

**A** בס"ד

Intro

Today we will learn בע"ה of דף מב of בבא בתרא. Some of the topics we will learn about include.

The Halachah of

שלשה לקוחות מצטרפין

If one field was sold to three people during three consecutive years, and the מרא קמא claims that he did not sell the field, the three buyers combine to form a חזקה of three years, as proof that the מרא קמא did sell the field.

רב's distinction between שטר and עדים regarding חזקה, and מלוה, a loan; but regarding זבניי, a sale, there is no distinction between שטר and עדים.

חזקת קרקעות  
ג' שנים

Regarding land, a proof of ownership is established only after the מחזיק occupies the land for three years.

**A**

שלשה לקוחות  
מצטרפין

Rav's distinction between  
שטר and עדים  
regarding חזקה, and מלוה

Regarding זבניי, a sale,  
there is no distinction between  
שטר and עדים.

חזקת קרקעות  
ג' שנים

**B**

חזקת מטלטלין  
אפילו שעה אחת

Regarding moveable objects, a proof of ownership is established immediately, once the מחזיק possesses the item and claims that he bought it, even if the מרא קמא provides עדים that the item belongs to him, because as the רשב"ם explains

סתם לוקח מטלטלין מחבירו בלא עדים ושטר

People generally purchase moveable items without any record or proof of the sale, and therefore the מחזיק is believed to say that he bought it from the מרא קמא.

האומנין והשותפין והאריסין והאפוטרופין  
אין להם חזקה

The people for whom a חזקה is not a proof of ownership, because the owner gives them permission to use his field based on their arrangement;

The Machlokes regarding שותף, two partners in a field, if one partner worked and ate the produce for three years, does this create a חזקה or not?

The contradiction in שמואל regarding שותף and the distinction in whether

הא דנחית לכולה

The partner worked in the entire field for three years, OR הא דנחית לפלגא

The partner worked in only a portion of the field for three years.

**B**

חזקת מטלטלין  
אפילו שעה אחת

האומנין והשותפין  
והאריסין והאפוטרופין  
אין להם חזקה

שותף  
הא דנחית לכולה  
הא דנחית לפלגא

1 So let's review ...

The Gemara proceeds with the following Halachah שלשה לקוחות מצטרפין

If one field was sold to three people in three consecutive years, they combine to form a חזקה of three years.

As the רשב"ם explains;

ראובן sold a field to שמעון who then sold it to לוי who then sold it to יהודה, and each לוקח occupied the field and ate the produce for one year.

If afterward ראובן claims that he did not sell the field to שמעון, but that שמעון stole it, and שמעון has no שטר, the other two buyers combine with שמעון to form a חזקה of three years, as proof that שמעון did buy the field from ראובן.

רב however makes the following distinction

כולם בשטר

מצטרפין

The לקוחות combine only if all their sales were recorded in a שטר, because

שטר אית לה קלא

Through the שטר the sale becomes public knowledge and certainly reached the מרא קמא, and he should have made a מחאה; and since he did not do so, this proves that שמעון did purchase the field from ראובן.

However

בעדים

אין מצטרפין

The לקוחות do not combine if there was no שטר, even if their sales were made in the presence of two עדים, because עדים לית להו קלא

Through עדים the sale does not become public knowledge and the מרא קמא did not know of the subsequent sales. And although the מרא קמא knew of their occupation of the field, he claims ®

לא חשתי למחות שהייתי רואה

שאתם יראים להחזיק כדמחזקי אינישי

I did not feel the need to make a מחאה, because I assumed that each one occupied the field for only one year because he stole the field and was afraid to remain longer.

1

שלשה לקוחות מצטרפין

If a field was sold to 3 people in 3 consecutive years, they combine to form a חזקה of three years.

לוי	שמעון	ראובן
sold it to	sold it to	sold a field to
יהודה	לוי	שמעון

and each לוקח occupied the field for one year.

If afterward ראובן claims

that he did not sell the field to שמעון, but that שמעון stole it, and שמעון has no שטר, the other two buyers combine with שמעון to form a חזקה of three years, as proof that שמעון did buy the field from ראובן.

