

OVERVIEW of the Daf

1) Establishing a chazakah on ones wife's property (cont.)

A Mishnah was cited that taught that a woman's sale of three types of property is voided because we assume that she did not truly intend to sell the property. The Gemara searches for the case that is excluded and concludes that it excludes the case of melog property.

This explanation is unsuccessfully challenged from a statement of Ameimar.

Another explanation of the statement of Ameimar is presented, i.e. Ameimar follows the position of R' Elazar quoted in a Beraisa.

The Gemara cites and explains at length the Beraisa to explain Ameimar's position.

Rava explains the rationale of R' Elazar's position in the Beraisa.

Rav rules that a married woman must protest someone's presence on her land.

Rava explains that Rav was referring to protesting after the husband changed the physical characteristics of the land.

Rava's explanation is challenged.

Two alternative explanations are presented to resolve the challenge.

R' Yosef suggests another resolution to the challenge to Rav's ruling that a married woman must protest someone's presence on her property.

2) Making a chazakah on a married woman's property

Rav rules that one cannot establish a chazakah on a married woman's property. ■

REVIEW and Remember

1. What is the consequence of a husband and wife selling her melog property?

2. What is the halacha of יום או יומים?

3. How does Rava explain Rav's ruling that a married woman must protest someone's presence on her property?

4. Is it possible to establish a chazakah on a married woman's property?

Today's Daf Digest is dedicated
 l'ilui nishmas David ben Yacov
 David Goldberg, Los Angeles, CA

Distinctive INSIGHT

A husband's chazakah in his wife's property

והאמר רב נחמן אמר רבה בר אבוה אין חזקה לנוקין

The Mishnah (42a) taught that a husband cannot establish a chazakah of ownership of his wife's property. In the Gemara, Rav says that a married woman "must protest" (צריכה למחות) to prevent a chazakah from occurring. This ostensibly indicates that a chazakah may be established against her property. In order to resolve these statements, the Gemara points out that the husband may, in fact, establish a chazakah in his wife's property, but only if certain circumstances are present. If he occupies the land in a normal manner, no chazakah can take hold, as the Mishnah ruled. If, however, the husband digs pits and caverns in the land in a destructive manner, and the wife is silent, the husband can claim that he bought the land from her, and he lost the document after noting her lack of protesting about the digging. This is the case in which Rav stated that the woman must protest in order to prevent the chazakah.

The Gemara immediately questions this distinction, because Rav Nachman in the name of Rabba bar Avuha taught that a chazakah cannot occur where damage is done (אין חזקה לנוקין). Rashbam learns that this means that when someone uses a field in a destructive manner, the owner can explain that the reason he did not protest against the foreign occupant in his land was that the occupant was not using the land as would a true owner. How, then, can the husband establish a chazakah in his wife's field specifically by using it in a destructive manner?

The Gemara answers that Rav Nachman actually had taught that when damage is done to a field we do not need three years for a chazakah to be established (אין דין חזקה), because the owner is expected to react immediately upon seeing his field being damaged. Here, too, the husband can establish a chazakah, and the woman's silence results in the chazakah occurring immediately.

Most Rishonim learn that Rav Nachman's rule אין חזקה לנוקין was not said in reference to residing in a land, but rather in reference to someone causing a nuisance in his land (causing smoke or a bad odor). When a neighbor later protests that he cannot live with the smoke or odor,

(Continued on page 2)

Today's Daf Digest is dedicated
 L'zecher nishmas our grandmother
 עלקה בת שרה ע"ה
 By Eliezer and Breena Freid

HALACHAH Highlight

The disqualification of a grafted esrog

ר' אלעזר אומר שניהם אינן בדין יום או יומים

R' Elazar says that neither one of them is subject to the law of "a day or two."

