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בבא בתרא ל׳
CHICAGO CENTER FOR Torah & Chesed
בס״ד

OVERVIEW of the Daf

1) Chazakah (cont.)

The Gemara notes that the positions adopted by Rava and R' Nachman in the previous incident seem to contradict the positions they adopted in other contexts.

The contradictions are resolved.

An incident is presented that discusses whether the original owner can claim that he was unaware that someone was establishing a chazakah on his property.

Another incident teaches that the one making the chazakah must be able to assert that he bought the property from the previous owner and it is not sufficient to claim to have bought it from someone who claimed that he bought it from the original owner.

Another incident teaches that the previous owner's advice to the occupant who purchased the property does not prove that he had relinquished rights to the field since it is possible that he did not want to pursue the actual thief.

It is noted that this ruling seems to follow Admon in his dispute with Rabanan.

It is explained how this ruling could even be consistent with Rabanan.

Another similar incident is presented.

Another incident teaches that people use the term "the years of chazakah" to refer to many years of chazakah.

The Gemara qualifies this ruling. ■

REVIEW and Remember

1. What was the point of dispute between Rava and R' Nachman concerning the preoperty of Bar Sisin?

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2. Is a claim by the previous owner that he was owner that he was unaware that someone was occupying his field acceptable?

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3. Does proof that the previous owner advised the present occupant to purchase the field demonstrate that he is no longer owner of the field?

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4. Does an offer to purchase a field prove that he is not the owner?

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Today's Daf Digest is dedicated
By the Okner family
In memory of their aunt
מרת שושנה בת ר׳ שמשון ,ע״ה
Mrs. Rose Gale O.B.M.

Distinctive INSIGHT

The owner's returning one month each year

אמר ליה והא אית לי סהדי דכל שתא הוה אתית תלתין יומי

Reuven resided in a house for three years, and when Shimon, the previous owner, confronted him to evict him from his house, Reuven claimed that he had a chazakah. Shimon responded that although he admittedly had not protested, he had been out of town doing business for the three years (בשוקא בראי), and that he therefore had been unaware of Reuven's presence in his house. Reuven had witnesses that Shimon had, however, come back to the city for one month of each of the three years of the chazakah, and that Shimon had still not protested. Shimon retorted that even during those thirty days each year he was overwhelmed and busy with his business locally, and thus had still been unaware of Reuven's occupancy of the house. Rava ruled that the chazakah of Reuven was not valid, and Shimon's claim that he was busy with his business even when he was in town was legitimate.

Ritva notes that the claim of Reuven was that Shimon had been in town for thirty days *each year* and therefore should have been aware of the house's being occupied. Ritva explains that it was not necessary for Reuven to bring witnesses of Shimon's being in town thirty days of each of the three years, but it is enough if Reuven can produce witnesses that Shimon was in town at any point during the three years, and that he had not protested. In fact, it is not even necessary for Reuven to show that Shimon was in town for thirty days at all, as his being in town even one day without protesting would have been enough. The reason the claim was that he was in town thirty days each year was only that the actual case which occurred took place in that manner.

Ran, as well as many other Rishonim, proves from our episode that the original owner of a property does not have to be present for the entire three years of the chazakah and to be silent the entire time. We see from here that if the owner becomes aware of the new occupant residing in his property even at the end of the three years, and he is silent, the chazakah can materialize, and the owner can be confronted and asked why he did not react. He adds that if, however, the owner was present at the beginning of the three-year chazakah and he did not protest, but at the end of the period he was in a location where he could not issue his מחאה, the chazakah is not valid. The owner can claim that he did not protest originally because he was counting on doing so later, but the opportunity to react later eluded him.

Ketzos HaChoshen (143:2) challenges this conclusion, because if this was true, the case would not have been illus-

(Continued on page 2)

(Insight...continued from page 1)

trated in terms of the owner's being far away at the conclusion of the three years, but rather simply with his being nearby but being unable to protest due to his being exceedingly busy. ■

HALACHAH Highlight

Determining who has the burden of proof

דההוא דאמר ליה לחבריה כל נכסי דבי בר סיסין מזבינא לך

There was a person who said to his friend, "All the property that I purchased from Bar Sisin I am selling to you."

