

**A** בס"ד

Intro

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

Halachah of רבי יוחנן

אומן אין לו חזקה  
בן אומן יש לו חזקה

For a craftsman, a חזקה is not proof of ownership, but for his son, who claims that he inherited the item from his father, a חזקה is valid proof of ownership.

However

גזלן ובן גזלן  
אין להן חזקה

For both, a thief, and his son who was not a thief and claims that he inherited the field from his father, a חזקה is not valid proof, however

בן בנו של גזלן

יש לו חזקה

For the grandson of a thief who claims that he inherited the field from his father, a חזקה is valid proof

The case in which even for

בן גזלן  
יש לו חזקה

The Braisa's Halachah of

אומן  
ירד מאומנותו יש לו חזקה

Regarding a craftsman, only while he maintains this job, a חזקה is not valid proof, however if he gave his job of אומן, and then he took possession of the item, the חזקה is a valid proof.

**B** Halachah of רבי הונא

גזלן שהביא ראיה

If a thief brought a proof of עדים who testify that the owner admitted to selling him the field, it depends, if

לא נתן מעות

The עדים did not see the thief pay the owner

אין ראיתו ראיה

ואין מעמידין שדה בידו

The proof is not valid, and he is not given possession of the field, because we assume that the owner was coerced.

The Machlokes רב ושמואל regarding

ראיה בשטר

If the owner wrote a שטר for the thief that he sold him the field, but

לא נתן מעות

Is the sale effective or not?

The Machlokes regarding

נתן לו מעות

If עדים did see the thief pay the owner for the field, is the sale effective or not?

**A**

אומן אין לו חזקה  
בן אומן יש לו חזקה

גזלן ובן גזלן  
אין להן חזקה

בן בנו של גזלן  
יש לו חזקה

אומן  
ירד מאומנותו  
יש לו חזקה

**B**

גזלן שהביא ראיה

לא נתן מעות

The עדים did not see the thief  
pay the owner

אין ראיתו ראיה

ואין מעמידין שדה בידו

ראיה בשטר

If the owner wrote a שטר for the thief  
that he sold him the field, but

לא נתן מעות

נתן לו מעות

1 So let's review ...

אמר רבי יוחנן  
אומן אין לו חזקה  
בן אומן יש לו חזקה  
For a craftsman, חזקה is not proof of ownership, but for his son who is not an אומן, a חזקה is proof of ownership.  
Similarly  
אריס אין לו חזקה  
בן אריס יש לו חזקה  
For a sharecropper, חזקה is not proof of ownership, but for his son that is not an אריס, a חזקה is proof of ownership.

However  
גזלן ובן גזלן  
אין להן חזקה  
For both, a thief, and his son who was not a thief, a חזקה is not proof of ownership.

And the Gemara explains the distinction as follows;  
קאתו בטענתא דאבוהון  
וקא אמרי עדים בפנינו הודה לו  
This is a case in which all the sons claimed that they inherited the field from their father, and there were also witnesses who confirmed that the owner admitted to the father that he sold him the field. Therefore,

בן אומן  
בן אריס  
יש לו חזקה  
Because  
איכא למימר קושטא קא אמרי  
We assume that the owner admitted willingly, and the father legally owned the field, and חזקה שיש עמה טענה  
הוי חזקה  
Since the son's חזקה is supported by עדים, the חזקה is valid.  
However,  
בן גזלן  
אין להן חזקה  
Because, as רב כהנא says  
אי לאו דאודי ליה  
הוה ממטי ליה ולחמריה לשחזור  
We assume that the owner admitted against his will, because the thief threatened to have the government confiscate his property, and since חזקה שאין עמה טענה  
לא הוי חזקה  
The son's חזקה is not supported by any proof, the חזקה is not valid.

1

אמר רבי יוחנן

**גזלן**  
**ובן גזלן**  
**אין להן**  
**חזקה**  
For a thief, and his son who was not a thief, a חזקה is not proof of ownership.

**אריס**  
**אין לו חזקה**  
**בן אריס**  
**יש לו חזקה**  
For a sharecropper, חזקה is not proof of ownership, but for his son that is not an אריס, a חזקה is proof of ownership.

**אומן**  
**אין לו חזקה**  
**בן אומן**  
**יש לו חזקה**  
For a craftsman, חזקה is not proof of ownership, but for his son who is not an אומן, a חזקה is proof of ownership.

קאתו בטענתא דאבוהון  
וקא אמרי עדים בפנינו הודה לו  
This is a case in which all the sons claimed that they inherited the field from their father, and there were also witnesses who confirmed that the owner admitted to the father that he sold him the field.

