

A בס"ד

Intro

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

- חזקת שלש שנים
חזקה for real property is established by normal usage for a period of three years.
- The Gemara lists many fields where one does not establish a חזקה, because
לא אחזיק כדמחזקי אינשי
He did not use the field as the owner would:
For example;
- מגודא דערודי ולבר
A section of a field not normally harvested;
- אכלה ערלה וכלאים
If the occupant took the produce of a tree during its first three years, or grain that grew interspersed with vineyards, which are forbidden; OR
- אכלה שביעית
A field during שמיטה, when it is ownerless;
- אכלה שחת
If he did not let the crop ripen, but harvested it early to use as animal feed;
- תפתיחא
A particularly unproductive field; and
- אפיק כורא ועייל כורא
If he harvested the same amount he planted.

A

חזקת שלש שנים

*Many fields
where one does not establish a חזקה*

because

לא אחזיק כדמחזקי אינשי

מגודא דערודי ולבר

אכלה ערלה וכלאים

אכלה שביעית

אכלה שחת

תפתיחא

אפיק כורא ועייל כורא

B

עבדים

Whether one can establish ownership of slaves with חזקת שלש שנים, although הגודרות אין להן חזקה
One cannot claim a חזקה on animals, which can move on their own.

שדה הבעל
According to רבי ישמעאל ורבי עקיבא, one establishes a חזקה in a field for which rainwater alone is sufficient after harvesting three crops, even if this takes less than three years.

ניר הוי חזקה
Whether plowing alone constitutes a חזקה?

B

עבדים

הגודרות אין להן חזקה

שדה הבעל

ניר הוי חזקה

1 So let's review...

The Gemara cites several ways where an occupant of a field takes the produce, but

לא הוי חזקה

He does NOT establish a חזקה.

Because as the Rashbam explains;

לא איכפת ליה למחות

דלא אחזיק כדמחזקי אינשי

The owner did not bother protesting, because the occupant's unusual usage does not indicate ownership, since an owner does not use it that way.

1.

האי מאן דאחזיק

מגודא דערודי ולבר

לא הוי חזקה

Landowners whose property adjoined a forest would fence in most their property and plant some seeds in a small area outside the fence, so that the wild animals would graze there and not enter the field.

Thus, if someone used this area for three years, he has not established a חזקה, because

כל דזרע נמי

ערודי אכלי ליה

Whatever the occupant planted there is eaten by the animals. Therefore, ®

לא איכפת ליה למחות

דלא אחזיק כדמחזקי אינשי

The owner did not bother protesting, because the occupant's usage did not indicate ownership since an owner does not harvest these plants anyway.

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The Gemara cites several ways where an occupant of a field takes the produce, but

לא הוי חזקה

He does NOT establish a חזקה.

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The owner did not bother protesting, because the occupant's usage did not indicate ownership since an owner does not harvest these plants anyway.

2

2. אכלה ערלה וכלאים אינה חזקה

If the occupant took forbidden produce, such as ערלה, the produce of a tree in its first three years, or כלאים, grain that grew interspersed with vineyards, it is not a חזקה.

Similarly, אכלה שביעית אינה חזקה

If someone occupied a field during שמיטה, when it is ownerless, he has not established a חזקה. The reason for all these cases is also because ®

לא איכפת ליה למחות דלא אחזיק כדמחזקי אינשי

An owner does not harvest such plants since they are forbidden.

2

2

אכלה ערלה וכלאים

אינה חזקה

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Similarly,

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If someone occupied a field during שמיטה, when it is ownerless, he has not established a חזקה.

Because

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An owner does not harvest such plants since they are forbidden.

3

3. אכלה שחת לא הוי חזקה

If the occupant did not let the crop ripen, but harvested it early to use as animal feed, it is not a חזקה, because

דלא אחזיק כדמחזקי אינשי

He did not use the field in its normal manner as an owner would. However,

אי בצואר מחוזא קיימא הוי חזקה

In an area where the people are wealthy and have many animals, it does establish a חזקה, because this is normal behavior of an owner.

3

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הוי חזקה

In an area where the people are wealthy and have many animals, it does establish a חזקה, because this is normal behavior of an owner.

