

A בס"ד

Intro

Today we will Be"H learn כ"ט of בבא בתרא. Some of the topics we will learn about include:

חזקת קרקעות

One can establish his ownership of real property by proving his normal usage of the property for three consecutive years. The Gemara offers several rationales for this procedure, including:

מחיל איניש

Whether the owner waives his rights;

לא קפיד איניש

Whether he protests; and

מיזדהר איניש בשטריה

Whether a buyer is careful to guard the deed to the property?

B The Gemara discusses several details of this חזקה, including:

מחאה שלא בפניו

The previous owner does not have to protest in the presence of the occupant, because

חברך חברא אית ליה

We assume that such news spreads and the occupant became aware of the protest.

שלוש שנים רצופות

He must use the property for three consecutive years. And this has some exceptions;

The Gemara discusses the חזקה of certain properties, including:

חזקת הבתים

Whether witnesses must testify to the nighttime use of a house, and several scenarios how this is possible.

חוץ מבית רובע

If one did not utilize a certain section of a field, and צונמא

How to utilize a non-arable field;

A

חזקת קרקעות

מחיל איניש

לא קפיד איניש

מיזדהר איניש בשטריה

B

מחאה שלא בפניו

חברך חברא אית ליה

שלוש שנים רצופות

חזקת הבתים

חוץ מבית רובע

צונמא

- C** שכוני גוואי
 If the previous owner claims he lived in an inner rooms of the house, and used the outer rooms to enter and exit, thereby invalidating the חזקה, the Gemara records a מחלוקת whether זיל ברור אכילתך
 The occupant must prove that he established a proper חזקה, or המוציא מחבירו עליו הראיה
 The חזקה establishes the occupant as the owner, and the burden of proof rests on the previous owner.

C

שכוני גוואי

זיל ברור אכילתך

המוציא מחבירו עליו הראיה

1 So let's review...

The Gemara continues seeking the rationale for 'חזקת ג' שנים, establishing one's ownership of real property by proving his normal usage of the property for three consecutive years. The Gemara suggests several logical explanations:

1.

שתא קמייתא
מחיל איניש
תרתי מחיל

The first two years that a stranger works the land and takes the produce, the owner would usually waive his rights.

However,

תלת לא מחיל

He would not do so for a third year.

Therefore, since he did not protest, we can assume that he indeed sold the property to the occupant.

1

The rationale for חזקת ג' שנים

1

שתא קמייתא
מחיל איניש

תלת לא מחיל

He would not do so
for a third year.

תרתי מחיל

The first two years
the owner would usually
waive his rights.

Therefore, since he did not protest,
we can assume that he indeed sold the property
to the occupant.

2 The Gemara asks however, according to this logic,

כי הדרא ארעא
תיהדר לבר מפירי

If one fails to establish a full three-year חזקה, he should return the land but not the produce he already consumed, because the owner was מוחל?

Yet רב נחמן said

הדרא ארעא והדרי פירי

He must return the value of the produce as well?

2.

Therefore, the Gemara modifies this rationale:

שתא קמייתא
לא קפיד איניש
תרתי לא קפיד

The first two years that someone occupies the land, although, the owner does not forgo his rights, he does not protest. However,

תלת קפיד

He would certainly protest during the third year. Therefore, since he did not protest, he must have sold it to the occupant.

2

?

According to this logic,

כי הדרא ארעא
תיהדר לבר מפירי

If one fails to establish a full three-year חזקה,
he should return the land but not the produce he consumed,
because the owner was מוחל?

Yet רב נחמן said

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He must return the value of the produce as well?

2

שתא קמייתא
לא קפיד איניש

תלת קפיד


The third year
he would certainly protest.

תרתי לא קפיד

The first two years
he does not protest.

Therefore, since he did not protest,
he must have sold it to the occupant.

- 3 The Gemara asks however, according to this logic, הני דבי בר אלישיב דקפדי אפילו אמאן דחליף אמיצרא דידהו הכי נמי דלאלתר הוי חזקה One should be able to establish a חזקה immediately in a property belonging to those who are known to protest any attempt to infringe upon their rights, even someone passing through their boundaries? And this cannot be so, because אם כן נתת דבריך לשיעורין The length of time necessary for a חזקה depends on each individual's nature, while the Mishnah stated unequivocally that it is three years?

