

**A** בס"ד

Intro

Today we will learn בבא בתרא דף נ"ד of מסכת בבא בתרא. Some of the topics we will learn about include.

Several applications of

חזקת קנין

One who makes a חזקה to acquire land that he bought from someone, or the land of a גר who died and his land became ownerless.

The two requirements for a חזקה;

1.

שיעשה תיקון בקרקע בידים

One must perform an action that improves the land

2.

AND

ובאותו תיקון יהא מתכוין לשם תיקון כדי להחזיק

His intentions must be specifically to improve the land.

The Machlokes regarding the effectiveness of a חזקה

in נכסי הגר

holds

כיון שהכיש בה מכוש אחד

קנה כולה

If a person dealt one blow to the land, the חזקה acquires the entire field

While שמואל holds

לא קנה אלא מקום מכושו בלבד

The חזקה acquires only its immediate area, but not the rest of the field.

**B**

Halachah of שמואל

נכסי עובד כוכבים הרי הן כמדובר

כל המחזיק בהן זכה בהן

If a non-Jew sold his land to a Jew who paid him money, but he did not yet transfer the שטר, the deed, to the buyer, the land is considered ownerless, and if someone else makes a חזקה he acquires the field, because

עובד כוכבים

מכי מטו זוזי לידיה אסתלק ליה

The non-Jew removes his ownership from when he accepts the money

And

ישראל לא קני

עד דמטי שטרא לידיה

The Jewish buyer does not acquire the field until he receives the שטר from the non-Jew.

Therefore, before the buyer receives the שטר

הרי הן כמדובר

וכל המחזיק בהן זכה בהן

The field remains ownerless, and anyone can make a חזקה and acquire the field.

The contradiction from שמואל's other statement of

דינא דמלכותא דינא

The laws of the government that do not contravene the תורה are Halachically binding, and

ומלכא אמר לא ליקני ארעא אלא באגרתא

The government rules that the sale of land is not finalized until the seller transfers the deed to the buyer; and until then the non-Jew still owns the field, and it does not become חפץ הפקר, he acquires the property

**A**

**חזקת קנין**

*Two requirements for a חזקה;*

**שיעשה תיקון בקרקע בידים**

**ובאותו תיקון  
יהא מתכוין לשם תיקון  
כדי להחזיק**

*The effectiveness of a חזקה  
בנכסי הגר*

**B**

**נכסי עובד כוכבים  
הרי הן כמדובר  
כל המחזיק בהן זכה בהן**

**עובד כוכבים  
מכי מטו זוזי לידיה  
אסתלק ליה**

**ישראל לא קני  
עד דמטי שטרא לידיה**

**דינא דמלכותא דינא**

1 So let's review ...

The Gemara proceeds with the applications of חזקת קנין

One who makes a חזקה to acquire land that he bought or received as a gift from someone, or the land of a גר who died and his land became ownerless.

1.

אמר רב יהודה

האי מאן דשדא ליפתא בי פילי דארעא דגר

לא הוי חזקה

If a person threw a turnip into a hole in the ground, but did not cover it with earth, and it later became rooted in the ground, this חזקה is not effective and he does not acquire the field, because

בעידנא דשדא לא הוי שבחא

השתא דקשבח ממיילא קא שבח

His action did not make an immediate improvement to the field, as he did not actually plant the turnip but rather it happened on its own.

However, the רשב"ם adds,

רפק בה פורתא

הוי חזקה

Even if he merely dug up a small portion of the ground, this חזקה is effective, because

דמעשה קעביד בגוף הקרקע

ומשביח הקרקע מיד בחרישה זו

His action did make an immediate improvement to the field.

=====

1

## חזקת קנין

One who makes a חזקה to acquire land that he bought or received as a gift, or land of a גר who died and his land became ownerless.

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His action did make an immediate improvement to the field.

2

2.

אמר שמואל

האי מאן דפשח דיקלא

If a person tore the branches off a palm tree, it depends:

שקל מוהאי גיסא ומוהאי גיסא

אדעתא דדיקלא

קני

If he took branches from both sides, which is beneficial to the tree, the חזקה is effective and he acquires the tree, because it indicates that his intention was to prune and improve the tree.

כולא מחד גיסא

אדעתא דחיותא

לא קני

If he took branches from only one side, which is detrimental to the tree, the חזקה is not effective and he does not acquire the tree, because it indicates that his intention was only to feed his animals.

And the Rashbam adds in the case of

שקל מוהאי גיסא ומוהאי גיסא

But

אדעתא דחיותא

לא קני

If he took from both sides but said that it's to feed his animals, he does not acquire it.

