

**A** בס"ד

Intro

Today we will Be"H learn דף לח of בבא בתרא. Some of the topics we will learn about include:

חזקה שלא בפניו

Whether an occupant can establish a חזקה while the previous owner is away, or he cannot?

The Gemara discusses several scenarios, including:

1.

בשאר מלכויות

The occupant and the previous owner are in different countries, whether

בשעת חירום

If they are hostile to each other and travel is restricted between them, or

בשעת שלום

If they are at peace and travel is unrestricted between them;

2.

היה ביהודה בעיר אחת

והחזיק ביהודה בעיר אחרת

They are in the same area of Eretz Yisroel, but in different cities.

3.

שלש ארצות לחזקה

The occupant is in one province of Eretz Yisroel, while the previous owner is in another province.

**B** מחזיקין בנכסי בורח

Whether one can establish a חזקה in the property of a fugitive? Whether,

בורח מחמת ממון

He fled because of monetary obligations; or

בורח מחמת מרדין

He fled because he was accused of a capital offense.

This may depend on two factors:

1.

מחאה שלא בפניו

Whether the owner must protest in the presence of the occupant?

2.

'מיחה בפני ב'

שאינ יכולין לומר לו

Whether the previous owner can protest in front of two individuals who cannot convey his protest to the occupant?

**A**

חזקה שלא בפניו

בשאר מלכויות  
בשעת חירום  
בשעת שלום

היה ביהודה בעיר אחת  
והחזיק ביהודה בעיר אחרת

שלש ארצות לחזקה

**B**

מחזיקין בנכסי בורח

בורח מחמת ממון  
בורח מחמת מרדין

מחאה שלא בפניו

מיחה בפני ב'  
שאינ יכולין לומר לו

1 So let's review...

To better understand this Sugya, let's review the classic case of חזקת שלש שנים and how it works:

The מערער, the claimant, generally the last-known previous owner, questions the מחזיק, the occupant, מאי בעית בהאי ארעא

Why are you occupying my property?

The occupant claims

מינך זבנתיה

It is mine; I bought it from you.

Now, it depends:

Within 3 years, the claimant can say to the occupant

אחוי שטרך

Show me your contract or deed.

If the occupant cannot produce the שטר, or two witnesses that he bought it, he must relinquish the property.

After 3 years, the occupant can claim

תלת שתא מיזדהר איניש בשטריה

טפי לא מיזדהר

After three years without hearing you protest I am not obligated to keep the שטר. You should have protested.

However, if the claimant did protest within 3 years, the occupant must continue to keep the שטר. In other words, he cannot utilize the claim of חזקת שלש שנים, of having used the property 3 years.

1

**חזקת שלש שנים**  
*And how it works*

The **מחזיק**  
OCCUPANT



**מינך זבנתיה**  
*I bought it from you.*

The **מערער**  
CLAIMANT



**מאי בעית בהאי ארעא**  
*Why are you in my property?*

**AFTER 3 YEARS:**  
**תלת שתא מיזדהר איניש בשטריה טפי לא מיזדהר**  
*After three years without hearing you protest I am not obligated to keep the שטר.*

**WITHIN 3 YEARS:**  
**אחוי שטרך**  
*Show me your contract or deed.*

*If the occupant cannot produce the שטר, or two witnesses, he must relinquish the property.*

*However, if the claimant did protest within 3 years, the occupant must continue to keep the שטר. In other words, he cannot utilize the claim of חזקת שלש שנים, of having used the property 3 years.*

2 Now, the Gemara introduces the question of מחאה שלא בפניו

Whether the claimant can protest not in the presence of the occupant?

If we say

מחאה שלא בפניו

לא הויא מחאה

It is not a valid מחאה, because we are concerned that it will not reach the occupant; then

חזקה שלא בפניו

לא הויא חזקה

The חזקה is not valid either, because as the Rashbam explains, if the claimant was unable to make a valid מחאה,

a valid protest, the occupant cannot claim that he should have protested, because it would not have helped anyway.

Therefore, the claimant must continue to keep the שטר and he has no חזקה.

2

**מחאה שלא בפניו**

*If we say*  
**מחאה שלא בפניו לא הויא מחאה**  
*because we are concerned that it will not reach the occupant;*  
*then*  
**חזקה שלא בפניו לא הויא חזקה**  
*The חזקה is not valid either,*  
*because if the claimant was unable to make a valid מחאה,*  
*the occupant cannot claim that he should have protested,*  
*because it would not have helped anyway.*  
*Therefore, the claimant must continue to keep the שטר and he has no חזקה.*

- 3 Now let's proceed with the Mishnah and the Gemara:  
 Zugt di Mishnah  
 שלש ארצות לחזקה  
 There are three separate provinces in Eretz Yisroel  
 regarding חזקות:  
 יהודה ועבר הירדן והגליל
- The תנא קמא explains:  
 היה ביהודה והחזיק בגליל  
 בגליל והחזיק ביהודה  
 אינה חזקה  
 עד שיהא עמו במדינה אחת  
 An occupant cannot establish a חזקה in one of these  
 provinces while the previous owner is in another  
 province.  
 A חזקה can only be established if they are both in the same  
 province.