רב makes the following distinction

בעדים

אין מצטרפין

If there sales were made only with עדים, because

עדים לית להו קלא

Through עדים the sale does not become public knowledge and the מרא קמא did not know of the subsequent sales.

כולם בשטר

מצטרפין

If all their sales were recorded in a שטר, because

שטר אית לה קלא

Through the שטר the sale becomes public knowledge and certainly reached the מרא קמא, and he should have made a מחאה.



And although the מרא קמא knew of their occupation, never-the-less he claims

לא חשתי למחות שהייתי רואה

שאתם יראים להחזיק כדמחזקי אינישי

I did not feel the need to make a מחאה, because I assumed that each one occupied the field for only one year because he stole the field and was afraid to remain longer.

2 The Gemara questions the idea of עדים לית להו קלא  
 From another statement of רב where it seems that עדים אית להו קלא  
 Something done in the presence of witnesses becomes public knowledge.  
 המוכר שדה בעדים  
 המוכר שדה בעדים  
 גובה מנכסים משועבדים  
 If someone sold his field in the presence of עדים and the field was later confiscated, the buyer can collect from the seller's other fields that he later sold to others.  
 As the רשב"ם explains;  
 משום דעדים מפקי לקלא  
 וידעו הלקוחות שמכר זה קרקע באחריות  
 Since the first field was sold before עדים, the later buyers knew that their field has a lien on it to guarantee the field sold earlier. ®

Apparently, these two statements of Rav are contradictory?

Regarding חוקה, Rav said

שטר אית לה קלא

עדים לית להו קלא

However, regarding זביני, selling a field, Rav said that both

שטר אית לה קלא

AND

עדים אית להו קלא

2

## עדים לית להו קלא

?

רב

### המוכר שדה בעדים גובה מנכסים משועבדים

*If someone sold his field in the presence of עדים and the field was later confiscated, the buyer can collect from the seller's other fields that he later sold to others.*

*As the רשב"ם explains;*

**משום דעדים מפקי לקלא**  
**וידעו הלקוחות שמכר זה קרקע באחריות**

*Since the first field was sold before עדים, the later buyers knew that their field has a lien on it to guarantee the field sold earlier.*

Regarding זביני, **שטר אית לה קלא**  
 Rav said that both **עדים אית להו קלא**

?

Regarding חוקה, Rav said **שטר אית לה קלא**  
**עדים לית להו קלא**

3 The Gemara answers - and as the Rashbam explains - differentiates between the stronger קול created by a שטר and the weaker קול created by עדים:  
 As the Rashbam writes  
 בעדים בלא שטר לית ליה קלא ממילא  
 אלא אם כן יפשפשו ויחקרו הדבר  
 A שטר creates publicity and the news spreads. Therefore, most people know about it.  
 עדים do not create publicity and the news does not spread, and most people do not know about it. However, a significant amount of people know about it, so that if someone checks and investigates he will find out. ®

Therefore, regarding חזקה;  
 עדים לית להו קלא  
 There is not enough knowledge out there for the מורא קמא to hear about the sales without inquiring; and he had no reason to investigate, because as explained earlier  
 לא חשתי למחות שהייתי רואה  
 שאתם יראים להחזיק כדמחזקי אינישי  
 He assumed it was stolen.

However, regarding זביני;  
 עדים אית להו קלא  
 There is enough knowledge out there for the buyers to find out if they inquire. Therefore,  
 לקוחות אינהו אפסידו אנפשיהו  
 The later buyers caused their own loss, because they should have investigated whether there are liens on the fields they are now buying - what we call today a 'title search.'

