

## OVERVIEW of the Daf

### 1) Acquiring property from an idolater (cont.)

Rava suggests an exception to the rule that a Jew who purchases property from an idolater must produce a deed to establish a chazakah.

This suggestion is challenged and Rava revises his statement.

### 2) Behaving with chutzpa

R' Yehudah rules that one who declares that he is going to cut down a friend's tree because he bought the tree from him is believed since people do not otherwise act with such chutzpa.

### 3) Usage that establishes a chazakah

Six statements are quoted and some with additional elaboration regarding the type of usage that constitutes a chazakah.

### 4) Slaves

The Gemara challenges the Mishnah's statement that a chazakah could be established on slaves.

Rava explains how it is possible to make a chazakah on a slave.

Rava asserts that one could make a chazakah on a slave who is an infant.

The novelty of this ruling is explained.

An incident is cited that touches upon the issue, mentioned earlier, of making a chazakah on living creatures.

### 5) The dispute between R' Yishmael and R' Akiva

The Gemara suggests a possible explanation of the dispute between R' Yishmael and R' Akiva.

This suggestion is rejected in favor of another explanation.

### 6) Establishing a chazakah by plowing

A Baraisa presents a dispute whether one could establish a chazakah by plowing.

R' Chisda identifies the opinion which maintains that

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## REVIEW and Remember

1. Why is a chazakah not established if the occupant ate orlah for three years?

2. Explain גודרות אין להן חזקה חזקה.

3. What are the respective rationales of the dispute whether plowing a field established a chazakah?

4. What is the point of dispute between Rav and Shmuel?

## Distinctive INSIGHT

### Consuming produce of ערלה or כלאים

ואמר רב יהודה אכלה ערלה אינה חזקה. תניא נמי הכי אכלה ערלה שביעית וכלאים אינה חזקה

The text found in our Gemara is the text which Rashbam verifies as being accurate, and it tells us that if one entering a land consumes its produce as ערלה, that year of consumption does not contribute to the chazakah. Rashbam explains that the reason for this is that the owner of the field may notice someone eating the ערלה or כלאים produce, but he might not care to protest, as these fruits are forbidden to eat, and the owner does not feel that he must stop this person who is taking something which is of no value for himself. Similarly, consumption during shemitta does not accrue toward a chazakah because the owner understandably cannot protest against the one consuming the land's produce and demand that he leave.

Tosafos also has the text of Rashbam. He explains that the the chazakah does not materialize when the consumption is ערלה because the occupant is not using the land as would a true owner. This is just a grab and attempt to use the land in a manipulative manner. The owner is not intimidated by this seizing of the fruit.

Rabeinu Chananel has a text which reads that consumption of ערלה fruits is a חזקה (הוי חזקה). Tosafos explains that Rabeinu Chananel must hold that the person is "eating" or using the branches of the trees, and not the fruit itself. The branches are not prohibited from benefit even during the years of ערלה of shemitta, and the כלאים is dealing in a case where the branches pre-dated the prohibited introduction of the mixed species, and the branches did not yet grow the additional amount which would constitute כלאים for them.

Ramban writes in the name of Rav Hai Gaon that consumption of prohibited branches does result in a chazakah, but only in reference to כלאים. The reason is that the owner does not necessarily care about the branches themselves, but he should have protested in order to allow himself to clear away the prohibited growth and to plant permitted plants. In regard to shemitta and ערלה nothing beneficial could have been done even if the branches are removed, but the כלאים growth could be cleared. ■

Today's Daf Digest is dedicated  
 In loving memory of the yahrzeit of our brother  
 Isaac Yosef ben Shmuel.  
 by Helene and Alan Jay Gerber

# HALACHAH Highlight

## A migo of audacity – מִגּוֹ דַּהְעָזָה

דאי בעי אמר לקוחות הן בידוי

For if he wanted he could claim that he purchased them

The Gemara relates that a person who seizes his friend's goat with the claim that the goat was eating his barley is believed to claim compensation for damages up until the value of the seized goat. The reason, explained the father of Shmuel, is that he has a *migo* that if he wanted he could claim that he is the owner of the goat. Rashba<sup>1</sup> points out that there is an inherent weakness to this *migo*. The barley owner's assertion that the goat damaged his field is a claim that the goat owner has no way to confirm or deny. In contrast, the claim that the barley owner is the owner of the goat is known by the goat owner to be patently false. For the barley owner to make a claim that is known by the other litigant to be patently false is called a **מִגּוֹ דַּהְעָזָה** – a *migo* of audacity. Whether or not this weakness expresses itself in halacha is subject to a debate amongst the Rishonim.