ואע"ג דממילא מהני לדקל

Even though his act also prunes and improves the tree, this is not a חזקה, because

תרתי בעינן

There are two requirements for a חזקה to be effective;

1.

שיעשה תיקון בקרקע בידיים

His act improves the field

2.

AND

ובאותו תיקון יהא מתכוין לשם תיקון

His intention with this act is to improve the field.

And the Rashbam also adds that

דאכילת פירות אינו חזקה לקנות

שהרי אינו עושה שום תיקון בקרקע

שיהא דומה לנעל גדר ופרץ

Taking the produce is not a

חזקת קנין

But a

חזקת שלש שנים

=====

Shmuel proceeds to give several more examples of cases where it depends whether his intention was

אדעתא דארעא

To improve the field; or

אדעתא דפירא

To gain some benefit through the field;

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2

2

אמר שמואל

האי מאן דפשח דיקלא

If a person tore the branches off a palm tree...

**כולא מחד גיסא  
אדעתא דחיותא  
לא קני**

If he took branches from only one side, which is detrimental to the tree, the חזקה is not effective and he does not acquire the tree, because it indicates that his intention was only to feed his animals.

**שקל מוהאי גיסא  
ומוהאי גיסא  
אדעתא דדיקלא  
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If he took branches from both sides, which is beneficial to the tree, the חזקה is effective, because it indicates that his intention was to prune and improve the tree.

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But

אדעתא דחיותא לא קני

If he took from both sides but said that it's to feed his animals, he does not acquire it.

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Taking the produce is not a - חזקת קנין

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Shmuel proceeds to give several more examples of cases where it depends whether his intention was

**אדעתא דפירא**

To gain some benefit through the field;

**אדעתא דארעא**

To improve the field;

3 The Gemara proceeds with a מחלוקת רב ושמואל regarding חזקה בנכסי הגר:  
 In a שדה המסויימת במצריה  
 A גר's field that has visible boundaries on all sides;  
 רב holds  
 כיון שהכיש בה מכוש אחד  
 קנה כולה  
 If a person dealt one blow to the ground, the חזקה acquires the entire field.

And שמואל holds  
 לא קנה אלא מקום מכושו בלבד  
 The חזקה acquires only its immediate area, but not the rest of the field.

And in a שדה שאינה מסויימת במצריה  
 A field that does not have visible boundaries on all sides;  
 רב agrees to  
 לא קנה אלא מקום מכושו בלבד

However, if he does the following דאזיל תיירא דשורי והדר  
 קנה כולה  
 If he plows two rows back and forth from one end of the field to the other, the חזקה acquires the entire field, because ®  
 כאילו חרש כולו  
 It is considered as if he plowed the entire field.

And the רשב"ם adds the following distinction;  
 ודוקא בנכסי הגר  
 לא קנה כולה  
 לא disagrees only regarding a חזקה in a גר's field, that a חזקה in one area does not acquire the entire field, because ממיילא קני  
 He acquires the field on his own, but not through another party, and therefore the חזקה is limited only to its specific area.

אבל מכר וקבל זוזי  
 החזיק באחת מהן קנה כולן  
 Regarding a חזקה in a field that one bought and paid for, a חזקה in one area can acquire all the fields that he paid for, because  
 דכולהו אשתעבוד ללוקח בשביל מעותיו  
 All the fields are obligated to the buyer by virtue of his payment.  
 =====

3 חזקה בנכסי הגר  
 שדה המסויימת במצריה  
 A גר's field that has visible boundaries on all sides

לא קנה  
 אלא מקום מכושו בלבד  
 The חזקה acquires only its immediate area, but not the rest of the field.

רב  
 כיון שהכיש בה מכוש אחד קנה כולה  
 If a person dealt one blow to the ground, the חזקה acquires the entire field.

And in a שדה שאינה מסויימת במצריה  
 A field that does not have visible boundaries on all sides;

רב agrees  
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אבל מכר וקבל זוזי  
 החזיק באחת מהן קנה כולן  
 Regarding a חזקה in a field that one bought, a חזקה in one area can acquire all the fields that he paid for, because  
 דכולהו אשתעבוד ללוקח בשביל מעותיו  
 All the fields are obligated to the buyer by virtue of his payment.

