

Bava Basra – Simanim

דף לג – Daf 33

פרק ג – חזקת הבתים

1. Leveraging a משכון to collect another debt with a מגו of לקוחה

Rabbah bar Sharshum possessed a משכון which entitled him to its produce for a number of years to collect a debt. After the borrower died, a rumor emerged that משכון's term was over, yet he continued using the orphans' משכון. He explained to Abaye that the father owed him an additional debt, and he realized that if he would return the משכון, he would have to swear to collect the second debt, like any collection from orphans. To avoid the *shevuah*, he decided to hide the שטר of the משכון and consume its produce until his debt was paid: דמיגו דאי בעינא – *for since, if I wanted to lie, אמינא לקוחה היא בידי, I could say I bought [the land] from their father, and I would be believed (since I used the property for enough years to establish a chazakah).* – כי אמינא דאית לי זוזי גבייכו מהימנא – *Therefore, if I say that you owe me money, I will also be believed, without requiring a shevuah.* Abaye responded that since the land was rumored to belong to the orphans, he could not have claimed he bought it (since he should have retained the שטר), and his מגו is faulty.

2. קריביה דרב אידי: if admission impacts past produce consumption

A relative of Rav Idi bar Avin died and left a date palm. Rav Idi said he was the closest relative and inherited the palm, but another man claimed he was the closest relative. Neither proved his claim, and the second person took control of the tree. Eventually, he admitted that Rav Idi was the closer relative, and Rav Chisda put the tree in Rav Idi's possession. Rav Idi asked that the man should also return all the produce he had consumed until then. Rav Chisda said: זה הוא שאומרים עליו אדם גדול הוא – *This is the one about whom they say, "He is a great man"?! – אמאן קא סמיך מר – On whom does Master base his right to the tree? אהאי – On this man, who now admitted the tree is Rav Avin's? טפי – But he claimed until now, "I am the closer relative"!* His admission that you are the owner is considered like a mere gift and does not dictate the return of former produce. Abaye and Rava disagreed: כיון דאודי אודי – *once he admitted that the tree is Rav Idi's, he has admitted, by extension, that all the produce was also his, and must return it.*

3. הדרא ארעא והדרי פירי, if testified to two years of consumption, פירי

An occupant brought witnesses to establish a *chazakah*, but they only testified that he ate the land's produce for two years. Rav Nachman ruled: הדרא ארעא והדרי פירי – *the land returns to the former owner, and the produce also returns.* Since the *chazakah* was not established, and we assume the land still belongs to its former owner, it emerges that the occupant consumed two years of produce which was not his. Rav Zevid said that if the occupant would have claimed לפירות ירדתי – *"I went down to the field to consume its produce because I was entitled to it (e.g., he purchased it), he is believed.* This is based on Rav Yehudah's ruling, that if one takes harvesting tools and declares he is going to harvest someone's dates because he bought them, he is believed, because דיקלא דלאו דיליה – *a person is not so brazen as to harvest a palm which is not his.* This is ineffective when claiming he purchased someone's property, because he is expected to have a שטר, but regarding produce, שטרא לפירי לא עבדי – *people do not make שטרות for produce sales.*

Siman – Peg Leg Pirate

The peg leg pirate who continued using land to feed his crew which was a משכון belonging to *yesomim*, after the loan term was over in order to collect an additional debt, was shocked when one of the pirates admitted a palm tree he had claimed was his inheritance was actually not his, but wouldn't pay for the fruits he ate, and a third pirate lost his loot paying for fruits he ate when witnesses testified he was only there for two years, and he wasn't clever enough to say "I purchased the rights to the fruits, not the land."

דף לג | DAF 33

Peg Leg Pirate



The peg leg pirate who continued using land to feed his crew which was a משכון belonging to yesomim, after the loan term was over, in order to collect an additional debt, was shocked when one of the pirates admitted a palm tree he had claimed was his inheritance was actually not his, but wouldn't pay for the fruits he ate, and a third pirate lost his loot paying for fruits he ate when witnesses testified he was only there for two years, and he wasn't clever enough to say "I purchased the rights to the fruits, not the land."

3 things to remember

1. Leveraging a משכון to collect another debt with a מגו of לקוחה
2. If admission impacts past produce consumption
3. If עדים testified to two years of consumption, הדרא ארעא והדרי פירי