**בן גזלן**  
**אין להן חזקה**  
Because, as רב כהנא says  
אי לאו דאודי ליה  
הוה ממטי ליה ולחמריה לשחזור  
We assume that the owner admitted against his will, because the thief threatened to have the government confiscate his property, and since חזקה שאין עמה טענה  
לא הוי חזקה  
The son's חזקה is not supported by any proof, the חזקה is not valid.

**בן אומן – בן אריס**  
**יש לו חזקה**  
Because  
איכא למימר קושטא קא אמרי  
We assume that the owner admitted willingly, and the father legally owned the field, and since חזקה שיש עמה טענה  
הוי חזקה  
The son's חזקה is supported by עדים, the חזקה is valid.

2 רבי יוחנן concludes however

בן בנו של גזלן  
יש לו חזקה

For the grandson of a thief, a חזקה is valid proof of ownership, because as the רשב"ם explains

דטעין מאבי ירשתי ואבי לא היה גזלן

If he claims that he inherited the field from his own father who was not a thief, and not from his grandfather who was a thief, and, he also brings a ראיה that his father occupied the field, and even though he has no טענה that his father bought the field from the owner, in this case

טענין ליורש

Bais Din claims for an heir that his father acquired the property from the owner.

says רבא

(לפי גירסת רשב"ם ותוס')

פעמים שאפילו בן גזלן

יש לו חזקה

Sometimes, even for the son of a thief, a חזקה is proof of ownership;

כגון דקא אתי בטענתא דאבא דאבוא

If he claims that he inherited the field from his father's father who was not a thief, as Tosfos explains

אע"ג שהיתה ביד מי שאין לו חזקה

מי"מ יש לו חזקה

Even though the field passed through the hands of his father the גזלן, for whom a חזקה is not valid proof, nevertheless for the son, his חזקה is a valid proof.

2

*רבי יוחנן concludes however*

**בן בנו של גזלן  
יש לו חזקה**

For the grandson of a thief, a חזקה is proof of ownership,

*because as the רשב"ם explains*

*דטעין מאבי ירשתי ואבי לא היה גזלן*

*If he claims that he inherited the field from his own father who was not a thief,*

*and not from his grandfather who was a thief, and, he also brings a ראיה that his father occupied the field,*

*even though he has no טענה that his father bought the field from the owner,*

*in this case*

**טענין ליורש**

*Bais Din claims for an heir that his father acquired the property from the owner.*

*רבא*

*לפי גירסת רשב"ם ותוס'*

**פעמים שאפילו בן גזלן  
יש לו חזקה**

Sometimes, even for the son of a thief, a חזקה is proof of ownership;

**כגון דקא אתי בטענתא דאבא דאבוא**

*If he claims that he inherited the field from his father's father who was not a thief,*

*as Tosfos explains*

*אע"ג שהיתה ביד מי שאין לו חזקה*

*מי"מ יש לו חזקה*

*Even though the field passed through the hands of his father the גזלן, for whom a חזקה is not valid proof, nevertheless for the son, his חזקה is a valid proof.*

3 The Gemara explains that the Halachah of חזקה would apply to the following: Either

1.  
 כגון שהוחזק על שדה זו בגזלנותא  
 A person who was known to have stolen and occupied a certain field, and as the רשב"ם explains  
 בהווא שדה הוא דאין לו חזקה  
 אבל בשאר שדות יש לו חזקה  
 Only on that field, his חזקה is not valid, but on other fields his חזקה is valid.

OR

2.  
 כגון דבית פלוני שהורגין נפשות על עסקי ממון  
 A person who is known to kill people for monetary matters; and  
 בשום קרקע  
 אין להם חזקה  
 For all fields his חזקה is not valid, because  
 שכל אדם ירא למחות בהן  
 מחאה  
 The owner is afraid to make a מחאה.  
 =====

3 בזמן אין לו חזקה  
 would apply to the following

כגון דבית פלוני  
 שהורגין נפשות  
 על עסקי ממון

A person who is known  
 to kill people for monetary  
 matters;

and

בשום קרקע  
 אין להם חזקה

For all fields his חזקה  
 is not valid, because  
 שכל אדם ירא למחות בהן  
 מחאה  
 The owner is afraid  
 to make a מחאה.