- 3 משנה
- שלש ארצות לחזקה**  
 There are three separate provinces in Eretz Yisroel  
 regarding חזקות:  
**יהודה - ועבר הירדן - והגליל**  
**היה ביהודה והחזיק בגליל**  
**בגליל והחזיק ביהודה**  
**אינה חזקה**  
**עד שיהא עמו במדינה אחת**  
 An occupant cannot establish a חזקה in one of these provinces  
 while the previous owner is in another province.  
 Only if they are both in the same province.

4 The Gemara explains that the תנא קמא actually holds מחאה שלא בפניו הויה מחאה  
A protest not in the presence of the occupant IS a valid מחאה, because as the Rashbam explains;  
והיה לו להזהר בשטרו  
We assume that the protest reached the occupant, and he should have kept the deed to the property. Therefore, if שניהם במדינה אחת  
אע"פ שאינם בעיר אחת  
הויה מחאה  
If they are both in the same province, even if they are in different cities, it is a valid מחאה, because  
כיון ששיירות מצויות  
הויה ליה למחויי  
Since people travel between the cities, the claimant should have protested, because it will reach the occupant and would have been a valid מחאה; and since he did not protest the occupant has a valid חזקה, as explained earlier.

And, the Rashbam continues;  
בשאר מלכויות  
If the occupant and the claimant are in different countries, it depends:  
אי איכא חירום  
לא הויה חזקה  
בשעת שלום  
הויה חזקה  
If the countries are hostile to each other and travel is restricted between them, there is no valid מחאה since the occupant will not hear of the protest, and therefore the חזקה is not valid.  
However, if they are at peace and travel is unrestricted, there is a valid מחאה since the occupant will hear of the protest, and therefore the חזקה is valid.

Now, the Gemara explains  
סתם יהודה וגליל  
כשעת חירום דמו  
Travel between these provinces was not common even in times of peace, similar to two hostile countries.  
Therefore, there is no valid מחאה since the occupant will not hear of the protest, and therefore the חזקה is not valid.  
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4 **מחאה שלא בפניו הויה מחאה**  
*A protest not in the presence of the occupant is valid,*  
*because as the Rashbam explains;*  
**חזכך חזכרא חויה ליה**  
*ושמע המחזיק בדבר זה והיה לו להזהר בשטרו*  
*We assume that the protest reached the occupant, and he should have kept the deed to the property.*  
*Therefore, if*  
**שניהם במדינה אחת אע"פ שאינם בעיר אחת**  
*הויה מחאה*  
*If they are both in the same province, even if they are in different cities, it is a valid מחאה,*  
*because*  
**כיון ששיירות מצויות הויה ליה למחויי**  
*Since people travel between the cities, the claimant should have protested, because it will reach the occupant and would have been a valid מחאה; and since he did not protest the occupant has a valid חזקה, as explained earlier.*  
**בשאר מלכויות**  
*If the occupant and the claimant are in different countries, it depends:*  
**אי איכא חירום – לא הויה חזקה**  
**בשעת שלום – הויה חזקה**  
*If the countries are hostile to each other and travel is restricted between them, there is no valid מחאה since the occupant will not hear of the protest, and therefore the חזקה is not valid.*  
*However, if they are at peace and travel is unrestricted, there is a valid מחאה since the occupant will hear of the protest, and therefore the חזקה is valid.*  
*The Gemara explains*  
**סתם יהודה וגליל**  
**כשעת חירום דמו**  
*Travel between these provinces was not common even in times of peace, similar to two hostile countries.*  
*Therefore, there is no valid מחאה since the occupant will not hear of the protest, and therefore the חזקה is not valid.*

5 The Mishnah continues:

אמר רבי יהודה  
 As the Rashbam explains  
 לחלוק בא ולומר דאינן חלוקות לחזקה  
 דהיה בגליל והחזיק ביהודה  
 הויא חזקה  
 היה disagree with the קמא and holds that one can  
 establish a חזקה in the different provinces, and even far  
 away countries, where there are no frequent travelers,<sup>®</sup>  
 because  
 לא אמרו שלש שנים  
 אלא כדי שיהא באספמיא  
 ויחזיק שנה  
 וילכו ויודיעוהו שנה  
 ויבא לשנה אחרת  
 The reason the Chachamim initiated that we need three  
 years to establish a חזקה is so that even if the previous  
 owner is in Spain and the occupant harvests one year's  
 crop in Eretz Yisroel, someone can travel for a year and  
 inform the owner, and the owner can then return a year  
 later and protest.

