

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses establishing a chazakah on houses, land, grain fields and orchards.

2) The source for a three-year chazakah

R' Yochanan reports in the name of those who travel to Usha that the source for a chazakah taking three years is derived from the case of making a bull into a muad.

Numerous unsuccessful challenges to the teaching of R' Yochanan are presented.

It is suggested that the chazakah should be established in three days, or thirty days, but these suggestions are rejected.

When it is suggested that a chazakah should be established in three months the Gemara concedes and suggests that those who travelled to Usha is a reference to R' Yishmael who indeed maintains that three years are not necessary to establish a chazakah.

The Gemara inquires about the source for three years according to Rabanan who disagree with R' Yishmael.

R' Yosef cites a verse for the source of a three-year chazakah. ■

REVIEW and Remember

1. What is the point of dispute between R' Yishmael and R' Akiva?

2. According to R' Yochanan, what is the source that a chazakah takes three years?

3. Explain חזקה שאין עמה טענה.

4. Who are "those who traveled to Usha"?

Distinctive INSIGHT

The source for a chazaka for land

שמעתי מהולכי אושא שהיו אומרים מנין לחזקה ג' שנים משור המועד

In the Gemara, R' Yochanan notes that the source for the halacha that a chazaka for land is three years is from the law of an ox that gores. An ox which develops a pattern of goring has its status changed from being a תם to being a מועד after goring three times. So, too, a chazaka is established after three years of residency or utility.

Ramban tries to understand the association between a goring cow and ownership of a property. On the one hand, we understand that after goring three times, any particular domesticated animal is determined to have a wild and uncontrolled temperament. However, what is the significance of three years of residing in a land without the owner's protesting? How do these three years indicate anything about the nature of the situation changing?

Ramban explains that just as three years indicates that an animal loses its status of being tame, so too, the inaction of a previous owner to protest for three years indicates that he is no longer the owner of this property. When the current resident claims that he purchased the land, the previous owner is put on the defensive to prove that he did not sell it to this person. The Gemara correctly notes that if the lesson from a goring cow is simply that the previous status of the animal is no longer valid, and that the cow is not advanced to being מועד until the fourth time it gores, then in reference to property we should say that although the land's being owned by the previous owner ends after three years, the land should not enter the possession of the current resident until a fourth year of usage.

This approach also helps us understand the question of the Gemara when it says that if we learn from the law of a goring ox, a chazaka should be valid even without an accompanying legal claim (חזקה שאין עמה טענה). Once the ownership of the original owner has been suspended, it would be logical that the one residing it take control even without claiming that he bought it, or by providing some other legal explanation for his new ownership. The Gemara answers that, nevertheless, if the

HALACHAH Highlight

The force of halachos derived from logic (סברא)

מנין לחזקה שהיא ג' שנים

What is the source that a chazakah takes three years?

The Gemara discusses at great length the issue of establishing a chazakah on another's property. A fundamental question is whether establishing a chazakah is a Biblical law or is it a rabbinic enactment. Rabbi Ben-Zion Meir Chai Uzziel¹, author of Teshuvos Mishpatei Uzziel, asserts that all opinions agree that establishing a chazakah is a Biblical law and not merely a Rabbinic enactment. According to R' Yishmael the halacha of establishing a chazakah is derived from the case of a *muad* ox. Just as an ox is deemed a *muad* after goring three times, so too a person establishes a chazakah on land by using the land for three years. Rabanan, who disagree with R' Yishmael, derive the halacha from the assumption that people will take care to maintain their paperwork for three years but beyond three years people are no longer careful to maintain their paperwork. Although R' Yishmael and Rabanan disagree about the exact source of this halacha all

are in agreement that the principle of establishing a chazakah on another's land is a Biblical law.

An interesting concept that emerges from this dispute addresses the question of whether halachos that are derived from logic (סברא) are considered Biblical in origin or not. From Mishpatei Uzziel's perspective halachos derived from logic are considered Biblical law. As proof to this assertion he cites the well-known law of **המוציא** – The burden of proof rests on the one who seeks to collect. The principle of **המוציא מחבירו** is one of the fundamental principle of Choshen Mishpat and yet its source is the logical assumption **דמאן דכאיב ליה** - The one who is in pain will go to the doctor, meaning the one who feels that he deserves to collect will have to prove his claim to Beis Din in order to collect. And based on this logic the Gemara asks why it is necessary for the Gemara in Bava Kama to cite an exposition from a pasuk for this principle when it could be easily derived from logic. This clearly demonstrates that conclusions that are drawn based on logic have the same force as any other Biblical law derived from exposition. ■

1. שו"ת משפטי עוזיאל כרך ד - עניינים כלליים סימן יח

STORIES Off the Daf

The greatness of Bava Basra

"חזקת הבתים..."

When Rav Shmuel Shapiro, zt"l, was a bochur in Eitz Chaim, someone noticed that he was learning Bava Basra during bekiyus seder instead of the regular mesechta studied by the rest of the yeshiva. This seemed very strange. Why would one of the prized students of Rav Isser Zalman Meltzer, zt"l, deviate from the regular learning seder?

When this bochur asked Rav Shmuel about this he replied, "The difficulty in learning this mesechta, especially with the lengthy explanation of the Rashbam, made it very

efficacious in breaking the yetzer hara within. After all, the Arizal teaches that the reason why Gemara is so difficult is so that a person should toil to understand, thereby breaking the bad within. It follows that the harder the learning is, the more powerfully it breaks the evil inside us."

When Rav Levi Yitzchak Bender, zt"l, heard this story, he was amazed. "Surely learning with the express purpose of breaking the bad within is a very great level!"¹

In light of this story we can understand a seemingly cryptic statement that the Pachad Yitzchak of Boyan, zt"l, once made.

A group of Boyaner Chasidim who were learning in Yeshivas Tiferes Yisrael went to see the Rebbe. The Rebbe asked them what they were

learning. "We have just begun perek Chezkas HaBatim," they replied.

"Learning a daf of Chezkas HaBatim is like learning a mussar sefer," the Rebbe said.²

Surely one who learns the Gemara in such a manner learns Torah l'shmah! ■

1. שמואל בקראי שמו, עי"ד

2. קובץ תפארת ישראל, שבט תשס"ז, ע' 55

(Insight...continued from page 1)

current resident does not provide a legal explanation how he became the owner, the land does not transfer to becoming his on its own. This is why he needs to offer a claim, and if he does not claim that he bought it, we do not assume on our own that the land was bought, and it remains in the possession of its original owner. ■