

## Bava Basra – Simanim

### דף נב – Daf 52

### פרק ג – חזקת הבתים

#### 1. יעשה כפירושן received from married women, slaves, and children (פקדונות)

A Baraisa teaches that one may not accept a פקדון from married women, from slaves, or from children, because we suspect they may have stolen the money (from their husband, master, or home, respectively), and accepting the פקדון assists their thievery. If one did accept a פקדון from a woman or slave, it should be returned to them, since they may own it. If one accepted a פקדון from a child, לו יעשה – *he should set up a trust for him* (he should not return it, since the child cannot responsibly safeguard it). The Gemara defines the “trust” as a ספר תורה to learn from, or a palm tree which will yield fruit for him, while the principal remains. The Baraisa concludes: *and any of them who said at the time of their deaths, של פלוני הן – “They belong to Ploni,”* [the שומר] *should follow their specification, i.e., he should return it to that person.* If he does not believe them, and suspects they were embarrassed to admit they stole it from the husband, etc., *he יעשה פירוש לפירושן – he should make his own “specification” to override their specification, and return it to the husband, etc.*

#### 2. A brother managing the inherited estate presents שטרות bearing his name

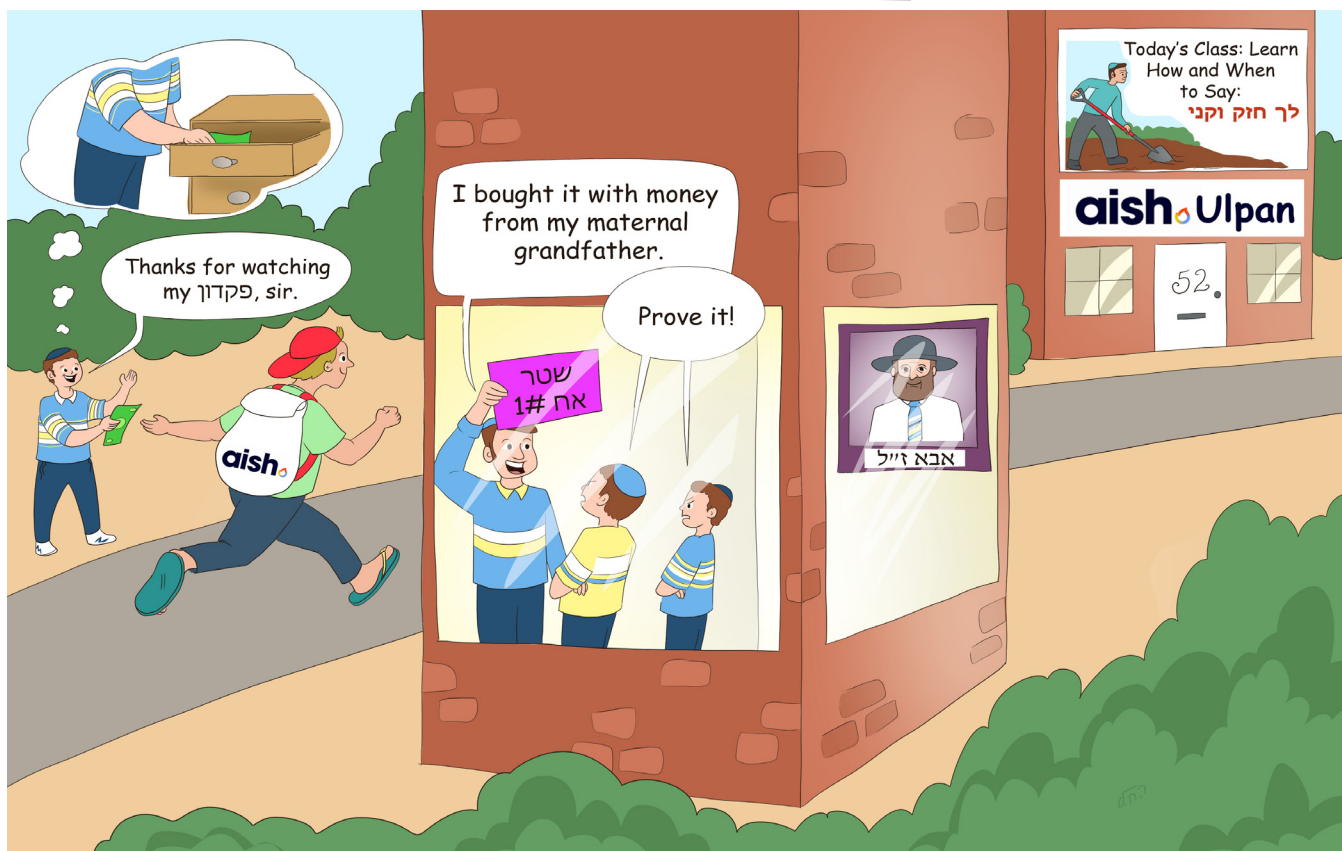
The Gemara discusses a brother who was managing the father’s estate on behalf of all the brothers, והיו *and documents* [of sales and loans] *appear in* [this brother’s] *name*, and he claims they are from money he inherited independently from his maternal grandfather. Rav says: עליו *it is incumbent upon* [the managing brother] *to prove* the שטרות refer to his personal assets, because his name may have been written simply because he managed the estate. Shmuel says: על האחין להביא ראיה *it is incumbent upon the brothers to prove* the שטרות are from the father’s estate. A Baraisa below supports Rav. Rav Chisda said that Rav’s ruling only applies *where they were not divided in their “dough,”* i.e., their food expenses were shared, making it unlikely that one brother has personal assets, *but if they were divided in their “dough,”* אימור מעיסתו *say that perhaps he saved from his dough* (i.e., apportioned food) and built up personal assets. Amoraim discuss if the managing brother’s proof would require witnesses that the money is his, or if certification of the שטר is sufficient, since Beis Din will verify its details.

#### 3. When "לך חזק וקני" is necessary before acquiring someone’s property

The Mishnah on Daf 42a stated that the laws of a three-year *chazakah* only apply to a dispute over ownership, but where one is acquiring property, such as a gift, brothers dividing an estate, or the *hefker* estate of a *ger* who died, he acquires it by locking, fencing, or breaching its enclosure. Rav Hoshaiyah taught a Baraisa which states: *if [a purchaser] locked, fenced, or breached a property, even minimally, in [the seller’s] presence, זה חזקה – this is a valid chazakah* to acquire the property. This implies that one cannot acquire the property when not in the seller’s presence, which is not true, so Rava clarifies: *if the acquisition was made in his presence, לא צריך למימר ליה לך חזק – [the seller] does not need to tell [the buyer], “Go, make a chazakah and thereby acquire it,”* because his silence indicates his consent to the *kinyan*. *If the kinyan was made not in his presence, צריך למימר ליה לך חזק וקני – he must tell him beforehand, “Go, make a chazakah and acquire it.”*

#### Siman – Newbie to Yiddishkeit

The newbie to Yiddishkeit who **mistakenly accepted a פקדון from a child whose brothers were fighting with their oldest brother managing their father’s estate who presented שטרות bearing his name**, was on his way to Ulpan to learn how to say, **“לך חזק וקני”** to a buyer of property, if a *kinyan* is not made in his presence.



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### 3 things to remember

1. Receiving a פקדון from a child
2. A brother managing the inherited estate presents שטרות bearing his name
3. When "לך חזק וקני" is necessary before acquiring someone's property

