

OVERVIEW of the Daf

1) Establishing a chazakah (cont.)

Abaye concludes proving 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.

Abaye adds two qualifications to this conclusion.

2) Selling land to one person and trees to another

R' Zevid rules that when a seller sells his land to one person and the trees on that land to another the tree owner has no rights to any of the land.

R' Pappa rejects this ruling and rules that the one who acquires the trees also gets half of the land.

The Gemara rules that if one sells his land but retains for himself the trees it is understood that he retains for himself some land as well.

It is noted that all opinions would agree with this ruling.

The Gemara states that if someone sold the trees but retained for himself the land the question of whether the purchaser of the trees can replant other trees is subject to a dispute between R' Akiva and Rabanan.

3) Establishing a chazakah (cont.)

Nehardai rules that one who uses a field in which trees are planted too densely does not establish a chazakah.

Rava challenges this ruling and suggests a revised version of this ruling.

R' Zeira notes that Rava's ruling is subject to a dispute between Tannaim.

4) Selling a tree

Nehardai rules that one who purchases a tree acquires the land beneath the tree. ■

REVIEW and Remember

1. According to R' Pappa, what is acquired by one who makes a chazakah on trees when another person makes a chazakah on the land?

2. Explain מוכר בעין יפה.

3. What is the point of dispute between R' Akiva and Rabanan concerning one who sold trees but retained for himself the land?

4. What is included in a sale of a palm tree?

Distinctive INSIGHT

Too many trees in the area—רצופין

אכלן רצופין אין לו חזקה

The Gemara is discussing the details of whether a chazakah can be established for a field of trees which are planted too close together. No more than ten trees can be planted in an area of fifty amos by fifty amos square. Nehardai states that a chazakah cannot be created if the current occupant harvests the fruits of these trees for three years. This is not how a true owner uses his trees or his land. Trees planted in such a close proximity cannot grow properly, and they are destined to be uprooted.

Rava disagrees with Nehardai, and he holds that a chazakah can be established by harvesting trees growing within a too dense arrangement. Rava recognizes that a valid statement was made regarding trees growing too close together, but it was in regard to a sale, not a chazakah. The statement was that if someone sells more than ten trees within a בית סאה to a buyer, the buyer only owns the trees, but not the land upon which they are growing.

Rashbam and ר"י מיגש explain the reason for Nehardai. The land cannot supply enough nurturing to support the overgrowth of trees. An owner would correct the situation rather than allow his trees to suffer and his land to become depleted of its nutrients. The one taking from the fruits is not conducting himself as would a true owner. ר"י מיגש says that the occupant is therefore not actually benefitting from the land, and this is why the owner can claim that he did not bother to protest.

Rava argued that we found earlier (28b) that a chazakah can be established in a field used to grow animal fodder (hay), although this type of usage is repeated every thirty days, and this depletes the land of its nutrients. It must be that deriving benefit even for the moment is enough. If a chazakah works in that type of field, it should work in an overcrowded tree field, as well.

Rashbam understands that Nehardai hold that because an overcrowded tree field is destined to be cut down, most people would not use the field under such conditions. The claim of the owner is that the occupant used the field in a manner which most people avoid. Rava's question from the fodder field was that we see that even where only a few people use a field in a particular way, a chazakah may be established.

HALACHAH Highlight

Selling but keeping for oneself the trees

שיורי שייר דאי לא שייר לימא ליה עקור אילנא וזיל

He retains for himself land for if he didn't the owner could say uproot your trees and go

It is evident from the Gemara that one who sells a field but retains for himself the trees also retains for himself the land beneath the trees so that the purchaser should not be able to demand that he remove his tree. An apparent difficulty with this is that the Gemara (81a) teaches that one who purchases two trees does not acquire any land with his purchase and thus when the trees die he has no rights to the land where the trees stood. The implication of this Gemara is that the tree owner has no rights after the trees die but while the trees are still standing the land owner may not insist that he remove his trees. This seems to contradict our Gemara that implies the land owner would be able to demand that the tree owner remove his trees. Ramban¹ answers that when someone purchases two trees the landowner may not demand that he remove the trees since if he had that right it would emerge that it was not a sale of trees but rather it was a sale of wood. In our Gemara where someone is selling his land and retaining for himself the trees, it might be possible that his intent is to keep for himself the wood rather than the trees.

(Insight...continued from page 1)

Rashbam and Ritva also explain that because trees in this configuration are destined to be removed, their growth is not standard, and the field is not serving their needs. Therefore, taking fruit from the trees does not indicate anything about ownership of the land. Rava disagrees and holds that harvesting the fruit is considered utilizing the land, no worse than where a chazakah is established when a field is used to grow fodder. ■

Ketzos Hachoshen² asks that according to the rationale of Ramban the seller only intends to keep for himself some land so that the land owner should not be able to demand that he remove his trees but how do we know that he also intended to be able to use the land to plant new trees when the old ones die? He answers, based on the Gemara (81b), that when a person purchases two trees we are uncertain whether the purchase included land. Due to that uncertainty halacha dictates that the land should remain in the possession of the previous owner. Similarly, when someone sells his land and retains for himself two trees we do not know whether he retained for himself the land. Accordingly, we leave the land in the possession of the last owner who in this case is the seller and thus he has the right to plant new trees when the old ones die. ■

1. רמב"ן ד"ה דאי לא.

2. קצות החושן סי' רט"ז סק"א. ■

STORIES Off the Daf

Conflicting Chazakos

"זיה החזיק באילנות וזה החזיק בקרקע..."

Baking hand-made shmurah matzos is a very time-consuming and difficult job. In one bakery, a certain person had a chazakah to bake matzos every year on Shushan Purim, the day after Purim everywhere except in places surrounded by a wall that dates back to the time of Yehoshua bin Nun. This man's friend had a chazakah to bake every Sunday after Purim. This arrangement went on for quite a while, until one year when Shushan Purim fell out on Shabbos.

The man who baked the matzos yearly on Shushan Purim could not bake

on Shabbos, and figured that Sunday would be his time to bake since it is the next opportunity. Not surprisingly, the man with the chazakah to bake matzos on the Sunday after Purim also wished to bake on his regular day. Although it was actually possible to find another day for one of them to bake on, both had planned on baking that Sunday and each insisted that it was his right.

This question came before Rav Yaakov Stern. He answered, "This case is similar to what the Ohr Someach, ז"ל, taught based on Bava Basra 37. Rav Zvid suggests there that a certain man sold his field to one buyer and the trees of his field to another consumer, but Rav Papa objects to this possibility since if that were the case the purchaser of the field could demand that the man who

bought the trees uproot and remove them since the field is his. Rav Papa reasons that this cannot be, since clearly the person who sold to the both of them had sold with an ayin yafeh, with a 'good eye,' and certainly had not intended that the trees be uprooted.

"The Ohr Someach applies this to chazakos in general. In our case, since one of the men has a chazakah to bake on Sunday, we allow him to bake on Sunday. The other person has already missed his day, and he is the one who must wait. But he should be provided with the next possible day, even Monday if this is possible, since this is the closest thing to fulfilling his particular chazakah." ■

1. חלקת יעקב, או"ח, סי' ר"ג. ■

