

OVERVIEW of the Daf

1) Chazakah (cont.)

An incident is presented and Rabbah and Abaye disagree whether the occupant is believed because he has no reason to lie (מה לו לשקר) or perhaps that is not a valid claim against witnesses.

2) Changing a claim

In the incident the occupant changed his claim and Ulla and Nehardei disagreed whether a person can change his claim.

The Gemara notes a case where Ulla would agree that one cannot change his claim.

The Gemara also notes a case where Nehardei would agree that a person could change his claim.

The final ruling on the matter is that a person may change his claim.

3) Chazakah (cont.)

Two people claimed that a piece of land belonged to their father. One produced witnesses that it was his father's and he had been there for the years of chazakah and the second only had witnesses for chazakah but not that it belonged to his father.

R' Nachman and Rava disagree whether the land is given to the one who has evidence that it belonged to his father.

It is suggested that this dispute is similar to a dispute between R' Huna and R' Chisda.

The Gemara rejects this and states that all opinions agree about the position R' Chisda would adopt and the dispute is what R' Huna would hold.

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REVIEW and Remember

1. What is the issue debated by Ulla and Nehardai?

2. What was the point of dispute between Rava and R' Nachman?

3. Explain זילותא דבי דינא.
4. Why did R' Nachman issue a ruling that seemingly went against a Baraisa?

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By Dr. and Mrs. Berk
In loving memory of their father
ר' טובי' בן ר' משה

Distinctive INSIGHT

A חזקת כשרות is retained even after a suspicion has arisen
אמר רב הונא זו באה בפני עצמה ומעידה וזו באה בפני עצמה ומעידה

Two people came to court to argue about ownership of a piece of land. Although one of the litigants brought witnesses that the land had been owned by his family and that he had personally lived in the land the years of chazakah, the other also brought witnesses that he had resided in the land for the years of chazakah. Rav Nachman ruled that the testimonies regarding which of the litigants had been living there were contradictory and had to be discarded; the one who had testimony about the land's being owned by his family should be awarded the land. Rava pointed out to R' Nachman that being that both sets of witnesses were involved in a contradictory testimony, neither set retained any credibility. Therefore, even the statement regarding "the fathers" had to be dismissed.

The Gemara suggests that the views of R' Nachman and Rava can be matched with those of Rav Huna and R' Chisda, who discussed a case where two sets of witnesses contradicted each other, and we do not know which set is truthful and which is lying. Rav Huna holds that each of these sets of witnesses may come on their own and testify in another case. Rav Chisda declares that each set, even independently, has been tainted due to being involved in the earlier contradictory case, and neither may now come to testify, even by itself.

Rashbam explains that the reason Rav Huna allows each set to continue to testify in other cases is that each set of witnesses retains its status of being kosher (חזקת כשרות) until it is proven definitively to be liars. In his Commentary to the Mishnah, Rambam explains why the חזקת כשרות is retained even when a suspicion has been raised against them. If a chazakah would be weakened whenever a question would be registered against it, this would in effect mean that we would be reacting to every possibility that exists and allow doubt to control every status quo. This would be absurd. Rather, a chazakah is sustained and maintained until we have evidence or other proof that things have changed, and we do not allow doubt to shake our status-quo.

Regarding the Gemara's assumption that Rava must hold according to R' Chisda, Rava responds and explains that even R' Huna would agree with him. Although each set may come and testify on its own, that is only when they testify in a case other than the one in which they were contradicted. However, even R' Huna would agree that in our case, where the testimonies were presented together regarding whose father owned this land and who had just resided in it, once one aspect of the testimony is challenged, the other aspect is also suspect. ■

HALACHAH Highlight

Changing one's claim upon entering Beis Din

עביד איניש דלא מגלי טענתיה אלא לבי דינא

It is common for a person to not reveal his claims other than in Beis Din

The Gemara relates that despite the fact that Nehardai maintain that a person may not file one claim and then file another claim, they agree that a person may make one claim while outside of Beis Din and then advance a second, even contradictory claim in Beis Din. The reason is that it is common for a person to not want to reveal his claims other than in the presence of Beis Din. Rashbam¹ indicates that even if the occupant claims outside of Beis Din that a parcel of land belonged to his father rather than the previous owner's father, he can later claim in Beis Din that he (the occupant) purchased the land from the previous owner since any claim out of Beis Din is meaningless. Rabbeinu Yonah² disagrees and asserts that once the occupant claims, even outside of Beis Din, that the land belonged to his father rather than the father of the previous owner it is as if he is admitting that he did not purchase the land from the previous owner. Consequently, he may not claim in Beis Din that he purchased the field from the previous owner since that contradicts his original assertion.