כגון שהוחזק  
 על שדה זו  
 בגזלנותא

A person who was known  
 to have stolen and occupied  
 a certain field,

and as the רשב"ם explains  
 בהווא שדה

הוא דאין לו חזקה  
 אבל בשאר שדות יש לו  
 חזקה

Only on that field, is his חזקה  
 not valid, but on other fields  
 his חזקה is valid.

4 The Gemara cites a Braisa

תנו רבנן אומן אין לו חזקה  
ירד מאומנותו יש לו חזקה

Regarding a craftsman, only while he practices this craft, a חזקה is not proof of ownership, but if he gave up this craft, and then took possession of the item, the חזקה is proof of ownership.

Similarly

אריס אין לו חזקה  
ירד מאריסותו יש לו חזקה

Regarding a sharecropper, only while he maintains this job, a חזקה is not proof of ownership, but if he gave up this job, and then took possession of the field, the חזקה is proof of ownership.

Similarly

בן שחלק  
ואשה שנתגרשה  
הרי הן כשאר כל אדם

If a son separated from his father's properties, and then took possession of his father's field, OR a woman was divorced, and then took possession of her husband's field, the חזקה is a valid proof.

=====

4

ברייתא

תנו רבנן

Regarding a craftsman...

ירד מאומנותו  
יש לו חזקה

If he gave up this craft, and then took possession of the item, the חזקה is proof of ownership.

אומן  
אין לו חזקה

While he practices this craft, a חזקה is not proof of ownership,

ירד מאריסותו  
יש לו חזקה

If he gave up this job, and then took possession of the field, the חזקה is proof of ownership.

אריס  
אין לו חזקה

While he maintains this job, a חזקה is not proof of ownership,

Similarly

בן שחלק – ואשה שנתגרשה  
הרי הן כשאר כל אדם

If a son separated from his father's properties, and then took possession of his father's field,

OR a woman was divorced, and then took possession of her husband's field, the חזקה is a valid proof.

5 The Gemara continues:

גזלן רב נחמן said that רב הונא related the following Halachah  
 כולן שהביאו ראיה  
 ראיתן ראיה  
 ומעמידין שדה בידן  
 If an אומן or אריס brought a proof of עדים who testify that the owner admitted to selling them the field, even if נתן לא מעות, the עדים did not see them pay the owner, the proof is valid, and they are given possession of the field.

However

גזלן שהביא ראיה  
 If a thief brought a proof of עדים who testify that the owner admitted to selling him the field, it depends: If לא נתן מעות  
 The עדים did not see the thief pay the owner  
 אין ראיתו ראיה  
 ואין מעמידין שדה בידו  
 The proof is not valid, and he is not given possession of the field, because as the Gemara said earlier.  
 אי לאו דאודי ליה  
 הוה ממטי ליה ולחמריה לשחזור  
 He might have threatened the owner.  
 And the Gemara adds that רב הונא holds  
 אף בשטר  
 אין ראיתו ראיה  
 Even if the owner wrote a שטר for the גבב that he sold him the field, but  
 לא נתן מעות  
 The proof of שטר is not valid, because as the רשב"ם explains  
 מחמת פחד כתב לו השטר  
 The owner possibly wrote the document because he feared the thief.

5

רב נימא

רב הונא related the following Halachah

כולן שהביאו ראיה  
 ראיתן ראיה  
 ומעמידין שדה בידן

If an אומן or אריס brought a proof of עדים who testify that the owner admitted to selling them the field, even if נתן מעות, the עדים did not see them pay the owner, the proof is valid, and they are given possession of the field.

However

גזלן שהביא ראיה

If a thief brought a proof of עדים who testify that the owner admitted to selling him the field, it depends:

If

לא נתן מעות

The עדים did not see the thief pay the owner

אין ראיתו ראיה

ואין מעמידין שדה בידו

The proof is not valid,  
 and he is not given possession of the field,  
 because as the Gemara said earlier:

אי לאו דאודי ליה

הוה ממטי ליה ולחמריה לשחזור

He might have threatened the owner.

And the Gemara adds that רב הונא holds

אף בשטר

אין ראיתו ראיה

Even if the owner wrote a שטר for the גבב that he sold him the field, but

לא נתן מעות

The proof of שטר is not valid,

As the רשב"ם explains

מחמת פחד כתב לו השטר

The owner possibly wrote the document because he feared the thief.

6 However  
נתן לו מעות  
ראייתו ראייה  
If רב הונא did see the thief pay the owner for the field,  
holds the proof is valid, and even though the thief coerced  
the owner to sell him the field, the sale is effective, as רב  
הונא later says  
תליוהו ויהיב  
זביניה זביני  
If a person was coerced to sell his field, and he was paid  
money, the sale is effective, because  
אגב דמקבל זוזי גמר ומקני  
Since the owner was paid, he agrees to the sale.