- 3 
According to this logic,
**הני דבי בר אלישיב
דקפדי אפילו אמאן דחליף אמיצרא דידהו
הכי נמי דלאלתר הוי חזקה**
*One should be able to establish a חזקה immediately
in a property belonging to those who are known to protest
any attempt to infringe upon their rights,
even someone passing through their boundaries?*
And this cannot be so, because
**אם כן
נתת דבריך לשיעורין**
*The length of time necessary for a חזקה
depends on each individual's nature,
while the Mishnah stated that it is three years?*

4

3.

Therefore, the Gemara offers a slightly different rationale:

שתא קמייתא
מיזדהר איניש בשטריה
תרתי ותלת מיזדהר

During the first three years after a sale, a buyer is careful to guard his deed;

טפי לא מיזדהר

After that, he assumes that his ownership is secure, and it is reasonable for him to misplace the document.

Accordingly, the Rishonim explain,

כיון דהאי שתק
רגלים לדבר

When one uses a property and the previous owner does not protest, we assume he did indeed sell the property.

However,

תוך ג' אמרינן ליה למחזיק
אחוי שטרך

Within three years, since the current occupant cannot produce the document, this undermines his claim that he bought it.

However,

ולאחר שלש איתרע ליה האי טענה

After three years, when it is not unusual to misplace the document, he can use the owner's silence to prove his ownership.

Nevertheless,

מחאה שלא בפניו
הוי מחאה

The previous owner does not have to protest in the presence of the occupant, because

חברך חברא אית ליה

וחברא דחברך חברא אית ליה

We assume that such news spreads and the occupant

became aware of the protest, and should have been careful to retain the sale document.

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3

שתא קמייתא
מיזדהר איניש בשטריה
תרתי ותלת מיזדהר

During the first three years after a sale,
a buyer is careful to guard his deed;

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and it is reasonable for him to misplace the document.

Accordingly, the Rishonim explain,

כיון דהאי שתק - רגלים לדבר

When one uses a property
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The previous owner does not have to protest
in the presence of the occupant, because

חברך חברא אית ליה
וחברא דחברך חברא אית ליה

We assume that such news spreads
and the occupant became aware of the protest,
and should have been careful to retain the sale document.

5 The Gemara discusses several details regarding establishing a חזקה:
 אמר רב הונא
 שלש שנים שאמרו
 הוא שאכלן רצופות
 He must use the property for three consecutive years.

Although the Mishnah clearly stated
 חזקתן שלש שנים מיום ליום
 Three years to the day;
 We might have thought
 מיום ליום
 לאפוקי מקוטעות
 ולעולם אפילו מפוזרות
 They must be full years, but they do not need to be consecutive.
 קמ"ל
 therefore teaches us that they must be consecutive.

The Gemara adds
 מודי רב הונא
 באתרי דמוברי באגי
 רב הונא agrees that in an area where some people leave their fields fallow every other year in order to produce better crops the following year, that the years of usage do not have to be consecutive, because he's using it like a typical owner.
 =====

5 *Several details regarding establishing a חזקה*
 אמר רב הונא
**שלש שנים שאמרו
 הוא שאכלן רצופות**
He must use the property for three consecutive years.

Although the Mishnah clearly stated
**חזקתן שלש שנים
 מיום ליום**
Three years to the day;

We might have thought
"מיום ליום"
**לאפוקי מקוטעות
 ולעולם אפילו מפוזרות**
*They must be full years,
 but they do not need to be consecutive.*

קמ"ל
They must be consecutive.

**מודי רב הונא
 באתרי דמוברי באגי**
*רב הונא agrees that in an area where some people
 leave their fields fallow every other year
 in order to produce better crops the following year,
 that the years of usage do not have to be consecutive,
 because he's using it like a typical owner.*

6 The Gemara challenges רב הונא from our Mishnah which says

חזקת הבתים

Ownership of homes is also established through a חזקה of three years. However,

בתים ביממא ידעי

בליליא לא ידעי

Ordinarily, witnesses can only testify regarding the daytime, and are not aware whether the occupant remained there during the night. If so,

הוּוּ לְהוּוּ מִפּוֹזְרוֹת

They can only testify to a non-consecutive חזקה.

So, according to רב הונא, how does one establish חזקת הבתים?

The Gemara offers three answers:

1.

שיבבי אביי says

שיבבי מידע ידעי ביממא ובליליא

The neighbors know, and can testify about the nighttime as well.

2.

דאתו בי תרי ואמרי says רבא

דאתו בי תרי ואמרי

אנן אגרינן מיניה

ודרינן ביה תלת שנין ביממא ובליליא

One can establish a חזקה if witnesses testify that they rented the home from the buyer and lived there for three uninterrupted years, day and night.

6

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חזקת הבתים

Ownership of homes is also established through a חזקה of three years.