3

<p><b>עדים</b>                  create a                  weaker קול</p>	<p><b>שטר</b>                  creates a                  stronger קול</p>
<p><i>As the Rashbam writes</i></p> <p>בעדים בלא שטר לית ליה קלא ממילא                  אלא אם כן יפשפשו ויחקרו הדבר                  A שטר creates publicity and the news spreads.                  Therefore, most people know about it.                  עדים do not create publicity and the news does not spread,                  and most people do not know about it.                  However, a significant amount of people know about it,                  so that if someone investigates he will find out.</p>	
<p><b>זביני</b>                  עדים אית להו קלא                  There is enough knowledge                  out there for the buyers to find                  out if they inquire.                  Therefore,                  לקוחות אינהו אפסידו                  אנפשיהו                  The later buyers caused                  their own loss, because they                  should have investigated                  whether there are liens on                  the fields they were buying.</p>	<p><b>חזקה</b>                  עדים לית להו קלא                  There is not enough knowl-                  edge out there for the מורא                  קמא to hear about the sales                  without inquiring;                  And he had no reason to                  investigate, because as                  explained earlier                  לא חשתי למחות                  שהייתי רואה                  שאתם יראים להחזיק                  כדמחזקי אינישי                  He assumed it was stolen.</p>

4 However, if so, the Gemara asks; What is the difference between זביני and מלוה, a loan? Regarding which a later Mishnah makes a distinction between שטר and עדים as follows:  
 המלוה את חברו בשטר  
 גובה מנכסים משועבדים  
 If a person loaned someone money and the loan was recorded in a שטר, the מלוה collects even from the לווה's sold properties. But  
 ע"י עדים  
 גובה מנכסים בני חורין  
 If the loan was not recorded in a שטר, even if it was in the presence of עדים, the מלוה collects only from fields that the לווה still owns, but not from those that he sold to others.  
 Apparently, because  
 שטר אית לה קלא  
 עדים לית להו קלא  
 With עדים there is not enough knowledge out there for them to find out whether the seller owes money even if they inquire.  
 The Gemara answers:  
 Regarding זביני,  
 עדים אית להו קלא  
 Because  
 מאן דזבין ארעא  
 בפרהסיא זבין  
 כי היכי דליפוק לה קלא  
 The seller publicizes his intention to sell to attract potential buyers.  
 However, regarding מלוה  
 עדים לית להו קלא  
 Because,  
 כי קא יזיף  
 בצנעא קא יזיף  
 כי היכי דלא ליתגלו נכסיה עליה  
 Someone who borrows money does it privately, so that people should not know that he is in dire need of money, because if he wants to sell some land they will offer him a lower price.  
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4

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*If so, what is the difference between זביני and מלוה?*

<p><b>המלוה את חברו בשטר</b>  <b>ע"י עדים</b>  <b>גובה מנכסים בני חורין</b>  <i>If the loan was made only in the presence of עדים, the מלוה collects from fields that the לווה still owns, but not from those sold to others.</i></p> <p><b>עדים</b>  <b>לית להו קלא</b></p> <p><i>Regarding מלוה</i>  <b>עדים לית להו קלא</b>  <i>Because,</i>  <b>כי קא יזיף</b>  <b>בצנעא קא יזיף</b>  <b>כי היכי דלא ליתגלו נכסיה עליה</b>  <i>Someone who borrows money does it privately, so that people should not know that he needs money, because if he wants to sell some land they will offer him a lower price.</i></p>	<p><b>המלוה את חברו בשטר</b>  <b>גובה מנכסים משועבדים</b>  <i>If a person loaned someone money and the loan was recorded in a שטר, the מלוה collects even from the לווה's sold properties.</i></p> <p><b>שטר</b>  <b>אית לה קלא</b></p> <p><i>Regarding זביני</i>  <b>עדים אית להו קלא</b>  <i>Because</i>  <b>מאן דזבין ארעא</b>  <b>בפרהסיא זבין</b>  <b>כי היכי דליפוק לה קלא</b>  <i>The seller publicizes his intention to sell to attract potential buyers.</i></p>
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5

Zugt Di Mishnah

האומנין והשותפין והאפוטרופין  
אין להם חזקה

For the following people a חזקה is not proof of ownership:  
האומנין, a craftsman,  
השותפין, partners in a field,  
האריסין, a sharecropper,  
האפוטרופין, a person appointed to handle the affairs of  
יתומין, orphans.