Shach<sup>2</sup> cites authorities who maintain that a **מִגּוֹ דַּהְעָזָה** is only effective to exempt a person from payment but is not effective when it comes to exempting one from taking an oath. Tosafos<sup>3</sup> disagrees and asserts that there is never a difference between the halacha regarding the monetary claim and the obligation to take an oath. The only distinction that will have bearing on the case is whether the two parties have had a good relationship leading up to their present disagreement. If the two parties had a good working relationship, e.g. one was a

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plowing establishes a chazakah as that of R' Acha.

R' Ashi reports that other scholars of his generation agree that plowing establishes a chazakah.

R' Nachman explains the rationale behind R' Acha's position as well as the dissenting position.

R' Nachman bar R' Chisda cited authorities who maintain that plowing does establish a chazakah.

R' Nachman bar Yitzchok cited other authorities who maintain that plowing does not establish a chazakah.

The sources that R' Yishmael, R' Akiva, Rav and Shmuel hold that plowing does not establish a chazakah are cited.

Abaye identifies the practical difference between the position of Rav and the position of Shmuel.

### 7) Establishing a chazakah

Abaye infers from the opinion of R' Yishmael that according to Rabanan if a person eats ten out of thirty trees over a three year period he has established a chazakah on the field. ■

watchman or a hired worker for the other; the *migo* claim that involves audacity is not effective since it is assumed that people do not demonstrate such audacity to someone with whom they have a good relationship. If, however, they did not have a good relationship there is every reason to believe that he would demonstrate this degree of audacity and the *migo* claim is considered effective to exempt him from the monetary claim as well as from a possible oath. ■

1. שו"ת הרשב"א ח"ב סי' רע"ג.

2. ש"ך סי' פ"ב דיני מִגּוֹ סק"ו.

3. תוס' בבא קמא ק"ז. ד"ה עירוב פרשיות ע"פ החזו"א חו"מ ה: ט"ו. ■

# STORIES Off the Daf

## Constant supervision

"ומידא לידא משלמי..."

The Chofetz Chaim, zt"l, was a paradigm of living emunah. He would often say that even if one is beset with difficulties he must never say that things are bad, since such statements contradict the truth that everything Hashem does is for our good. Instead, one should say that things are very bitter, since medicines are also bitter but they are certainly good for a person since they heal him. In addition, one who complains that things are bad has lied, since he says that what is

ultimately for his good is bad simply because he does not see how it is for the good.<sup>1</sup>

It is not surprising that when Rav Michel Shurkin, shlit"a, asked Rav Yisrael Portnoy, shlit"a, what he learned in Radin, his simple reply comprised a single word: "Emunah."<sup>2</sup>

The Chofetz Chaim would say over a vort that he enjoyed in the name of the bathhouse attendant in Radin. "The verses states, **וְאֵנַחְנוּ עִם מְרַעֲיָתוֹ וְצֹאן יָדוֹ** — And we are the people of His shepherding and the flock of His hand.' The intention of **צֹאן יָדוֹ** is that He always guards us without a moment's break. This parallels the teaching in Bava Basra 36, that the people of Nehardea

would not leave their sheep to find their own way to the shepherds' houses unsupervised for fear of thieves. Instead, the owners would go to the shepherds' shacks and hand over the sheep from hand to hand.

"This is the meaning of the verse. Divine providence does not leave the Jewish people for even an instant. This is similar to the Gemara in Kidushin 72. There we find that before Eli left the world, Shmuel's light had already begun to shine, since Hashem does not leave the world bereft of tzaddikim to protect and guide us."<sup>3</sup> ■

1. הצדיק רבי שלמה, ע"י י"ח

2. מגד גבעות עולם, ח"א, ע"י ע"ג

3. מאיר עיני ישראל, ח"ו, ע"י 345 ■