However,

בתים ביממא ידעי

בליליא לא ידעי

Witnesses can only testify regarding the daytime, and are not aware whether the occupant remained there during the night.

If so,

הוּוּ לְהוּוּ מִפּוֹזְרוֹת

They can only testify to a non-consecutive חזקה. According to רב הונא, how does one establish חזקת הבתים?

1

אביי

שיבבי מידע ידעי ביממא ובליליא

The neighbors know, and can testify about the nighttime as well.

2

רבא

דאתו בי תרי ואמרי

אנן אגרינן מיניה

ודרינן ביה תלת שנין ביממא ובליליא

If witnesses testify that they rented the home from the buyer and lived there for three uninterrupted years, day and night.

7

3.

However, מר זוטרא explains, as Rashi writes;

אין מחייבין את המחזיק להביא עדים
שיעידו בפירוש על כל הימים והלילות

We do not require the occupant to bring witnesses who
can testify specifically about the nights;

אלא יעידו סתם שראוהו דר ג' שנים
ומסתמא אם בימים דר בבית

אף בלילות דר בו

It is sufficient for the witnesses to testify only about the
days, and we assume that he lived there at night as well. ®

Unless,

אי טעין ואמר

ליתו תרי סהדי לאסהודי ליה

דר ביה תלת שני ביממא ובליליא

טענתיה טענה

If the previous owner demands that witnesses testify
about the nights as well, the occupant must comply.

Otherwise,

אנן לא טענינן ליה

We do not demand it.

Except in the case of

ברוכלין המחזירין בעיירות

דאע"ג דלא טעין

טענינן ליה אנן

If the previous owner is a peddler, we do demand that the
witnesses testify about every single night, since peddlers
are rarely home and the occupant may simply be a
squatter who moved out of the house whenever the
peddler returned home.

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7

3

אי זוטרא

Rashi writes

אין מחייבין את המחזיק להביא עדים
שיעידו בפירוש על כל הימים והלילות

We do not require the occupant to bring witnesses
who can testify specifically about the nights;

אלא יעידו סתם שראוהו דר ג' שנים

ומסתמא אם בימים דר בבית – אף בלילות דר בו

אי טעין ואמר

ליתו תרי סהדי לאסהודי ליה

דר ביה תלת שני ביממא ובליליא

טענתיה טענה

If the previous owner demands that witnesses testify about
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דאע"ג דלא טעין

טענינן ליה אנן

If the previous owner is a peddler,
we do demand witnesses for every single night,
since peddlers are rarely home
the occupant may simply be a squatter who moved out
whenever the peddler returned home.

8 The Gemara cites an exception to the original ruling of רב הונא:
 מודה רב הונא
 בחנותא דמחוזא
 דליממא עבידא
 לליליא לא עבידא
 Shopkeepers do not have to bring witnesses about the nights, because the normal usage of a store is only during the day. Therefore, a storekeeper indeed establishes a חזקה after three years of daytime usage.
 =====

The Gemara relates
 רמי בר חמא ורב עוקבא בר חמא
 זבון ההיא אמתא בהדי הדדי
 They purchased a slave woman in partnership;
 מור אישתמש בה ראשונה שלישיית וחמישיית
 ומר אישתמש בה שניה רביעיית וששית
 She served them for six years, alternating between them.
 Consequently,
 נפק ערער עילוה
 Someone claimed she belonged to him.

רבא ruled
 כי היכי דלדידכו לא הוי חזקה
 לעלמא נמי לא הוי חזקה
 You alternated years so that neither of you could claim a חזקה against the other. Similarly, neither of you have established a חזקה vis-a-vis anyone else either.

However,
 כתוב עיטרא
 קלא אית ליה
 If they wrote a document delineating your arrangement, people were aware of their partnership and the claimant should have protested; and so it is a valid חזקה even after only three years.
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8

**מודה רב הונא
 בחנותא דמחוזא
 דליממא עבידא
 לליליא לא עבידא**

Shopkeepers do not need witnesses about the nights, because normal usage of a store is only during the day. Therefore, a storekeeper indeed establishes a חזקה after three years of daytime usage.

**רמי בר חמא ורב עוקבא בר חמא
 זבון ההיא אמתא בהדי הדדי**

*They purchased a slave woman in partnership
 מור אישתמש בה ומר אישתמש בה
 ראשונה שלישיית וחמישיית
 שניה רביעיית וששית*

She served them for six years, alternating between them.

