

OVERVIEW of the Daf

1) A hidden gift document (cont.)

Ravina and R' Ashi disagree about the status of a hidden gift document where the giver did not give any explicit instructions.

The Gemara rules that we are concerned that the hidden gift document may, in fact, be invalid.

2) **MISHNAH:** The Mishnah rules that together with a chazakah it is necessary to have a claim that explains how the occupant took ownership of the field.

3) Explaining the Mishnah

The Gemara elaborates on the novelty of the Mishnah's ruling.

The Gemara presents a number of incidents in which occupants were removed from the land they were occupying because they did not present a proper claim to the land.

Abaye and Rava disagree about a detail related to R' Chiya's position in the last position.

4) Establishing a chazakah through multiple occupants

The Gemara rules that three buyers can make an effective chazakah.

Rav asserts that this is true only if they all purchased the land with contracts.

The rationale behind Rav's ruling is unsuccessfully challenged. ■

REVIEW and Remember

1. What is a *חזקה שאין עמה טענה*?
2. What is the halacha regarding one who mistakenly relinquishes a right?
3. What was R' Yehuda's response to R' Kahana's allegation that he has a letter that halacha does not follow R' Shimon ben Elazar?
4. How do three purchases combine to make a chazakah?

Today's Daf Digest is dedicated
 By Dr. & Dr. Ron Sanders
 Mr. & Mrs. Binyomin Sanders
 In loving memory of their mother
 לע"נ מרת רחל בת ר' יוסף הכהן, ע"ה

Distinctive INSIGHT

When does a chazakah need to be accompanied by a claim?

כל חזקה שאין עמה טענה אינה חזקה

The Mishnah issued a general statement teaching that a chazakah is only valid if it is accompanied by a legal claim or explanation how the occupant entered into the land. As the Mishnah explains, if, when the person was asked why he is in the land, he says that he found it empty and no one ever asked him to leave, even if he was there three years uncontested, his chazakah is baseless. The chazakah is only valid if the occupant says, for example, that he bought the land, or it was given to him as a gift.

Although the example given in the Mishnah is regarding establishing a chazakah for land, there is debate whether this rule applies to establishing ownership for movable objects (*מטלטלין*) as well. Rabeinu Yona (to 28b) writes that this rule applies only to land. However, if Reuven is in possession of an item which he claims as his own, and Shimon claims that the item belongs to him, Reuven who has possession can decline to respond and simply maintain his status quo of being the owner. Here, possession is enough of a proof to allow Reuven to keep the object.

K'tzos HaChoshen (133:1) maintains that the rule we find in the Mishnah applies not only to land, but also to movable objects. If someone is confronted and his possession of an object is questioned, once he admits that it previously belonged to the challenger, he must provide an explanation how he has become the owner in order to substantiate his possession of the item.

Chidushi HaRi"m notes that the Mishnah states that without a claim "the chazakah is not a chazakah." Apparently, the problem is not that the chazakah is not good, but rather that without a claim the occupant will fail to establish his ownership. Why did the Mishnah not say just that— "it is not his," rather than say "the chazakah is not a valid chazakah"? He explains that regarding land, once he has no claim, the occupant who says, "No one ever asked me to leave," will lose the land to the *מערער*. His chazakah becomes meaningless. However, regarding movable objects, even without a claim, the one who possesses the item is still holding on to it, and even without a claim he would keep it by virtue of his being in possession of the object. ■

Today's Daf Digest is dedicated
 Mr. and Mrs. Myron Cherry
 In loving memory of their sister
 Rita Cherry o'b'm

HALACHAH Highlight

Can a deaf-mute, child or insane person establish a chazakah?

כל חזקה שאין עמה טענה אינה חזקה

A chazakah that is not accompanied by a claim is not a chazakah

Shulchan Aruch¹ cites Rambam² who writes that someone who is deaf-mute, insane or a child cannot prove ownership of land by using it for three years because it is considered as though they are creating a presumption of ownership without a claim (חזקה שאין עמה טענה). Magid Mishnah³ questions this ruling since Rambam cannot mean that the deaf-mute, insane or minors cannot acquire property since it is clear that they can acquire property. It must be that the reason these people cannot make a chazakah is that they cannot make a claim like others and Biblically they do not have the ability to purchase property.

Ketzos HaChoshen⁴ challenges this explanation. Although it is true that these people cannot Biblically purchase property, nevertheless, they can Biblically be the recipient of a gift of property, and as such there is no reason they should not be able to establish a chazakah by claiming that the land was given to them as a gift. Therefore, Ketzos suggests that

the reason these people cannot establish a chazakah is based on the explanation offered by Rambam. Rambam explained that these people cannot establish a chazakah because they do not have a "claim." This is similar to the ruling found in the Gemara Shavuos (38b) which teaches that one is not required to take an oath as a result of a claim filed by someone in one of these three categories. Accordingly, since they cannot file a claim they can never establish a chazakah since our Mishnah teaches that a valid chazakah requires an accompanying claim how the occupant became the owner of the property.

Nesivos Hamishpat⁵ suggests an alternative explanation for this ruling. The whole basis of a chazakah is that the occupant can claim that he purchased the land and since three years have passed he lost the contract with which he purchased the land. Since people in these three categories do not have the ability to purchase land with a contract they cannot make the claim needed to establish a chazakah, namely, "I purchased the land from you and I lost the contract." ■

1. שו"ע חו"מ סי' קמ"ט סעי' י"ח.
2. רמב"ם פ"יג מהל' טוען ונטען ה"ב.
3. מגיד משנה שם.
4. קצות החושן לשו"ע הנ"ל סק"ה.
5. נתיבות המשפט שם סק"ו. ■

STORIES Off the Daf

Mistaken Mechilah

"מחילה בטעות הוא..."

Acertain man had a counterfeit ring in his possession. As is often the case with such trinkets, it looked pretty impressive since only an expert could have determined that it was merely a cheap trinket. A fellow merchant noticed the ring and asked to buy it, offering a price that was way above the value of the ring.

The owner of the ring figured that this was a perfect opportunity to make a great joke. He said, "But I will take responsibility if it turns out to be a fake." Of course this sounds as though he himself was unsure when in truth he was quite certain that the ring was phony.

To his surprise, the potential buyer waved his offer aside. "I have no need of any guarantee of yours," he said decisively.

The two made a kinyan shortly afterward, and the word got out that someone had paid ten times the value of a ring he had thought was gold but was actually an inexpensive fake. The merchant who had sold the ring offered to give a full refund but the glum purchaser said that he was afraid that this was not so simple. "You offered a guarantee and I rejected it, so I suspect that I am not entitled to a refund at all. I certainly have no desire to accept a gift from you and perhaps I will learn not to be overly confident in the future."

But the two went to the Shvus Yakov, ז"ל, just to make certain. "I don't see any shadow of a doubt in this case," replied the Rav. "The purchaser

is certainly entitled to a full refund since what he said was based on a mistaken premise. We find a similar thing in Bava Basra 41. There we see that when Rav Anan rebuilt his walls he accidentally did so on his neighbor's property. When Rav Nachman ordered him to tear it down he protested that the neighbor had helped him erect the fence—this shows that he allowed him to build it where it was. However, Rav Nachman refused to accept this, since the neighbor had clearly not realized that the fence had been built in his land. Therefore, his mechilah is meaningless.

"So too in our case. Your mechilah was a mistake, since it is clear that no person would purchase what is counterfeit. It is obvious that you deserve to be reimbursed."¹ ■

1. שו"ת שבות יעקב, ח"ב, ס' קס"ו. ■