4. תפתיחא לא הוי חזקה
 One cannot establish a חזקה in a particularly unproductive field, because
 דלא אחזיק כדמחזקי אינשי

5. Similarly,
 אפיק כורא ועייל כורא
 לא הוי חזקה
 If the occupant harvested the same amount that he planted and did not realize a profit, he does not establish a חזקה;
 דלא אחזיק כדמחזקי אינשי
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4
תפתיחא לא הוי חזקה
One cannot establish a חזקה in a particularly unproductive field, because
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אפיק כורא ועייל כורא לא הוי חזקה
If the occupant harvested the same amount that he planted and did not realize a profit, he does not establish a חזקה;
דלא אחזיק כדמחזקי אינשי

5 Another example of
לא הוי חזקה

הני דבי ריש גלותא
לא מחזקי בן
ולא מחזקינן בהו

The members of the ריש גלותא's household were very
wealthy and powerful.

Therefore, they cannot establish a חזקה in other people's
property, because the owner may have been intimidated
and afraid to protest.

Similarly, others cannot establish a חזקה in their property,
because they don't bother to protest. They rely on their
power to take it back whenever they want.

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The Mishnah earlier stated

והעבדים

One can establish ownership of slaves with שלש חזקה
שנים.

The Gemara challenges this ruling:

There is a Halachah of מוחזק, which means that we
generally assume that any movable object in a person's
possession belongs to him. However,

והאמר ריש לקיש

הגודרות אין להן חזקה

This does not apply to animals, since they could have
wandered into his property on their own. Similarly, a חזקה
of three years of having a slave does not indicate owner-
ship, because he may have come into one's property by
himself?

The Gemara answers;

אין להן חזקה לאלתר

אבל יש להן חזקה לאחר ג' שנים

The Halachah of מוחזק is not established immediately
with animals or slaves as with other movable property,
because they could have come on their own. But, a חזקה is
established after three years, since the owner did not
protest.

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הני דבי ריש גלותא
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אין להן חזקה לאלתר
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The Halachah of מוחזק is not established immediately
with animals or slaves as with other movable property,
because they could have come on their own.

But, a חזקה is established after three years,
since the owner did not protest.

6 The Mishnah earlier stated

שדה הבעל
חזקה שלש שנים
ואינו מיום ליום
A field for which rainwater alone is sufficient yields a crop once a year. Therefore, one does not need to use the property for a full three years, but establishes a חזקה of three years after harvesting three crops, even if this takes less than three years.

The Mishnah elaborates:

רבי ישמעאל אומר
ג' חדשים בראשונה
ג' באחרונה
ושנים עשר חדש באמצע
הרי י"ח חדש

He can grow one crop during the last three months of the first year, another crop during the second year, and then a third crop during the first three months of the third year, thus establishing a חזקה of three years through three consecutive crops within 18 months.

רבי עקיבא אומר
חדש בראשונה
וחדש באחרונה
ושנים עשר חדש באמצע
הרי י"ד חדש

He can grow a crop during the last month of the first year, another crop during the second year, and then a third crop during the first month of the third year, thus establishing a חזקה of three years through three consecutive crops within 14 months.

The Gemara explains their מחלוקת as follows:

לרבי ישמעאל
בעי פירא רבא
לרבי עקיבא
בעי פירא זוטא
רבי ישמעאל requires harvesting a fully grown crop, such as oats or barley, and this requires three months, while רבי עקיבא suffices with harvesting a partial crop, such as for animal feed, which grows in one month.

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6

משנה

שדה הבעל
חזקה שלש שנים
ואינו מיום ליום

A field for which rainwater alone is sufficient yields a crop once a year.

Therefore, one does not need to use the property for a full three years, but establishes a חזקה after harvesting three crops, even if this takes less than three years.

רבי עקיבא אומר
חדש בראשונה
וחדש באחרונה
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He can grow a crop during the last month of the first year, another crop during the second year, and a third crop during the first month of the third year, thus establishing a חזקה of three years through three consecutive crops within 14 months.

לרבי עקיבא
בעי פירא זוטא

suffices with harvesting a partial crop, such as for animal feed, which grows in one month.

רבי ישמעאל אומר
ג' חדשים בראשונה
ג' באחרונה

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He can grow one crop during the last three months of the first year, another crop during the second year, and a third crop in the first three months of the third year, thus establishing a חזקה of three years through three consecutive crops within 18 months.

