

OVERVIEW of the Daf

1) Establishing a chazakah through multiple occupants (cont.)

Rav's ruling that one could collect a guarantee from encumbered property even if there was no contract to the sale is unsuccessfully challenged.

A Baraisa is cited that discusses the validity of a chazakah made through the use of the property by different people.

The implication that the purchase of property becomes public knowledge is unsuccessfully challenged.

2) MISHNAH: The Mishnah begins with a list of people who cannot make a chazakah on property and concludes by differentiating between the chazakah that indicates ownership and the chazakah that is an act of acquisition.

3) Partners and craftsmen

Shmuel's father and Levi assert that partners and craftsmen cannot establish a chazakah whereas Shmuel maintains that a partner can establish a chazakah.

R' Abba notes that Shmuel is on record as giving a contradictory ruling.

The contradiction is resolved.

Ravina offers an alternative resolution to the contradiction.

The Gemara wonders about Shmuel's intent when he stated that a partner is treated the same as one who enters a property with permission.

R' Nachman in the name of Rabbah bar Avuha explains Shmuel's intent. ■

REVIEW and Remember

1. Why does a person borrow money privately?

2. What are the two types of חזקה?

3. What is the point of dispute between Shmuel and his father?

4. What was Shmuel's intent by his statement that a partner is considered like one who entered the property of another with permission?

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 לע"נ ר' אלחנן בן ר' יהודה ע"ה
 By the Schwabacher Family

Distinctive INSIGHT

Closing or locking the door to show ownership

נעל וגדר ופרץ כל שהוא הרי זו חזקה

The Mishnah teaches that transfer of land is formally effected when the receiver "locks, fences in or creates an opening" for the field. What is the definition of "נעל—locking"?

Many Rishonim explain that this means that the receiver simply closes the door of the house or the fence around the field. Some Rishonim say that building a doorway or even installing a lock on a pre-existing door is also adequate, as any one of these actions satisfies the guidelines of "locking or fencing-in."

In reference to acquiring the property of a convert who dies without heirs, Rashbam (later, 53a, ד"ה והשתא) explains that the act of נעל refers to sealing a breach in the doorway, installing a lock for the door, or building and installing a door for the property. These are formal acts of construction and establish one's position as an owner. Simply closing a door or even locking the door that is already there are not significant tasks which indicate ownership. These would merely be efforts to secure the property and protect it from intruders. This is something which anyone is obligated to do for another Jew if he sees his property at risk.

ר"י and ר"א understand that the opinion of Rashbam is not only true in regard to acquiring the property of a convert, but it is also true regarding buying or receiving a gift. Closing a door is not enough of an act to establish ownership. However, Lechem Mishnah (to זכיה ב:ג ומתנה ב:ג) writes that Rashbam's comment was only said in reference to acquiring the property of a convert, but when buying or receiving a gift, Rashbam would agree that even closing a door does indicate a חזקה.

Rambam (Hilchos Mechira 1:10) rules that if the door to the property was open when the sale took place, the

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HALACHAH Highlight

Establishing a chazakah on a seat in shul

ולא לבן בנכסי האב

Nor can a son establish a chazakah on the property of his father

There was once a man who sat in his father-in-law's seat in shul while he was alive and even after his death he continued to sit in his seat for the time necessary to establish a chazakah. Some time later his brothers-in-law claimed that as heirs to their father, the seat in shul is their inheritance. The son-in-law claimed that the deceased gave him the seat privately while he was alive. Furthermore, since he has been sitting in the seat for the time necessary to make a chazakah and no one protested, his chazakah is valid and the seat should be pronounced his. Since the parties could not come to a conclusion on their own they turned to the author of Teshuvos Maseis Binyomin¹ for guidance.

In the first part of his analysis, Maseis Binyomin examines whether the son-in-law's claim that his father-in-law gave him the seat is an acceptable claim. Land is acquired by cash, contract or chazakah and the son-in-law is not claiming to have made any of those acts of acquisition on the seat. The mere fact that he has been sitting on the seat for more than three years does not constitute a chazakah to acquire the property since he did not perform any action to the land itself. He ultimately concludes that the son-in-law did establish a valid chazakah since each object has its meth-

(Insight...continued from page 1)

buyer must close the door and reopen it. Just closing it is not enough for this purpose. Beis Yosef (C.M. 192) explains the opinion of Rambam in a number of ways. It could be that Rambam does not mean that the buyer must reopen the door to show ownership. Rather he means that once he closes the door, even if he reopens it, his act of closing the door was enough to acquire the property. Or else, Rambam might mean that if he simply closes the door, it might seem that he is doing so only as a messenger of the owner. However, once he closes and reopens it, we see that he did so on his own volition, and he has acquired the property. ■

od of use and since the normal use of a seat in a shul is sitting, that is considered the means by which a chazakah would be established. He does, however, raise another issue that undermined the validity of the chazakah established by the son-in-law. Our Gemara teaches that a son can not establish a chazakah on his father's property. Poskim extend this principle to all relatives and explain that since it is common for people to grant permission to their relatives to use their property, even for a long period of time, the mere use of the property is not sufficient to establish a chazakah. Therefore, the use of his father-in-law's seat for more than three years does not establish a chazakah and the children of the deceased have a right to take possession of that seat. ■

1. שו"ת משאת בנימין סי' ל"א. ■

STORIES Off the Daf

Choosing a Chazan

"מנכסים בני חורין..."

One time, the Shach suggested that the destitute Be'er Hagolah, zt"l, be appointed chazan for the yomim noraim in a certain town. When the people there heard him sing, however, they were appalled. He could hardly carry a tune and was certainly unfit to lead their community in prayer!

When they pointed this out to the Shach, he said, "But so few chazanim chosen for the yomim noraim actually fulfill all of the many criteria as prescribed in the Shulchan Aruch. While

it is true that he doesn't have a voice to speak of, you still have an opportunity to hire a chazzan that fulfills every other requirement!"¹

In another town, the community's veteran chazan was getting older and his voice started to weaken. When people began to notice that his Torah-reading was growing fainter from week to week, they decided to replace him with a younger candidate who had a stronger voice.

The veteran chazzan did not lack for money but was annoyed with what he felt to be severe mistreatment. He went to Rav Eizel Charif, zt"l, for justice. "Do I not have an irrefutable chazakah?" asked the man bitterly.

Rav Eizel empathized with the old-

er man, but realized that he could not be chazzan at the cost of people being unable to hear the reading. He gently quipped, "You are mistaken. In Bava Basra 42 we find that for a chazakah to be completely valid it must be accompanied with a 'kol'—public knowledge. Although this literally means that in order to collect from bnei chorin people must know that a property was sold, we can learn a separate lesson from this: a chazan only maintains his chazakah as long as he still has a robust voice!"² ■

1. כן שמעתי מדודי, רב שמחה גולשבסקי ז"ל

2. רבי אייזיל חריף, ע"י 27 ■