6  
However  
נתן לו מעות  
ראייתו ראייה  
If רב הונא did see the thief pay the owner for the field,  
holds the proof is valid,  
even though the thief coerced the owner to sell him the field,  
the sale is effective,  
as רב הונא later says  
תליוהו ויהיב  
זביניה זביני  
If a person was coerced to sell his field, and he was paid,  
the sale is effective, because  
אגב דמקבל זוזי גמר ומקני  
Since the owner was paid, he agrees to the sale.

7 The Gemara mentions others who disagree with רב הונא as follows;  
1.  
ראייה בעדים  
All agree that if there are only עדים for the owner's  
admission, but there were no עדים for the payment, and  
there was no שטר; and regarding  
גזלן  
אין ראייתו ראייה  
Because  
אי לא דאודי ליה  
הוה ממוטי ליה ולחמריה לשחזור

7  
Others who disagree with רב הונא  
1  
ראייה בעדים  
All agree that  
if there are only עדים for the owner's admission,  
but there were no עדים for the payment,  
and there was no שטר; and regarding  
גזלן  
אין ראייתו ראייה  
Because  
אי לא דאודי ליה  
הוה ממוטי ליה ולחמריה לשחזור



8

2.

ראיה בשטר

If the owner wrote a שטר for the thief that he sold him the field, but

לא נתן מעות

It depends on the Machlokes רב ושמואל

Regarding סיקריקון,

An עכו"ם who threatened a Jew with his life unless he relinquished his property during times when it was against the law for a עכו"ם to kill a Jew;

As the Mishnah in גיטין states;

לקח מסיקריקון וחזר ולקח מבעל הבית

מקחו בטל

If a ישראל ceded his field to a סיקריקון and another ישראל, first bought the field from the סיקריקון, and then he also bought it from the original owner, the sale is NOT effective, because as the רשב"ם explains

מחמת פחד דסיקריקון הקנה לו ללוקח

The original owner only sold the field because he was afraid of the סיקריקון.

רב holds

לא שנו אלא דאמר לו לך חזק וקני

אבל בשטר קנה

אבל בשטר is only if the owner verbally told the לוקח go and acquire the field; but if the owner wrote a שטר for the לוקח

then because, as the רשב"ם explains

מפחד דגולן לא מסהדי וכתבו עדים שיקרא

The witnesses would not write and sign a false document out of fear of the thief.

רב הונא disagrees and says as שמואל

אף בשטר נמי לא קנה

עד שיכתוב לו אחריות

לוקח, even if the owner wrote a שטר for the לוקח,

because ®

מחמת פחד כתב לו השטר

The witnesses would write and sign a false document, out of fear of the thief

3.

נתן לו מעות

If רב הונא did see the thief pay the owner for the field, רב הונא holds

מקחו קיים

The sale is effective, because

אגב דמקבל זוזי גמר ומקני

Since the owner was paid, he agrees to the sale.

While רב ביבי holds

קרקע אין לו

אבל מעות יש לו

The sale is not effective, the thief must return the field to the owner, and the owner refunds his money, because

לא גמר ומקני

Even though the owner was paid, he does not agree to the sale.

8

2

## ראיה בשטר

If the owner wrote a שטר for the thief that he sold him the field, but

## לא נתן מעות

It depends on the Machlokes רב ושמואל

Regarding

## סיקריקון

An עכו"ם who threatened a Jew with his life unless he relinquished his property during times when it was against the law for a עכו"ם to kill a Jew;

As the Mishnah in גיטין states;

## לקח מסיקריקון וחזר ולקח מבעל הבית מקחו בטל

If a ישראל ceded his field to a סיקריקון and another ישראל, first bought the field from the סיקריקון, and then he also bought it from the original owner, the sale is NOT effective, because

As the רשב"ם explains

מחמת פחד דסיקריקון הקנה לו ללוקח  
The original owner only sold the field because he was afraid of the סיקריקון.

3

## נתן לו מעות

If רב הונא did see the thief pay the owner for the field, רב הונא holds

## מקחו קיים

The sale is effective, because

אגב דמקבל זוזי גמר ומקני  
Since the owner was paid, he agrees to the sale.

While רב ביבי holds

## קרקע אין לו אבל מעות יש לו

The sale is not effective, the thief must return the field to the owner, and the owner refunds his money, because

## לא גמר ומקני

Even though the owner was paid, he does not agree to the sale.