקים אותה ממנו תדיר
עושה פירות תדיר


Since these fields contain a spring from which they are irrigated regularly, they yield produce continuously.


Therefore,

חזקתן שלש שנים מיום ליום

2 On the other hand, the Mishnah continues,
 שדה הבעל
 As Rashi explains
 המסתפקות במי גשמים
 אינה עושה פירות
 אלא פעם אחת בשנה
 Since they depend on rainwater, they only produce one
 crop a year.
 Therefore,
 חזקתה שלש שנים
 ואינן מיום ליום
 Their חזקה is established through harvesting three crops,
 even in a period of less than three years. The Mishnah
 proceeds to describe the necessary amount of time.

2



שדה הבעל
 המסתפקות במי גשמים
 אינה עושה פירות אלא פעם אחת בשנה
*Since they depend on rainwater,
 they only produce one crop a year*


**חזקתה שלש שנים
 ואינן מיום ליום**
*Their חזקה is established
 through harvesting three crops,
 even in a period of less than three years*

3 The Gemara seeks a source for חזקת ג' שנים:
 אמר רבי יוחנן
 שמעתי מהולכי אושא
 מנין לחזקה ג' שנים
 משור המועד
 The גמרא who resided in אושא said that it's derived from
 the laws of a goring ox:
 מה שור המועד
 כיון שנגח ג' נגיחות
 נפק ליה מחזקת תם
 וקם ליה בחזקת מועד
 Just as an ox that gores three times loses its status of תם,
 whose owner is only liable for half-damages, and is now
 classified a מועד, whose owner is fully liable;
 הכי נמי
 כיון דאכלה תלת שנין
 נפק לה מרשות מוכר
 וקיימא לה ברשות לוקח
 Similarly, after three years of use, the property ceases to
 be the possession of the seller and is now the property of
 the buyer.

3

*The Gemara seeks a source
 for חזקת ג' שנים*


 אמר רבי יוחנן
**שמעתי מהולכי אושא
 מנין לחזקה ג' שנים
 משור המועד**

<p><i>כפי נמי</i></p> <p>כיון דאכלה תלת שנין נפק לה מרשות מוכר וקיימא לה ברשות לוקח <i>After three years of use, the property ceases to be the possession of the seller and is now the property of the buyer</i></p>	<p><i>מה לורי פאורד</i></p> <p>כיון שנגח ג' נגיחות נפק ליה מחזקת תם וקם ליה בחזקת מועד <i>An ox that gores 3 times loses its status of תם, and is now a מועד</i></p>
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4 The Gemara points out however, שור המועד מוכי נגח שלש נגיחות הוי מועד עד נגיחה רביעית לא מייחייב Although an ox is classified a מועד immediately after goring three times; nevertheless, its owner is not fully liable until it gores a fourth time, because כי לא נגח מאי לשלם He has not yet committed an act as a מועד for which to be liable. However, קרקע כיון דאכלה תלת שני קיימא לה ברשותיה As soon as he harvests three years of produce, the buyer establishes his ownership of the field, and there is no need for a fourth year.

The Gemara explains several details of חזקה according to this interpretation:

1. כל חזקה שאין עמה טענה אינה חזקה If the original owner claims the field, and the present occupant replies לא אמר לי אדם דבר מעולם "I have never been challenged." But he does not make a claim of how he acquired this property; for example, "You sold it to me," or, "I inherited it from my father;" This is not a valid חזקה, and the three years of usage does not remove the property from its previous owner, because דלמא כדקאמר השתא The חזקה only works to support a valid claim. Therefore, איהו לא טעין אנן ליטעון ליה If he does not submit a valid claim to ownership, we will not assume so based solely on his חזקה.

4

The Gemara points out however

<p><i>קרקע</i> כיון דאכלה תלת שני קיימא לה ברשותיה <i>As soon as he harvests three years of produce, the buyer establishes his ownership of the field, and there is no need for a fourth year</i></p>	<p><i>לוי פאוצצ</i> מכי נגח שלש נגיחות הוי מועד עד נגיחה רביעית לא מייחייב <i>Its owner is not fully liable until it gores a fourth time</i> <i>Because</i> <i>כי לא נגח מאי לשלם</i></p>
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Several details of חזקה according to this interpretation

1

כל חזקה שאין עמה טענה אינה חזקה

If the original owner claims the field, and the present occupant replies לא אמר לי אדם דבר מעולם But he does not make a claim of how he acquired this property of how he acquired this property

This is not a valid חזקה

Because

דלמא כדקאמר השתא

the חזקה only works to support a valid claim

Therefore,

איפו לא טעין אנן ליטעון ליה

If he does not submit a valid claim to ownership, we will not assume so based solely on his חזקה

5

2.

מחאה שלא בפניו
הוי מחאה

If the previous owner protests the present occupant's use of the property at any point within the three years, the חזקה is disqualified. Furthermore, he does not need to do so in the presence of the occupant.

Although

שור המועד

בפניו בעינן

An ox only becomes a מועד if witnesses testify in front of its owner; however, this is only because

והועד בבעליו כתיב

The Pasuk requires them to testify in his presence, so that he can defend himself before becoming liable for damages. However, regarding a protest against a property, חברך חברה אית ליה

וחברה דחברך חברה אית ליה

We assume that such news spreads and the occupant became aware of the protest, and should have been careful to retain proof of his ownership of the property.

6

3.

לרבי מאיר דאמור

ריחק נגיהותיו חייב

קירב נגיהותיו לא כ"ש

An ox becomes a מועד if it gored three times during three consecutive days.