Shulchan Aruch³ rules that any claim made outside of Beis Din has no legal standing and the litigant may present new claims in Beis Din even if they contradict the claims that were made outside of Beis Din. Vilna Gaon⁴ comments that the source for this ruling is the Rashbam cited earlier. Taz⁵ men-

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4) Reversing a decision of Beis Din

In this incident R' Nachman granted the land to the one who had proof that it was his father's but afterwards the other party produced evidence that the land had belonged to his father so R' Nachman reversed his earlier ruling without regard to the Beis Din's reputation.

R' Nachman's position is challenged that we are not concerned with the reputation of Beis Din.

Despite the fact that he accepted the challenge to his position he reversed the ruling and the Gemara begins to identify the source for his final ruling. ■

tions Tur who quotes Rabbeinu Yonah that once a person claims outside of Beis Din that the land belonged to his father rather than the father of the previous owner he may not later claim in Beis Din that he purchased the field from the previous owner. Taz writes that at first glance this ruling is surprising since the Gemara indicates that a person does not reveal his claims outside of Beis Din. Why then should we take what he states outside of Beis Din as significant? He answers that Rabbeinu Yonah is of the opinion that an admission outside of Beis Din that is to the litigant's detriment is the equivalent of one hundred witnesses and thus it is treated as though witnesses are testifying that the occupant admitted that he did not purchase the land. ■

1. רשב"ם ד"ה ומודו נמי וכן דייק מדבריו ר' יונה דלקמן.
2. עליות דר' יונה לסוגיין ד"ה ומודו נהרדעאי.
3. שו"ע חו"מ סי' פ' סעי' א'.
4. ביאור הגר"א שם אות ד'.
5. ט"ז שם סי' ע"ט סעי' ט'.

STORIES Off the Daf

Chezkas HaBatim

"חזקת הבתים..."

The Chofetz Chaim, zt"l, firmly opposed allowing secular studies into the yeshivos since he felt that this would severely compromise the learning. This was a very valid concern for his time and place, since any girl or boy who joined the secular "gymnasias" invariably left the path of Torah observance. It was not such a great leap to suspect that learning secular studies would be a harmful common denominator between students of the yeshivos and the secular high schools.

In addition, he felt that this would

damage a bochur's ability to attain Torah greatness, since one needs to focus solely on Torah in order to become a talmid chacham. Attaining greatness in Torah is hard enough without secular studies. As we find in the Gemara, only one in a thousand students who start learning reach the ability to pasken on their own. Who knows what effect secular studies would have on this?

But the Polish government insisted that the yeshivos at least teach Polish in their curriculum, which was damaging in itself and would obviously be a dangerous precedent. In order to nullify this decree the Chofetz Chaim travelled with Rav Elchonon Wasserman, zt"l, and the Imrei Emes of Gur, zt"l, each in a different car of the same train.

When they stopped at one place, a boy clearly of Ger-chassidic stock approached the Chofetz Chaim for a blessing. The Chofetz Chaim waved him on and said, "The Gerrer Rebbe is in the next car." But the boy was insistent that he had come for a brochah from the Chofetz Chaim, not the Gerrer Rebbe.

The Chofetz Chaim gazed at the child for a moment and said, "The Mishnah states in Bava Basra 31, חזקת הבתים, זה, אומר של אבותי של אבותי. We can also learn a great lesson from this mishnah: If one wishes for his bayis, his spiritual home, to be strong, he must hold on to the custom of his fathers. Insofar as we strengthen the mesorah of our fathers, we strengthen our own yiddishkeit."¹ ■

1. מאיר עיני ישראל, ח"ג, ע' 520 ■