

# Bava Metzia - Simanim

# דף קי – Daf 110 –

# פרק ט – המקבל שדה מחבירו

### 1. A lender who already consumed the produce of a disputed year of a משכון

The Gemara discusses a משכון of land which was given for a number of years, during which the lender could consume its produce, but the שטר did not indicate the number of years. The lender claimed the term was three years, and the borrower claimed it was two, and the lender consumed the produce of the third year before they went to court. Rav Yehuda said: קרקע בחזקת בעליה קיימא – land stands in its owner's possession, and its produce is presumed his (the borrower's) until proven otherwise. Rav Kahana said: פירות בחזקת אוכליהן קיימי – fruits stand in the possession of he who consumed them, so the lender need not pay for them until the borrower proves his case. The halachah follows Rav Kahana. The Gemara objects that the halachah follows Rav Nachman, who ruled elsewhere that land stands in the owner's possession (regarding the disputed month of a rented bathhouse)!? The Gemara answers that here, ואטרוחי בי דינא – art is something where the truth is likely to become revealed, תרי זמני לא מטרחינן – and we do not risk bothering Beis Din twice (if the lender will later bring proof).

## 2. Dispute if the term of a משכון of land was five or three years

The Gemara discusses a משכון of land which the lender claimed was for five years, and the borrower claimed it was only for three. After three years, the borrower demanded the lender show the משכון five the lender said he lost it. Rav Yehudah said the lender is believed to retain the land for two more years, but the lender said he lost it. Rav Yehudah said the lender is believed to retain the land for two more years, בידי בעי אמר לקוחה היא בידי – since, had he wanted to lie, he could have said, "I purchased the land from you," since a buyer who occupies purchased land for three years is believed to say he lost the שטר. Therefore, we presume his claim that the משכון sirve years is truthful. Rav Pappa said that Rav Zevid and Rav Avira disagree with this ruling, and reason: האי שטרא כיון דלגוביינא קאי – this document of the משכון mich is used for collecting the land's produce temporarily, משכון [a lender] is certainly careful with it, and it is so unlikely that it was lost, that he is not even believed based on a "ומיכבש הוא דכבשיה לשטריה "argument." משכון argument. משכון argument important of the land's produce temporarily.

### 3. Dispute if land improvements were made by the orphans or late father

If orphans of a debtor say, "אנו השבחנו" - We improved the land, and those improvements cannot be collected by the creditor," ובעל חוב אומר אביכם השביח – but the creditor says, "Your father improved the land, so the improvements are subject to collection," Rav Chanina thought to say: ארעא בחזקת יתמי קיימא – the land is in the orphans' possession, so it is incumbent on the creditor to prove that the father made the improvements. However, a certain elder said that Rebbe Yochanan ruled that the burden of proof is on the orphans, and the Gemara explains: ארעא כיון דלגוביינא קיימא – since the land is subject to collection by this creditor, במאן דגביא דמיא – it is like it is already collected and in his possession. Rashi explains that since the Gemara below concludes that even if the orphans made the improvements, it is paid out to them in cash, and the creditor keeps the land, the dispute is reduced to one about monetary payments, and not land ownership. Thus, the burden of proof is on the orphans.

### Siman – Gold Key Ceremony

The golden key to the field which was being presented to the lender, who came late to the ceremony because he was busy eating the fruits of the disputed third year before they went to Beis Din and had some papers sticking out of his pocket as he claimed, "I can't find the shtar of the mashkon", was presented next to a field in which some orphans and their creditors were disputing who made improvements on the land.

דף קי | DAF 110

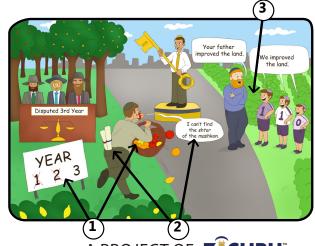
Gold Key Ceremony



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# Sthings to remember

- A lender who already consumed the produce of a disputed year of a משכון
- 2. When lender with משכון of land says he lost the משכון
- 3. Dispute if land improvements were made by the orphans or late father



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### בבא מציעא – סימנים

## פרק תשיעי – המקבל

דף קי

## 1. מלוה אכל פירות שחולקין עליו המלוה והלוה

ההוא שטרא דהוה כתיב ביה שנין סתמא, מלוה אמר שלש לוה אמר שתים, קדים מלוה ואכלינהו לפירי מי נאמן, רב יהודה אמר קרקע בחזקת בעליה קיימא, רב כהנא אמר פירות בחזקת אוכליהן קיימי, והלכתא כוותיה דרב כהנא דאמר פירות בחזקת אוכליהן קיימי, והא קי"ל דהלכתא כוותיה דרב נחמן דאמר קרקע בחזקת בעליה עומדת, התם מילתא דלא עבידא לאיגלויי היא הכא מילתא דעבידא לאיגלויי היא, ואטרוחי בי דינא תרי זמני לא מטרחינן

### 2. מלוה אמר לחמש ולוה אמר לשלש

מלוה אומר חמש לוה אומר שלש, א"ל אייתי לי שטרך, א"ל שטרא אירכס לי, אמר רב יהודה מלוה נאמן מגו דאי בעי אמר לקוחה היא בידי, א"ל רב פפא לרב אשי רב זביד ורב עוירא לא סבירא להו הא דרב יהודה, מאי טעמא האי שטרא כיון דלגוביינא קאי מיזהר זהיר ביה ומיכבש הוא דכבשיה לשטריה, סבר אוכלה תרתין שנין יתירתא

#### 3. יתומים אמרו אנו השבחנו ובעל חוב אומר אביכם השביח

יתומים אומרים אנו השבחנו ובעל חוב אומר אביכם השביח על מי להביא ראיה, סבר רבי חנינא למימר ארעא בחזקת יתמי קיימא ועל בעל חוב להביא ראיה, אמר להו ההוא סבא הכי א"ר יוחנן על היתומים להביא ראיה, מאי טעמא ארעא כיון דלגוביינא קיימא כמאן דגביא דמיא ועל היתומין להביא ראיה

ופרש"י, דבין יתומים השביחו ובין אביהן השביח דינו ליטול קרקע עם השבח, ואם היתומים השביחו מעלה להן השבח בדמים כדלקמיה, הלכך גבי ארעא עם השבח ממה נפשך נמצא היתומים תובעין להוציא ממנו, ועליהן הראיה

סימן: טקס הענקת מפתח זהב(key)

מפתח זהב שהוצג בטקס למלוה, שבא באיחור כי היה עסוק בלהיות **קדים ואכלינהו לפירות במקרה שמלוה אמר**שלש ולוה אמר שתים לפני שבא לבי"ד, והיה לו שטרות שביצבצו מכיסו בעודו אומר :שטרא אירכס ,נערך על יד שדה
שהיה עליו ויכוח בין יתומים שאמרו אנו השבחנו ובעל חוב שאמר אביכם השביח.

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