The Rashbam explains

טעמא דרבי יהודה  
 לא משום  
 דתלת שנין מיזדהר איניש בשטריה  
 היה does not agree that the reason for שלש שנים is  
 because an occupant holds onto the deed for three years.  
 Rather,  
 פעמים היה המערער רחוק  
 It is to ensure that the claimant's protest will reach the  
 occupant even if he is sometimes far away. Accordingly,  
 אי הוי המערער בעיר  
 הוי חזקה מיד  
 If the claimant lives locally and does not protest immedi-  
 ately, the occupant establishes a חזקה right away.  
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5

*The Mishnah continues*

**אמר רבי יהודה**

*As the Rashbam explains*  
 לחלוק בא ולומר דאינן חלוקות לחזקה  
 דהיה בגליל והחזיק ביהודה  
 הויא חזקה

*disagrees with the קמא and holds that one  
 can establish a חזקה in the different provinces,  
 and even far away countries,  
 where there are no frequent travelers*

**לא אמרו שלש שנים  
 אלא כדי שיהא באספמיא**

**ויחזיק שנה וילכו ויודיעוהו שנה ויבא לשנה**

*The reason the Chachamim initiated  
 that we need three years to establish a חזקה  
 is so that even if the previous owner is in Spain  
 and the occupant harvests one year's crop in Eretz Yisroel,  
 someone can travel for a year and inform the owner,  
 and the owner can then return a year later and protest.*

*The Rashbam explains*

**טעמא דרבי יהודה**

**לא משום דתלת שנין מיזדהר איניש בשטריה**

*does not agree that the reason for שלש שנים is  
 because an occupant holds onto the deed for three years.*

*Rather,*

**פעמים היה המערער רחוק**

*It is to ensure that the claimant's protest will reach the  
 occupant even if he is sometimes far away.*

*Accordingly,*

**אי הוי המערער בעיר הוי חזקה מיד**

*If the claimant lives locally and does not protest immediately,  
 the occupant establishes a חזקה right away.*

6 The Gemara cites two versions of a שמואל רב ושמאל:  
 1.  
 רב said  
 אין מחזיקין בנכסי בורח  
 One cannot establish a חזקה in the property of a fugitive.  
 And as the Rashbam adds  
 הוא הדין לכל מרחיקי ארצם  
 The same Halachah applies to any situation where the  
 previous owner is not in the same country as the property,  
 because Rav holds  
 מחאה שלא בפניו  
 לא הויא מחאה  
 If the original owner does not protest in the presence of  
 the occupant, it is not a valid מחאה, since the occupant will  
 not know to retain the deed to the property. Therefore, if  
 one uses a property while the owner is away, the מחאה is  
 not valid, because the occupant will not hear of the  
 protest. Thus the חזקה is not valid either, as explained  
 earlier.  
 However, שמואל argued  
 וכי למחות בפניו הוא צריך  
 Surely, he does not need to protest in the presence of the  
 occupant! Thus, שמואל holds  
 מחאה שלא בפניו  
 הויא מחאה  
 And similarly, he would hold  
 מחזיקין בנכסי בורח  
 The חזקה is valid as well.

6

1

<p style="text-align: center;"><i>רב</i></p> <p style="text-align: center;"><b>וכי למחות בפניו הוא צריך</b></p> <p style="text-align: center;"><i>Surely, he does not need to protest in the presence of the occupant!</i></p> <p style="text-align: center;"><i>Thus, Rav holds</i></p> <p style="text-align: center;"><b>מחאה שלא בפניו הויא מחאה</b></p> <p style="text-align: center;"><i>And also, he would hold</i></p> <p style="text-align: center;"><b>מחזיקין בנכסי בורח</b></p> <p style="text-align: center;"><i>The חזקה is valid as well.</i></p>	<p style="text-align: center;"><i>רב</i></p> <p style="text-align: center;"><b>אין מחזיקין בנכסי בורח</b></p> <p style="text-align: center;"><i>One cannot establish a חזקה in the property of a fugitive.</i></p> <p style="text-align: center;"><i>As the Rashbam adds</i></p> <p style="text-align: center;"><b>הוא הדין לכל מרחיקי ארצם</b></p> <p style="text-align: center;"><i>The same Halachah applies to any situation where the previous owner is not in the same country,</i></p> <p style="text-align: center;"><i>Because Rav holds</i></p> <p style="text-align: center;"><b>מחאה שלא בפניו לא הויא מחאה</b></p>
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7 2.  
 In the second version רב said  
 מחזיקים בנכסי בורח  
 One can establish a חזקה in the property of a fugitive,  
 because  
 מחאה שלא בפניו  
 היא מחאה  
 If the previous owner does not protest in the presence of  
 the occupant, it is still a valid מחאה, because we assume  
 that the protest will reach the occupant. Therefore, if one  
 uses a property while the owner is away, the מחאה is valid,  
 because the occupant will hear of the protest. Thus the  
 חזקה is valid too, as explained earlier.  
 However, שמואל argued  
 פשיטא  
 וכי למחות בפניו הוא צריך  
 Surely, he does not need to protest in the presence of the  
 occupant! In other words, it is obvious that  
 מחאה שלא בפניו  
 היא מחאה  
 And similarly,  
 מחזיקין בנכסי בורח