מאיר maintains that it certainly becomes a מועד if it gored three times in a shorter period. However,

אכלה תלתא פירי בחד יומא

כגון תאנה

לא הוי חזקה

If the occupant harvested three crops of the same field in one day, such as figs, which do not ripen all at once, it does not constitute a חזקה.

This is because in the case of שור המועד

בעידנא דאית ליה הא נגיהה

ליתא להא נגיהה

Each goring, even if on the same day, is a separate event, and so they establish a pattern of goring.

However, in the case of תאנה

בעידנא דאיתא להאי פירא

איתא להאי פירא

The three crops overlap;

And to establish a חזקה, he must harvest three crops that did not exist together.

5

2

מחאה שלא בפניו הוי מחאה

If the previous owner protests the present occupant's use of the property at any point within the three years, the חזקה is disqualified

Although

שור המועד בפניו בעינן

because

והועד בבעליו כתיב

The Pasuk requires them to testify in his presence, so that he can defend himself.

However,

regarding a protest against a property,

חברך חברה אית ליה

וחברה דחברך חברה אית ליה

6

3

לרבי מאיר דאמור

ריחק נגיהותיו חייב קירב נגיהותיו לא כ"ש

An ox becomes a מועד if it gored three times in a shorter period

אכלה תלתא פירי בחד יומא

כגון תאנה

לא הוי חזקה

If the occupant harvested 3 crops of the same field in one day, which do not ripen all at once, it does not constitute a חזקה

Because...

תאנה

בעידנא דאיתא

להאי פירא

איתא להאי פירא

And to establish a חזקה, he must harvest three crops that did not exist together

לרבי מאיר

בעידנא דאית ליה

הא נגיהה

ליתא להא נגיהה

Each goring, is a separate event, and so they establish a pattern of goring

7 However,
 אכלה תלתא פירי
 בתלתא ירחי
 כגון אספסתא
 If he harvests אספסתא crops, which mature in thirty days,
 for three consecutive months,
 לרבי ישמעאל
 הוא חזקה
 The רבי ישמעאל refer to הולכי אושא, and he indeed holds this
 is a חזקה, as he says in the end of the Mishnah
 בשדה אילן
 כנס את תבואתו
 ומסק את זיתיו
 וכנס את קייצו
 הרי אלו ג' שנים
 Harvesting three different crops simultaneously consti-
 tutes a חזקה.

However,
 לרבנן
 לא הוא חזקה
 The רבנן disagree, and maintain this does not constitute a
 חזקה. Clearly, they do not derive this law from שור המועד.
 If so,
 לרבנן מאי
 What is their source for שנים ג' חזקת?

7

However,
**אכלה תלתא פירי
 בתלתא ירחי
 כגון אספסתא**
 If he harvests אספסתא crops,
 which mature in thirty days,
 for three consecutive months

לא הוא חזקה
 לרבנן
 Clearly,
 they do not derive
 this law from שור המועד.
 If so,
 לרבנן מאי?
 ?

הוא חזקה
 לרבי ישמעאל
 פולסי אולא
 רבי ישמעאל refer to רבי ישמעאל
 as he says in the end
 of the Mishnah
 בשדה אילן
 כנס את תבואתו
 ומסק את זיתיו
 וכנס את קייצו
 הרי אלו ג' שנים

8 The Gemara suggests an alternate source:
 The Pasuk says
 שדות בכסף יקנו
 וכתוב בספר וזתום
 נביא ירמיה הנביא told the people to safeguard the documents of
 their purchases of real property. And the Gemara explains
 נביא עומד בעשר
 ומזהיר על אחת עשרה
 He warned them about the exile which would take place
 after the following year. Therefore, they would only use
 their fields for the next two years, failing to establish a
 חזקה, and would need their documents as proof.

However, the Gemara argues
 דלמא התם עצה טובה קמ"ל
 Perhaps the Navi was only offering good advice, to retain
 their documents so that they do not need to rely on finding
 witnesses to testify to their חזקה?
 And the Gemara brings support for this explanation:
 תדע דכתיב
 ונתתם בכלי חרש למען יעמדו ימים רבים
 The Navi also told them to preserve their documents in
 earthenware vessels. Clearly,
 עצה טובה קמ"ל
 He was offering good advice.

The Gemara on the next Daf will bring alternate sources
 for חזקת ג' שנים.

8 *The Gemara suggests an alternate source:*

**שְׂדוֹת בַּכֶּסֶף יִקְנוּ
 וְכָתוּב בַּסֵּפֶר וּזְתוּמָה**
*told the people
 to safeguard the documents
 of their purchases of real property*

And the Gemara explains
**נְבִיא עוֹמֵד בְּעֵשֶׂר
 וּמְזַהֵר עַל אַחַת עֶשְׂרֵה**
*He warned them about the exile
 which would take place after the following year*

*Therefore,
 they would only use their fields for the next two years,
 failing to establish a חזקה,
 and would need their documents as proof*

דְּלִמָּא הֵתָם עֵצָה טוֹבָה קָמ"ל?

*So that they do not need to rely on
 finding witnesses to testify to their חזקה?*

**תְּדַע דְּכָתִיב
 וְנָתַתֶּם בְּכֵלֵי חֲרָשׁ
 לְמַעַן יַעֲמְדוּ יָמִים רַבִּים**

*The Navi also told them
 to preserve their documents in earthenware vessels.
 Clearly, עצה טובה קמ"ל*