לרבי ישמעאל
בעי פירא רבא

requires harvesting a fully grown crop, such as oats or barley, and this requires three months.

7 The Gemara proceeds with a discussion whether ניר הוא חזקה
Whether plowing alone constitutes a חזקה; and cites a ברייתא in which this is indeed a Machlokes:
The תנא קמא says
'נרה שנה וזרעה ב'
נרה ב' וזרעה שנה
אינה חזקה
If the occupant merely plowed the field during one year, even if he planted crops during the other two years, it is not a חזקה, because he holds
ניר לא הוא חזקה
Plowing is not a חזקה, because, as the Gemara explains, מימר אמר
כל שיבא ושיבא דכרבו לעייל ביה
The owner is fine with someone else plowing his field, as long as he doesn't profit.
However,
רבי אחא אומר
הרי זו חזקה
He can establish a חזקה this way, because he holds
ניר הוא חזקה
Plowing does establish a חזקה, because as the Gemara explains
לא עביד איניש
דכריבו ליה לארעיה ושתיק
One would not allow someone to act as an owner in his property by plowing his field, without protesting.

The Gemara seeks a definitive ruling:
On the one hand,
רבי אחא וכל גדולי הדור אמרי
ניר הרי זה חזקה
Many great authorities ruled that plowing is a חזקה.
However, רב נחמן בר יצחק, רב ושמואל בבבל
ורבי ישמעאל ורבי עקיבא בא"י
אמרי ניר לא הוא חזקה
The greatest authorities, namely רב ושמואל in Bavel, and רבי ישמעאל ורבי עקיבא in Eretz Yisroel, ruled that plowing is not a חזקה.
And the Gemara shows his sources for these four rulings:
The opinion of רבי ישמעאל ורבי עקיבא מתניתין היא
In our Mishnah they both require one or three months for a crop, and do not suffice with plowing, as explained earlier.

The opinion of רב we see from the following statement:
אמר רב יהודה אמר רב
זו דברי רבי ישמעאל ורבי עקיבא
אבל חכמים אומרים
חזקתה ג' שנים מיום ליום
רב maintains that the תנא קמא disagrees with רבי ישמעאל ורבי עקיבא, and requires three full years for all fields. The Gemara adds
מיום ליום למעוטי מאי
לאו למעוטי ניר דלא
If even a one-month or three-month crop does not suffice, surely plowing is not enough!

7 **ניר הוא חזקה**
Whether plowing alone constitutes a חזקה

ברייתא

נרה שנה וזרעה ב'
נרה ב' וזרעה שנה

If the occupant merely plowed the field during one year, even if he planted crops during the other two years,

רבי אחא אומר
הרי זו חזקה
because he holds
ניר הוא חזקה
because
as the Gemara explains
לא עביד איניש
דכריבו ליה לארעיה
ושתיק
One would not allow someone to act as an owner in his property by plowing his field, without protesting.

תנא קמא
אינה חזקה
because he holds
ניר לא הוא חזקה
because
אימר אמר
כל שיבא ושיבא
דכרבו לעייל ביה
The owner is fine with someone else plowing his field, as long as he doesn't profit.

רב נחמן בר יצחק
רב ושמואל בבבל
ורבי ישמעאל
ורבי עקיבא בא"י
אמרי ניר לא הוא חזקה

רבי ישמעאל ורבי עקיבא
מתניתין היא
They both require one or three months for a crop, and do not suffice with plowing.

רב
we see from the following statement:

אמר רב יהודה אמר רב
זו דברי רבי ישמעאל ורבי עקיבא
אבל חכמים אומרים
חזקתה ג' שנים מיום ליום
The רבי ישמעאל ורבי עקיבא disagrees with תנא קמא, and requires three full years for all fields.

The Gemara adds
מיום ליום למעוטי מאי
לאו למעוטי ניר דלא
If even a 1-month or 3-month crop does not suffice, surely plowing is not enough!

