

OVERVIEW of the Daf

1) The source for a three-year chazakah (cont.)

Abaye rejects the source offered by R' Yosef for three years to make a chazakah.

Rava suggests another possible source for the three-year requirement to make a chazakah.

Abaye rejects this source.

Rava and Abaye have an exchange regarding the source for this halacha until Rava finally succeeds at identifying a source for the necessity for three years to establish a chazakah.

2) Three consecutive years

R' Huna asserts that for a chazakah to be valid the occupant must use the property for three consecutive years.

The novelty of the ruling is explained.

R' Chama asserts that R' Huna would agree in those places where the custom is to leave the field fallow every other year that it is unnecessary for the three years to be consecutive.

The novelty of this qualification is explained.

R' Huna's ruling is challenged.

Abaye and Rava offer their own resolutions to the challenge.

Rava's resolution is unsuccessfully challenged.

Mar Zutra rules that the previous owner may request proof that the occupant used the property for three years during the day and the night.

A qualification to this ruling is noted.

A qualification to R' Huna's ruling is noted.

A related incident is presented.

A qualification is added to Rava's ruling in the previous incident.

3) Chazakah

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REVIEW and Remember

1. The family of Bar Elyashiv was known for what?

2. Is the testimony of tenants valid to establish a chazakah?

3. What is an עיטרא?

4. What was the dispute between R' Nachman and Rava?

Distinctive INSIGHT

The three-year chazaka for houses

תנן חזקת הבתים - והא בתים בליליא לא ידעי

Rav Huna taught that the three years necessary in order to establish a chazaka must be accumulated consecutively. The Gemara explains that this means that not only would it be inadequate to occupy a land in an abridged manner, where the occupancy was for only part of each year, but also it is unacceptable even if the non-consecutive days and months which the new occupant resides in the land adds up to three full years.

The Gemara presents a question against the opinion of R' Huna from our Mishnah. The very first halacha is that a chazaka for a house can be established in three years. The current occupant of the house can apparently only establish his position based upon the testimony of the neighbors, and they can only verify his residency when they see him, which is during the daytime hours. It would take a total of six years of days alone to add up to a total accumulation of three years of occupancy for the chazaka of a house. Yet, although the chazaka of a house can only occur with non-consecutive occupancy, it does have the legal ability to accumulate, thus indicating that R' Huna is wrong.

Ramban notes that this question should not only be directed against R' Huna who said that a chazakah must be with consecutive occupancy, but the halacha of the Mishnah seems to also be problematic even if we allow intermittent occupancy. As we noted, occupancy of a house should take at least six years on the calendar, because we can only use the day-time periods which are the ones which are witnessed. Yet, the Mishnah rules that a chazakah for a house can be fulfilled in three years. This ruling therefore seems inconsistent with all opinions, and not only R' Huna.

Rabeinu Yona, Rashba, et al., answer that those who allow intermittent occupancy to accumulate for a chazakah would understand that when the Mishnah says that a chazakah for a house takes three years, it means six years on the calendar, which is the time it takes for verified occupancy to eventually accumulate to three years.

Rabeinu Yona points out, however, that the term "three years" in the Mishnah does not seem to imply an accumulated time of three years over six years on the calendar. Nevertheless, the Mishnah uses the term "three

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HALACHAH Highlight

Settling outside of Eretz Yisroel

בנו בתים וישבו ונטעו גנות ואכלו את פרי

Build houses and dwell [in them] and plant gardens and eat its fruit

Be'er Heitev¹ writes in the name of Rabbeinu Yehudah HaChassid that it is dangerous for a person to build a house out of stone and it is also dangerous for a person to build a house on a location that did not yet have a house. Chasam Sofer² adds that people say that when one is building a house of stone or on a location that did not yet have a house he should bring into the house a rooster and a chicken and then slaughter them in the house. Although people find this to be reminiscent of idolatrous ways (דרכי האמורי), Chasam Sofer suggests that there is a logical explanation for the practice. He suggests that people who follow this practice assume that by taking the rooster and chicken that are called גברים, whatever decree that was appropriate for the first people that dwell in the house happened to the birds, and the people who subsequently move in will not be the first residents and will thus be saved from harm.

Chasam Sofer proceeds to suggest that the danger of

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years" precisely in reference to a chazakah which is established for a wine press and a field, while in reference to a house the full time period would be six years of days, which is three years of verified occupancy. ■

these activities is that it gives the appearance as though one has abandoned hope of redemption and one has become comfortable with his dwelling in exile. In consideration of this danger it was thought that it is necessary to take these steps to save one's self from the danger of settling outside of Eretz Yisroel. Chasam Sofer writes that this attitude can be traced back to the time of Yirmiyahu HaNavi. Our Gemara relates that Yirmiyahu instructed the people to purchase homes and settle in those homes. Why was it necessary for Yirmiyahu to give these instructions? It would seem, suggests Chasam Sofer, that the people were opposed to settling outside of Eretz Yisroel because they were expecting the redemption to come at any time. Therefore, Yirmiyahu HaNavi had to come and instruct them to purchase homes and that it was not considered a sinful act to purchase homes and settle in Bavel. ■

1. באר היטב יו"ד סי' קע"ט.

2. שו"ת חת"ס יו"ד סי' קל"ח. ■

STORIES Off the Daf

Protesting a Chazakah

"שלוש שנים שאמרו הוא שאכלן רצופות..."

Many chassidim from all over Poland took care to spend the entire holiday of Sukkos immersed in Torah and yir'ah with their Rebbe, Rav Mordechai of Kuzmir, zt"l. They would learn together day and night, working hard to deepen their Divine service and their Torah mastery.

One day when they were learning chassidus together, the Rebbe opened the door of the adjoining room and said, "My children! It brings great joy to my heart to see you learning with such intensity this entire holiday."

But one of the chassidim turned to the Rebbe and said in a broken voice, "But Rebbe! While we are here with you, everything goes quite well. But what will

we do after the holiday when we are required to return home? Each of us will go back to his petty affairs and we will forget everything we have attained here!"

The Rebbe answered him back with powerful words of chizuk. "You are making a fundamental error my son. Know that in Bava Basra 29 we find that if a person was in possession of a field for three years and no one protested, no one else may claim that the field is his since the claimant should have protested sometime during the three years. The presumed owner no longer needs to keep any proof that the land is his since the fact that no one protested for three years is evidence enough.

"But if someone protested during the first three years that the new owner occupied the field, the field may be contested, since protesting nullifies a chazakah.

"The same is true regarding the yetzer hara. If a person is under the yetzer hara's thumb for a long period of time,

the yetzer gets a chazakah over the person and it is as if he owns the person, who must work exceedingly hard to overcome the evil within. But if the person protested before the yetzer had a chance to rule for too long, the yetzer does not establish a chazakah.

"So my children, if the protest you have lodged while you were here was strong enough, you have broken the yetzer's chazakah!"¹ ■

1. גדולת מרדכי—קאזמיר, עמי ק"ה ■

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Rava rules that if part of the land was not used during the three years that part of the land is excluded from the chazakah.

A qualification to this ruling is mentioned but subsequently rejected.

A related incident is presented and R' Nachman and Rava disagree whether it is the occupant or the claimant who has the burden of proof. ■