Therefore, the Gemara explains the מחלוקת רב ושמואל as follows:

רב teaches us the following novelty:

אפילו מיחה בפני שנים

שאין יכולין לומר לו

היא מחאה

Even if he protested in front of two individuals who will not have the ability to convey his protest to the occupant, it is a valid protest, because

חברך חברה אית ליה

וחברה דחברך חברה אית ליה

One's friends have friends, and their friends have other friends, and the news will spread. Therefore, the occupant will hear of the protest and will know to keep his deed.

However, שמואל holds

מיחה בפני שני בני אדם

שיכולים לומר לו

היא מחאה

If he protests in front of two individuals who can convey it to the occupant, it is a valid מחאה. But

מיחה בפני שני בני אדם

שאין יכולין לומר לו

לא היא מחאה

If he protests in front of two individuals who cannot convey it to the occupant, it is not a valid מחאה, and therefore not a valid חזקה.

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7 2

**פשיטא**  
 וכי למחות בפניו הוא צריך  
 Surely, he does not need to protest in the presence of the occupant!  
 It is obvious that מחאה שלא בפניו היא מחאה  
 And similarly, מחזיקין בנכסי בורח

**מחזיקים בנכסי בורח**  
 One can establish a חזקה in the property of a fugitive, because מחאה שלא בפניו היא מחאה  
 If the previous owner does not protest in the presence of the occupant, it is still a valid מחאה, because we assume that the protest will reach the occupant.

Therefore, the Gemara explains the מחלוקת רב ושמואל as follows

**מיחה בפני שנים שיכולים לומר לו היא מחאה**  
 If he protests in front of two individuals who can convey it to the occupant, it is a valid מחאה

**אפילו מיחה בפני שנים שאין יכולין לומר לו היא מחאה**  
 Even if he protested in front of two individuals who will not have the ability to convey his protest to the occupant, it is a valid protest, because חברך חברה אית ליה וחברה דחברך חברה אית ליה



8 The Gemara concludes:

אמר רבא  
הלכתא

אין מחזיקין בנכסי בורח

On the one hand, רבא rules that one cannot establish a חזקה in the property of a fugitive; apparently, because מחאה שלא בפניו

לא הויה מחאה

And therefore, the חזקה is not valid either.

However, on the other hand, רבא rules

מחאה שלא בפניו הויה מחאה

An owner does not need to protest in the presence of the occupant, because the occupant will hear of the protest.

Therefore, it would follow that one CAN establish a חזקה in the property of a fugitive.

Therefore, the Gemara asks

תרת

These two rulings are contradictory?

The Gemara answers and differentiates;

כאן בורח מחמת ממון

ואינו ירא למחות

If the fugitive fled because of monetary obligations, he is not afraid to protest, and so the occupant will hear of the מחאה and should retain his deed.

כאן בורח מחמת מרדין

וירא למחות

If he fled because he was accused of a capital offense, he is afraid to protest, since it might reveal his whereabouts.

Therefore, the מחאה is not valid, and the חזקה is not valid either.

8

*However, רבא rules*  
**מחאה שלא בפניו  
הויה מחאה**

*An owner does not need to protest in the presence of the occupant, because the occupant will hear of the protest.*

*Therefore, it would follow that one CAN establish a חזקה in the property of a fugitive.*

*אמר רבא*

**הלכתא  
אין מחזיקין  
בנכסי בורח**

*One cannot establish a חזקה in the property of a fugitive;*

*Apparently, because מחאה שלא בפניו לא הויה מחאה*

*And therefore, the חזקה is not valid either.*



**כאן בורח  
מחמת ממון  
ואינו ירא למחות**

*If he fled because of monetary obligations, he is not afraid to protest, and so the occupant will hear of the מחאה and should retain his deed.*

**כאן בורח  
מחמת מרדין  
וירא למחות**

*If he fled because of a capital offense, he is afraid to protest, since it might reveal his whereabouts. Therefore, the מחאה is not valid, and the חזקה is not valid either.*