The רשב"ם explains

1.

האומנין

אין להם חזקה

If an אומן claims that he bought someone's מטלטלין, a moveable item, and it is an item that is עשוי לשלחו לאומן כדי עשוי לתקנו, it's usually given to a craftsman for repair, the אומן's possession of the item is not proof of ownership, because people usually give him their items for repair.

2.

השותפין

אין להם חזקה

If two people were partners in a field and one partner ate all the produce of the field for three consecutive years, this is not proof that he bought and now owns the entire field, even though the other partner did not make a מחאה, because ®

שכן דרך שותפין

לאכול זה פירות שלש שנים

ואח"כ יאכל זה כמו כן

It is common for partners to arrange for one partner to work and eat all the produce for a long period of time, and afterward the other partner works and eats all the produce for the same amount of time.

5

מלך

האומנין והשותפין והאריסין והאפוטרופין  
אין להם חזקה

For the following people  
a חזקה is not proof of ownership:

האומנין, a craftsman

השותפין, partners in a field,

האריסין, a sharecropper,

יתומין, a person appointed to handle the affairs of האפוטרופין.

1

האומנין  
אין להם חזקה

If an אומן claims that he bought someone's מטלטלין, that is עשוי לשלחו לאומן כדי לתקנו, it is usually given to a craftsman for repair, the אומן's possession of the item is not proof of ownership, because people usually give him their items for repair.

2

השותפין  
אין להם חזקה

If two people were partners in a field and one partner ate all the produce of the field for three consecutive years, this is not proof that he bought and now owns the entire field, even though the other partner did not make a מחאה.

Because

שכן דרך שותפין

לאכול זה פירות שלש שנים

ואח"כ יאכל זה כמו כן

It is common for partners to arrange for one partner to work and eat all the produce for a long period of time, and afterward the other partner works and eats all the produce for the same amount of time.

6 3.  
האריסין  
אין להם חזקה  
If a sharecropper, who is paid with a percentage of the produce, ate all the produce of the entire field for three consecutive years, this is not proof that he bought and now owns the field, even though the owner did not make a מחאה, because he can claim ®

לאריסות הורדתיו

ודמי פירות היה משלם לי

He was only entitled to a percentage, and he paid me with money for the remainder of the produce;

OR

מנהג אריסים לעבוד עשר שנים

וחמש שנים אוכלין הבעלים

ואח"כ אוכלין האריסין חמש שנים כנגדם

It is common for a sharecropper to work for ten years, and the owner gets all the produce for the first five years, and the sharecropper then gets all the produce for the other five years.

4.

האפוטרופין

אין להם חזקה

If an אפוטרופוס ate all the produce of the יתומים' field for three years, this is not proof that he bought and now owns the entire field, since the יתומים or their relatives did not make a מחאה, because he was working on behalf of the יתומים.  
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6 3  
**האריסין  
אין להם חזקה**  
If a sharecropper,  
who is paid with a percentage of the produce,  
ate the produce of the entire field for 3 consecutive years,  
this is not proof that he bought and now owns the field,  
even though the owner did not make a מחאה.

*Because he can claim*

**לאריסות הורדתיו**

**ודמי פירות היה משלם לי**

*He was only entitled to a percentage,  
and he paid me with money for the remainder of the produce;*

OR

**מנהג אריסים לעבוד עשר שנים**

**וחמש שנים אוכלין הבעלים**

**ואח"כ אוכלין האריסין חמש שנים כנגדם**

*It is common for a sharecropper to work for ten years,  
and the owner gets all the produce for the first five years,  
and the sharecropper then gets all the produce  
for the other five years*

4  
**האפוטרופין  
אין להם חזקה**

If an אפוטרופוס ate all the produce of the יתומים' field  
for three years, this is not proof that he bought  
and now owns the entire field,  
since the יתומים or their relatives did not make a מחאה,  
because he was working on behalf of the יתומים.

7 The Mishnah continues

לא לאיש חזקה בנכסי אשתו

If a husband ate all the produce of his wife's field for three years, this is not proof that he bought the field from her, because

דאורחיה דבעל למיכל פירות

A husband is entitled to the פירות by the Kesubah, while she retains ownership of the field.

