

Bava Basra – Simanim

דף לז – Daf 37

פרק ג – חזקת הבתים

1. Establishing a *chazakah* by consuming the produce from a third of the trees each year

Abaye said that we may derive the following ruling from Rebbe Yishmael: if a property had thirty trees planted at a rate of ten trees per בית סאה (the appropriate spacing for an orchard), and the מחזיק harvested ten different trees each year, he establishes a *chazakah* on the entire field after three years. Rebbe Yishmael had ruled that if one harvests three different crops during a single year, he establishes a *chazakah* on the entire field, because חד פירא היו חזקה לבולו פירי – harvesting *one crop is considered a chazakah on all the crops*. Although the Rabbonon require three full years, they can still agree that harvesting part of a field each year qualifies for a *chazakah* on the entire field. Abaye adds two caveats: this only applies where the other twenty trees did not produce fruit that year, אבל אפיקו ולא אבל – *but if they produced fruit and he did not consume it, it is not a chazakah, since he did not consume all available produce*. Also, it only applies באזוי דבאזוי – *if [the ten trees] are scattered across the field*.

2. If one sold his trees to one person and his field to another

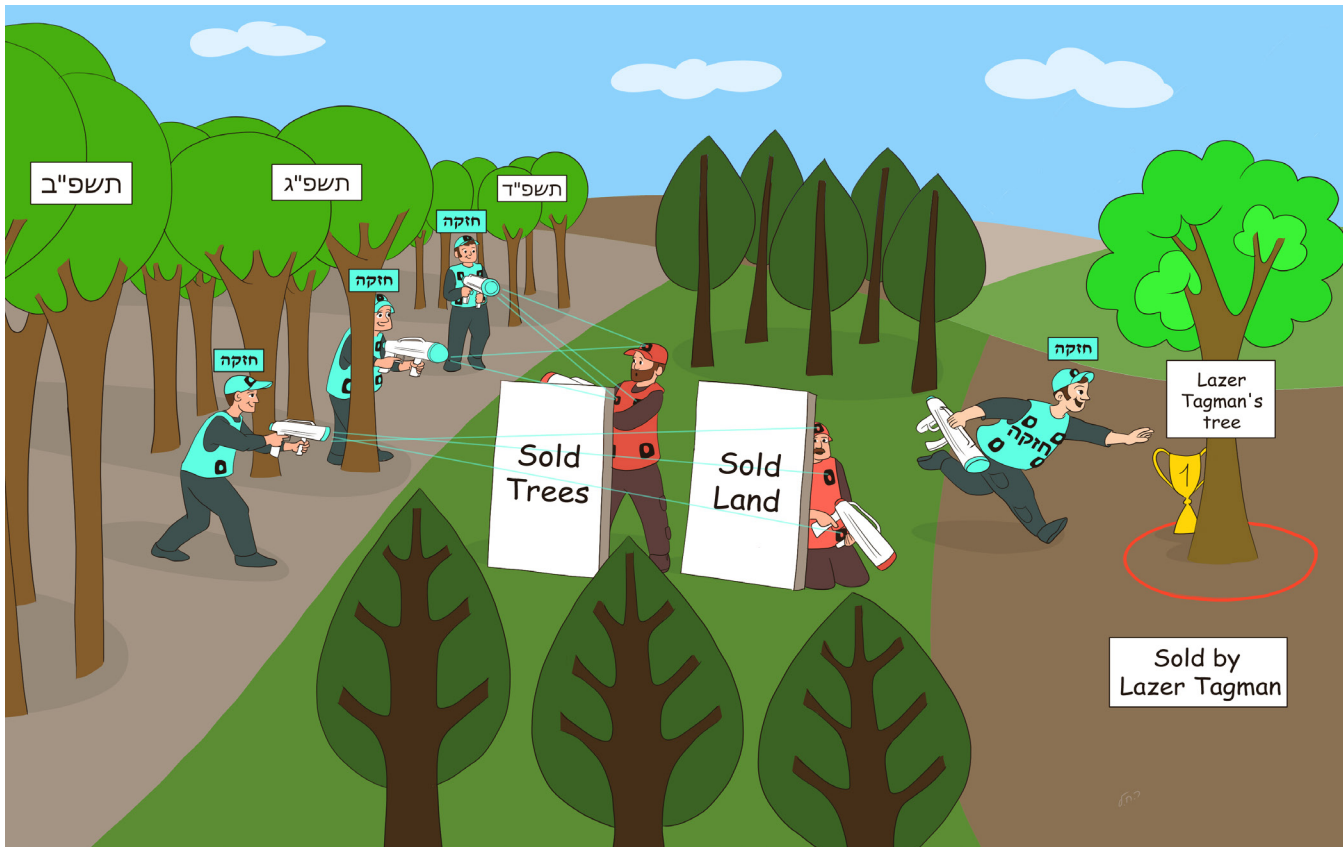
Amoraim discuss a case where one purchased trees of a field from someone, and someone else purchased the field, if the purchaser of the trees acquires part of the field (normally, if someone buys trees, he acquires part of the field, depending on the number of trees, and if one buys a field, he acquires the trees). Rav Zevid said: זה קנה אילנות וזה קנה קרקע – *this one acquires only the trees, and that one acquires the entire land*. Rav Pappa argued that if so, then the field owner can tell the tree owner, after his trees die, עקור אילנך שקול זיל – *“Uproot your trees and go!”* Although Rav Zevid held this is indeed the *halachah*, Rav Pappa considered this unreasonable. Therefore, he said: זה קנה אילנות וחצי קרקע – *this one acquires the trees and half the land, and that one acquires half the land*. The Rashbam explains this means the tree purchaser acquires the amount of land normally acquired when buying trees.

3. If one sold his field and retained the trees, or sold his trees and retained the land

The Gemara says: מכר קרקע ושייר אילנות לפניו – *if one sold his land and explicitly retained his trees for himself, he retains some land around the trees*. Even Rebbe Akiva, who holds מוכר בעין יפה מוכר – *a seller sells generously* (such that one who sells a house and retains its pit does not automatically retain a right-of-way to reach it), that is only regarding a pit, which does not harm the buyer’s land, whereas regarding trees, דקמכחי בארעא – *which weaken the ground*, he retains land, so the buyer will not prevent him from replanting after his trees die. If he sold two trees and explicitly retained the land, then according to Rebbe Akiva, that one sells generously, the buyer acquires the land under the trees (and may replant them). Even Rav Zevid, who said above that a tree purchaser acquires no land, that is where the land was sold to someone else, who can argue that his purchase should be just as exclusive as his counterpart’s. According to the Rabbonon, that one sells grudgingly, he acquires no land. Even Rav Pappa, who said above that the tree purchaser acquires land, that is where the land was also sold, because the tree purchaser can argue that his purchase should be just as permanent as the land purchaser’s.

Siman - Laser Tag

Team Chazakah who was impossible to beat in laser tag when **they used fruit bearing trees to hide behind, using a different set of ten trees in the same field each year, and then hid behind sold signs on trees and land, sold to two different people, and staked out their position in the land around a tree that a seller kept for himself when he sold the field and kept the tree.**



Team Chazakah was impossible to beat in laser tag when they hid behind a different set of ten trees in the same field each year, and zapped one opponent crouching behind a Sold Sign for trees and another behind a Sold sign for the land, and snatched the trophy that was on the land around a tree that a seller kept for himself when he sold the field and kept the tree.

3 things to remember

1. Establishing a *chazakah* by consuming the produce from a third of the trees each year
2. If one sold his trees to one person and his field to another
3. If one sold his field and retained the trees, or sold his trees and retained the land