The Gemara relates an incident of one who told his friend that he is selling to him all of the properties that he (the seller) purchased from Bar Sisin. There was one piece of property that the seller claimed was from the seller's ancestral estate and was merely called, "the field of Bar Sisin." R' Nachman ruled in favor of the buyer and the seller would have to prove his claim. Rava disagreed by invoking the well known principle המוציא מחבירו עליו הראיה – the burden of proof is on the one who seeks to collect. Accordingly, since the land was in the possession of the seller, the buyer should have the onus to prove that it was included in the sale since he is the one who is seeking to collect the land. Rashbam[1] explains that according to R' Nachman since it appears as though the land was included in the sale, given that it is referred to as a land of Bar Sisin, the onus is placed on the seller to prove that it is not land he purchased from Bar Sisin. This explanation requires further elaboration.

Shulchan Aruch[2] rules that a professional slaughterer who made a mistake while slaughtering an animal is exempt from liability if he was not compensated for the job. Being that he was not paid for his work he is categorized as an unpaid watchman (שומר חנם) and as such, as long as he was not negligent, and we assume as a professional that he was not, he is exempt. What happens if the animal's owner claims that the slaughterer is not a professional and the slaughterer claims to be a professional? Who has the burden of proof regarding the slaughterer's status? Seemingly, the animal's owner who is seeking to collect from the slaughterer should have the burden of proof. Shulchan Aruch rules that it is the slaughterer who has the burden of proof. The reason is that we are faced with someone who damaged the animal of his friend. The damager should be liable but he is claiming that he is an exception to the rule of damages and is exempt. Halacha says that when someone makes an unusual claim to be exempt from liability he bears the burden of proof. Similarly, since the land is called by the name Bar Sisin it seems obvious that it was included in the sale, and if the owner makes the unusual claim that it was not included in the sale the burden of proof rests upon his shoulders. ■

1. רשב״ם לסוגיין ל. ד״ה כיון.
2. שו״ע חו״מ סי׳ ש״ו סע׳ ז׳. ■

STORIES Off the Daf

A confederacy of scoundrels

״השני נוח לי...״

A certain unscrupulous man had a terrible relationship with his wife yet he absolutely refused to divorce her. When he finally agreed to give a divorce in exchange for a large pay-off, she was overjoyed.

At the writing of the גט the presiding rav asked how to spell the name of the late father of the husband. "Yosef Chaim," he replied. His uncle was also present at the time and agreed that that had been the father's name.

After the divorce, the woman was horrified when her former husband claimed that his father's name had actually been only "Yosef" and that the divorce was therefore invalid. When they asked the uncle he also backed his nephew up, admitting that he had lied in beis din in order to get their hands on the money they had always suspected the hapless woman had secreted away.

When this case came before Rav Avraham Teumim, zt"l, he explained that at first glance it would seem clear that the divorce is presumed to be valid. Since in the case in question it was impossible to verify what the father's real name had been, the husband and uncle are not believed. The basis for this is the Tosefta's teaching that after witnesses have given testimony in beis din, they are not believed if they change their mind and claim they were lying in beis din, even if they give a plausible reason for testifying falsely.

But then he had second thoughts. "Yet in Bava Basra 30 we find that we do believe a person who was wicked enough to have violated lifnei iver[1] to gain by inducing someone else's loss. Why is our case different?"

But then he answered his own question. "Although in general we believe someone who admits to being a rasha, since if we did not a person could never bring a korban chatas as the Shita Mikubetzes states[2], this is only regarding himself. In our case, these two are trying to ensure that this woman never remarries by invalidating their earlier testimony that brought them a windfall. In such a case they are not believed. Instead, we suspect that they merely wish to continue ruining the life of this woman who was already ill-used!"[3] ■

1. עיין סמ״ע, סי׳ קמ״ו, ס״ק ל״ט
2. שיטה מקובצת, ב״מ, ג:
3. חסד לאברהם, אבה״ע, סי׳ ס״ה ■

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