ולא לאשה חזקה בנכסי בעלה

If a wife ate all the produce of her husband's field for three years, this is not proof that she bought the field from him, because

דכיון דמזונות אשה על בעלה

שביק לה למיכל פירי

Since a husband is obligated to give her support, he gives her permission to eat the produce.

ולא לאב בנכסי הבן

ולא לבן בנכסי האב

If a father ate the produce of his son's field, or a son ate the produce of his father's field, this is not proof that he bought the field, because

דומיא דאפוטרופין נינהו

זה בנכסיו של זה

It's common for them to work together and they are not particular with each other.

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7

*The Mishnah continues ...*

לא לאיש חזקה בנכסי אשתו

*because*

דאורחיה דבעל למיכל פירות

*A husband is entitled to the פירות by the Kesubah, while she retains ownership of the field.*

ולא לאשה חזקה בנכסי בעלה

*because*

דכיון דמזונות אשה על בעלה

שביק לה למיכל פירי

*Since a husband is obligated to give her support, he gives her permission to eat the produce.*

ולא לאב בנכסי הבן

ולא לבן בנכסי האב

*Because*

דומיא דאפוטרופין נינהו

זה בנכסיו של זה

*It's common for them to work together and they are not particular with each other.*



8 Regarding שותף, the Gemara says that this is actually a Machlokes, in that שמואל תני אומן אין לו חזקה אבל שותף יש לו חזקה includes in the Mishnah only אומן has no חזקה, but a שותף does have a חזקה, because as the רשב"ם explains מנהג שותפים ליטול בשותפות פירות כל שנה ושנה Partners usually work together and split the produce of each and every year, and therefore דאם איתא דלא מכר לו חלקו היה לו לעבוד את האדמה ולאכול הפירות בשותפות If the other partner did not sell him his share, they should have worked and eaten the produce together.

The Gemara proceeds with a contradiction in שמואל: Here שמואל says שותף יש לו חזקה

And שמואל also says שותף כיורד ברשות דמי A partner who works in a shared field is considered like a sharecropper, which implies that שותף אין לו חזקה A partner has no חזקה?

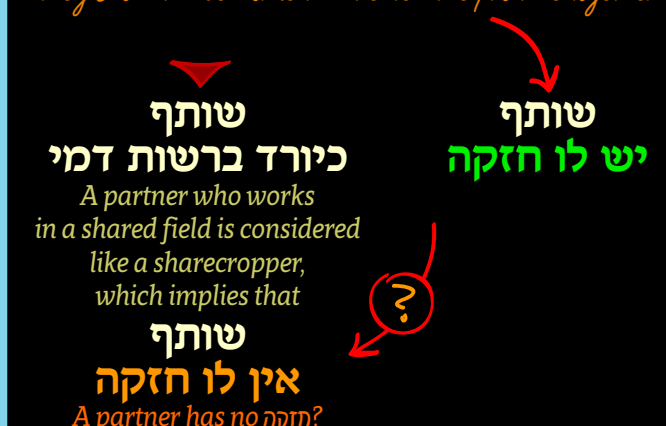
8

**שותף**  
**שמואל תני**  
**אומן אין לו חזקה**  
**אבל שותף יש לו חזקה**  
 חזקה, includes in the Mishnah only אומן has no חזקה, but a שותף does have a חזקה,  
*Because as the רשב"ם explains*  
 מנהג שותפים ליטול בשותפות פירות  
 כל שנה ושנה  
*Partners usually work together and split the produce of each and every year, and therefore*  
 דאם איתא דלא מכר לו חלקו  
 היה לו לעבוד את האדמה  
 ולאכול הפירות בשותפות  
*If the other partner did not sell him his share, they should have worked and eaten the produce together.*

**שותף**  
**כיורד ברשות דמי**  
 A partner who works in a shared field is considered like a sharecropper, which implies that

**שותף**  
**אין לו חזקה**  
 A partner has no חזקה?

**שותף**  
**יש לו חזקה**



9 The Gemara answers:

הא דנחית לכולה  
הא דנחית לפלגא  
It depends on whether the partner worked the entire field for three years or the partner worked only a portion of the field for three years.