8 The opinion of שמואל we see from the following:
 The Mishnah concludes
 א"ר ישמעאל
 בד"א בשדה לבן
 Only a field of grain requires 18 months;
 אבל בשדה אילן
 Regarding an orchard,
 כנס את תבואתו
 ומסק את זיתיו
 וכנס את קייצו
 הרי אלו ג' שנים
 Harvesting three different crops, even in a short period of
 time, establishes a חזקה.
 For example, grapes, olives, and figs harvested even
 within one year, are considered like a חזקה of three years.
 And שמואל commented;
 זו דברי רבי ישמעאל ורבי עקיבא
 Only רבי ישמעאל ורבי עקיבא suffice with three different
 crops.
 אבל חכמים אומרים
 עד שיגדור שלש גדירות
 ויבצור ג' בצירות
 וימסוק ג' מסיקות
 The תנא requires harvesting the same crop three
 times. For example, three crops of grapes, or three crops
 of olives or figs.

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שמואל
we see from the following:

א"ר ישמעאל
בד"א בשדה לבן
Only a field of grain requires 18 months

אבל בשדה אילן
Regarding an orchard,
כנס את תבואתו
ומסק את זיתיו – וכנס את קייצו
הרי אלו ג' שנים
*Harvesting three different crops, even in a short period of
 time, establishes a חזקה.*
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And רבא commented;
זו דברי רבי ישמעאל ורבי עקיבא
*Only רבי ישמעאל ורבי עקיבא suffice
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עד שיגדור שלש גדירות
ויבצור ג' בצירות – וימסוק ג' מסיקות
*The תנא requires harvesting
 the same crop three times. For example, three crops of
 grapes, or three crops of olives or figs.*

9 The Gemara explains the רב ושמואל רב מחלוקת רב ושמואל:
 דקל נערה איכא בניייהו
 They disagree regarding young date trees, which yield
 three crops in less than three years.
 לשמואל הוי חזקה
 בג' גדירות
 לרב הוי חזקה
 בג' שנים מיום ליום
 רב holds that the תנא קמא would agree that he
 establishes a חזקה after harvesting three crops, while רב
 holds that the תנא קמא requires three full years.
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9

The Gemara explains the מחלוקת רב ושמואל

דקל נערה איכא בניייהו
*They disagree regarding young date trees,
 which yield three crops in less than three years.*

לרב הוי חזקה	לשמואל הוי חזקה
בג' שנים מיום ליום	בג' גדירות
<i>The תנא קמא requires three full years.</i>	<i>The תנא קמא would agree that he establishes a חזקה after harvesting three crops</i>

10 The Rashbam points out

פרישנן בריש פירקין
טעמא דחזקת ג' שנים
דעד שלש שנים
מיזדהר איניש בשטריה

We explained on כ"ט that חזקת שלש שנים is based on the rationale that a buyer only holds onto the deed for three years, during which the original owner should protest.

This explanation follows the opinion of the רבנן according to Rav, who maintain that the occupant must always use the field for three full years. All other opinions, however, which suffice with a shorter period of time, must have a different rationale for חזקת שלש שנים.

Thus, there are four possible opinions as to the length of a חזקה:

1.
רבנן אליבא דרב
According to Rav, the רבנן always require three full years.

2.
רבנן אליבא דשמואל
According to Shmuel, the רבנן require three crops of the same type of fruit.

3.
רבי ישמעאל
For an orchard, רבי ישמעאל requires three crops, even of different types. For a crop of grain, the minimum is 18 months.

4.
רבי עקיבא
For an orchard, רבי עקיבא requires three crops, even of different types. For a crop of grain, the minimum is 14 months.

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The Rashbam points out

**פרישנן בריש פירקין טעמא דחזקת ג' שנים
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מיזדהר איניש בשטריה

We explained on כ"ט that חזקת שלש שנים is based on the rationale that a buyer only holds onto the deed for three years, during which the original owner should protest.

*כוותייהו דהני רבנן אליבא דרב קיימי
This explanation follows the רבנן according to Rav, who maintain that the occupant must always use the field for three full years.*

All other opinions, however, which suffice with a shorter period of time, must have a different rationale for חזקת שלש שנים.

Thus, there are four possible opinions as to the length of a חזקה:

2
**רבנן
אליבא דשמואל**
The רבנן require three crops of the same type of fruit.

1
**רבנן
אליבא דרב**
The רבנן always require three full years.

4
רבי עקיבא
For an orchard, רבי עקיבא requires three crops, even of different types.

For a crop of grain, the minimum is 14 months.

3
רבי ישמעאל
For an orchard, רבי ישמעאל requires three crops, even of different types.

For a crop of grain, the minimum is 18 months.