4

אמר רב יהודה אמר שמואל  
נכסי עובד כוכבים הרי הן כמודבר  
כל המחזיק בהן זכה בהן

If a non-Jew sold his field to a Jew who paid him money,  
but he did not yet transfer the שטר, the deed, to the buyer,  
the field is considered ownerless and if someone else  
makes a חזקה, he acquires the field, because  
עובד כוכבים

מכי מטו זוזי לידיה אסתלק ליה

When the non-Jew accepts the money his ownership is  
removed from the field, because as the רשב"ם explains  
שכל קנינו בכסף

A non-Jew acquires only through money, but not through  
שטר.

And

ישראל לא קני

עד דמטי שטרא לידיה

The Jewish buyer does not acquire the field until he  
receives the שטר from the non-Jew, because

סתם עובדי כוכבים אנסי

ואין בדעתו לקנות בלא שטר

He knows that עכו"ם generally steal, and he does not agree  
to the sale until he gets the proof of a שטר.

Therefore, in the interim

הרי הן כמודבר

וכל המחזיק בהן זכה בהן

The field remains ownerless, and anyone can make a חזקה  
and acquire the field.

The רשב"ם points out however that

האי שני רשע מקרי

The second person who does this is considered a wicked  
person, because

כיון דיהיב לוקח ראשון זוזי

לא גרע מעני המהפך בחררה ובא אחר ונטלה

נקרא רשע

Since the buyer paid for the field, he is no different than  
one who is trying to buy a field and another person  
preempts him, he is considered wicked.

=====

4

*אמר רב יהודה אמר שמואל*

**נכסי עובד כוכבים הרי הן כמודבר  
כל המחזיק בהן זכה בהן**

*If a non-Jew sold his field to a Jew who paid him money,  
but he did not yet transfer the שטר to the buyer,  
the field is considered ownerless  
and if someone else makes a חזקה, he acquires the field,  
because...*

**ישראל לא קני  
עד דמטי שטרא  
לידיה**

*The Jewish buyer does not  
acquire the field until he receives  
the שטר from the non-Jew,*

*because*

*סתם עובדי כוכבים אנסי  
ואין בדעתו לקנות בלא שטר  
He knows that עכו"ם steal, and  
he does not agree to the sale  
until he gets the proof of a שטר.*

**עובד כוכבים  
מכי מטו זוזי לידיה  
אסתלק ליה**

*When the non-Jew accepts  
the money his ownership  
is removed from the field,*

*because*

*שכל קנינו בכסף  
A non-Jew acquires  
only through money,  
but not through שטר.*

*Therefore, in the interim*

**הרי הן כמודבר  
וכל המחזיק בהן זכה בהן**

*The field remains ownerless,  
and anyone can make a חזקה and acquire the field.*

*The רשב"ם points out however*

*האי שני רשע מקרי*

*The second person who does this  
is considered a wicked person, because*

*כיון דיהיב לוקח ראשון זוזי  
לא גרע מעני המהפך בחררה ובא אחר ונטלה  
נקרא רשע*

*Since the buyer paid for the field,  
he is no different than one who is trying to buy a field  
and another person preempts him.*

5 The Gemara however asks that this statement of שמואל is contradicted from another statement of רב יוסף. נכסי עובד כוכבים הרי הן כמדבר וכל המחזיק בהן זכה בהן. Seems to be contradicted from another statement of רב יוסף; והאמר שמואל דינא דמלכותא דינא. The laws of the government that do not contravene the תורה are Halachically binding. ומלכא אמר לא ליקני ארעא אלא באגרתא. The law is that the sale of land is finalized only with a deed, and until then the non-Jew still owns the field, and it does not become הפקר?

This question remains unresolved in the Gemara. However, רב יוסף confirmed Shmuel's ruling of וכל המחזיק בהן זכה בהן. And it does not contradict דינא דמלכותא דינא. As the Rashbam explains that רב יוסף was of the opinion that the law at the time did not require only a deed, but a חזקה was also acceptable.

5

וכאמר שמואל

**דינא דמלכותא דינא**

*The laws of the government that do not contravene the תורה are Halachically binding.*

ומלכא אמר לא ליקני ארעא אלא באגרתא

*The sale of land is finalized only with a deed, and until then the non-Jew owns the field, and it is not הפקר?*

שמואל

**נכסי עובד כוכבים הרי הן כמדבר וכל המחזיק בהן זכה בהן**

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**נכסי עובד כוכבים הרי הן כמדבר וכל המחזיק בהן זכה בהן**

*The laws of the government that do not contravene the תורה are Halachically binding.*

ומלכא אמר לא ליקני ארעא אלא באגרתא

*The sale of land is finalized only with a deed, and until then the non-Jew owns the field, and it is not הפקר?*