*Consequently,
 נפק ערער עילוה
 Someone claimed she belonged to him.*

*רבא ruled
 כי היכי דלדידכו לא הוי חזקה
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 You alternated years so that neither of you could claim a חזקה against the other.
 Similarly, neither of you have established a vis-a-vis anyone else either.*

*However,
 כתוב עיטרא
 קלא אית ליה
 If they wrote a document delineating your arrangement, people were aware of their partnership and the claimant should have protested; and so it is a valid חזקה even after only three years.*

9 Another aspect of proper usage for חזקה:
 רבא said
 אכלה כולה
 חוץ מבית רובע
 ובר זריעה היא
 קנה כולה חוץ מבית רובע
 If one does not plant a certain arable section of the field,
 he has not established ownership of that section.

However, רב הונא בריה דרב יהושע qualified Rava's ruling;
 אי לאו בר זריעה היא
 קני לה אגב ארעא
 If it is not arable, this section is included with the rest of
 the field.

However, רב ביבי בר אבוי disagrees and holds
 לא קני לה אגב ארעא
 He did not established ownership of that section, because
 איבעי ליה לאוקומי בה חיותא
 אי נמי משטחא בה פירי
 He could have used that section for grazing his animals or
 drying fruit.

Similarly,
 צונמא במה יקנה
 אלא באוקומי בה חיותא
 ומשטחא בה פירי
 If an entire property is not arable, one establishes a חזקה
 by using it in other ways, such as these.
 =====

9

רבא

**אכלה כולה
 חוץ מבית רובע
 ובר זריעה היא
 קנה כולה חוץ מבית רובע**

*If one does not plant a certain arable section of the field,
 he has not established ownership of that section.*

*רב ביבי בר אבוי
 disagrees and holds*

**לא קני לה
 אגב ארעא**

*He did not established
 ownership of that section,
 of the field, because...*

*רב הונא בריה דרב יהושע
 qualified Rava's ruling;*

**אי לאו בר זריעה היא
 קני לה אגב ארעא**

*If it is not arable, it is included
 with the rest of the field.*

**איבעי ליה לאוקומי בה חיותא
 אי נמי משטחא בה פירי**

He could have used it for grazing his animals or drying fruit.

Similarly,

**צונמא במה יקנה
 אלא באוקומי בה חיותא
 ומשטחא בה פירי**

*If an entire property is not arable,
 one establishes a חזקה by using it in other ways,
 such as these.*

10 The Gemara discusses a case of a disputed חזקה:
 ההוא דאמר ליה לחבריה
 מאי בעית בהאי ביתא
 If the previous owner of a house asked the current occupant to explain his presence, and he said
 מינך זבינתיה
 ואכלית שני חזקה
 I purchased it from you, and I've already been residing here for three years, establishing a חזקה.
 The previous owner then claimed
 אנא בשכונני גוואי הואי
 During those years, I've been living in the inner rooms of this house, and I've also been using the outer rooms to enter and exit, thereby invalidating your חזקה.

Tosfos explains
 היה לו עדים
 שהיה בשכונני גוואי
 אבל לא היו יודעים באיזה דרך היה יוצא
 He can prove that he lived there, but he cannot prove that he also used the outer rooms.

The Gemara records a מחלוקת:
 רב נחמן ruled
 זיל ברור אכילתך
 The occupant must prove that he established a proper חזקה.
 רבא maintained
 המוציא מחבירו עליו הראיה
 The burden of proof rests on the previous owner, because as the רשב"ם explains, we do not need to suspect that the previous owner used the disputed space as well, and so the חזקה establishes the occupant as the owner.

10

**ההוא דאמר ליה לחבריה
 מאי בעית בהאי ביתא**
If the previous owner of a house asked the current occupant to explain his presence,
He said
**מינך זבינתיה
 ואכלית שני חזקה**
I purchased it from you, and I've already been residing here for three years, establishing a חזקה.

The previous owner then claimed
אנא בשכונני גוואי הואי
During those years,
I've been living in the inner rooms of this house, and I've also been using the outer rooms to enter and exit, thereby invalidating your חזקה.

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**היה לו עדים
 שהיה בשכונני גוואי**
אבל לא היו יודעים באיזה דרך היה יוצא
He can prove that he lived there, but not that he also used the outer rooms.

רבא
**המוציא מחבירו
 עליו הראיה**
The burden of proof rests on the previous owner

רב נחמן
**זיל ברור
 אכילתך**
The occupant must prove that he established a proper חזקה.

because as the רשב"ם explains,
we do not need to suspect that the previous owner used the disputed space as well, and so the חזקה establishes the occupant as the owner.