Now, this can be explained both ways:

אמרי לה להאי גיסא

Some say that

דנחית לכולה

יש לו חזקה

דנחית לפלגא

אין לו חזקה

Because as the רשב"ם explains,

מנהג שותפים ליטול בשותפות פירות כל שנה ושנה

Partners usually work together and split the produce of each and every year. Therefore, if he was נחית לכולה we assume that he bought off the entire field, but if he was נחית לפלגא we assume that they are still partners in the field.

ואמרי לה להאי גיסא

Others say vice versa

דנחית לכולה

אין לו חזקה

דנחית לפלגא

יש לו חזקה

Because

מנהג שותפים לאכול שדה שלש שנים

Partners usually allow one to work the field for three years at a time. Therefore, if he was נחית לכולה, we assume that they are still partners in the entire field, but if he was נחית לפלגא we assume that they dissolved the partnership and divided the field, because ®

לא היה לו לברר חלק אחד לבדו

אלא יעשו בשותפות ויחלקו הפירות

If they are still partners, they would have both worked the entire field together. Since they did not do so, but rather designated half the field for each partner, this proves that they dissolved the partnership.

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הא דנחית לכולה – הא דנחית לפלגא

It depends on whether the partner worked the entire field for three years or only a portion of the field for three years. Now, this can be explained both ways:

אמרי לה להאי גיסא

דנחית לכולה  
יש לו חזקה  
דנחית לפלגא  
אין לו חזקה

Because as the רשב"ם explains,

מנהג שותפים ליטול בשותפות פירות כל שנה ושנה

Partners usually work together and split the produce of each and every year. Therefore...

If he was נחית לפלגא we assume that they are still partners in the field.  
If he was נחית לכולה we assume that he bought off the entire field.

אמרי לה להאי גיסא

דנחית לכולה  
אין לו חזקה  
דנחית לפלגא  
יש לו חזקה

Because

מנהג שותפים לאכול שדה שלש שנים

Partners usually allow one to work the field for three years at a time. Therefore...

If he was נחית לפלגא we assume that they dissolved the partnership and divided the field,  
If he was נחית לכולה we assume that they are still partners in the entire field,

Because

לא היה לו לברר חלק אחד לבדו

אלא יעשו בשותפות ויחלקו הפירות

If they are still partners, they would have both worked the entire field together. Since they did not do so, but rather designated half the field for each partner, this proves that they dissolved the partnership.



10 הא והא דנחית לכולה  
 But the difference is  
 הא דאית בה דין חלוקה  
 יש לו חזקה  
 הא דלית בה דין חלוקה  
 אין לו חזקה  
 If the field was large enough for each partner to receive a significant portion of, at least, four אמות, we assume that he bought off the entire field, because in a large field ® מנהג שותפים ליטול בשותפות פירות כל שנה ושנה Partners work and eat the produce together each year.

If the field was small, in that each partner would receive a portion of less than four אמות, we assume that they are still partners in the entire field, because for a small field ® מנהג שותפים לאכול שדה שלש שנים Partners allow one to work the field for three years at a time

10 הא והא דנחית לכולה  
 But the difference is...

<p>הא</p> <p><b>דלית בה דין חלוקה אין לו חזקה</b></p> <p><i>If the field was small, in that each partner would receive a portion of less than four אמות, we assume that they are still partners in the entire field, because for a small field מנהג שותפים לאכול שדה שלש שנים Partners allow one to work the field for three years at a time</i></p>	<p>הא</p> <p><b>דאית בה דין חלוקה יש לו חזקה</b></p> <p><i>If the field was large enough for each partner to receive a significant portion of, at least, four אמות, we assume that he bought off the entire field, because in a large field מנהג שותפים ליטול בשותפות פירות כל שנה ושנה Partners work and eat the produce together each year.</i></p>
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