Poskim¹ rule unequivocally that a grafted esrog may not be used for the mitzvah even בדיעבד. A number of reasons are suggested by later authorities to explain the reason a grafted esrog is unfit for the mitzvah. Taz² suggests that the disqualification is based on the fact that the esrog is considered deficient (חסר). Since the esrog is a mixture of an esrog and a lemon it is by definition not a whole esrog. Maharam Alshich³ also explains that a grafted esrog is disqualified because it is considered deficient. He cites as proof to this the Gemara later (137a) which discusses the case of two brothers who inherit an esrog. The Gemara rules that they cannot fulfill the mitzvah as partners since the part that belongs to one brother is considered deficient from the part of the esrog that is owned by the other.

Teshuvos Bais Shearim⁴ rejects this approach and asserts that the disqualification of an esrog that is jointly owned is not because it is considered deficient; rather it is because one must have exclusive ownership (לכס) of the esrog in order to fulfill the mitzvah. Support for this approach is found in our Gemara that discusses the status of a slave that is sold for thirty days. The Gemara rules that the slave is not considered the property of the seller or the buyer since it is not the

(Insight...continued from page 1)

the one causing it cannot claim that he bought the rights to continue this offensive condition. This is where we say "אין חזקה לנזקין". We must understand, however, how this rule is applied to question the case of a husband digging a pit in his wife's field. ר' מיגש explains that we see that a previous owner who is confronted with a nuisance need not react immediately, and his later reaction is accepted. So, too, the Gemara thought that a woman who does not react instantaneously to the digging of the pits can still come later and stop the chazakah. ■

exclusive property of either one of them. Similarly, an esrog that is jointly owned is not considered the exclusive property of either partner and thus may not be used for the mitzvah.

Levush⁵ suggests that a grafted esrog is disqualified from use because it came into existence through the transgression of grafting which is included in the general prohibition of kilayim. Even if the grafting was performed by a gentile the esrog is prohibited since a transgression was committed. Shvus Yaakov⁶ disagrees with Levush's assertion that an esrog that was grafted by a gentile is disqualified from use for the reason that a transgression was committed since gentiles are not prohibited from grafting together two species. ■

1. עי' מ"ב סי' תרמ"ח ס"ק ס"ה.
2. ט"ז סי' תרמ"ט סק"ג.
3. שו"ת מהר"ם אלשיך סי' ק"י.
4. שו"ת בית שערים או"ח סי' שמ"ג.
5. לבוש סי' תרמ"ט סעי' ד'.
6. שו"ת שבות יעקב ח"א סי' ל"ו. ■

STORIES Off the Daf

Taking a 7sand

"צריכה למחות..."

On today's daf we find that sometimes a failure to protest demonstrates tacit agreement. Similarly, when one sees a spiritual flaw and he has the ability to protest it, failure to do so shows that he holds that he agrees that the sin is of no great consequence.

Although there were many great sages who protested the sins of others in a very effective manner, perhaps the most famous of these is the protest of the Chofetz Chaim, zt"l, against lashon hara. However, few are aware how the Chofetz

Chaim came to write his epic work.

Rav Velvel Eidelman, zt"l, was able to share where the germ of the idea came from. "In my house, we had a Mishnah Berurah which was marked in the Chofetz Chaim's own hand: 'checked.' My father had purchased it directly from the author, who had proofread his work himself.

"Since my early life was so close to the Chofetz Chaim, I remember hearing how his first work came to be written. It is clearly the halachah that one must literally flee to avoid hearing lashon hara. Once, the Chofetz Chaim was in just such a position. He saw that the only way for him to possibly avoid transgressing this prohibition was to flee and he did so immediately. He ran and ran until he fell

down from exhaustion. At that moment he decided that it was not enough to merely run away; if he wished to discharge his obligation he would have to write sefer Chofetz Chaim to promulgate these essential halachos."

The Chazon Ish, zt"l, recounted that the Chofetz Chaim would say, "When a Jew gets to heaven and he is asked why he ate chadash he can respond that he held like the Bach, zt"l, who permits chadash out of Israel. But when he is asked why he spoke lashon hara, he will have no compelling answer since the Bach does not permit speaking lashon hara, and neither does any other serious authority!"¹ ■

1. מאיר עיני ישראל, ח"ו, ע' 346 וע' 349 ■