

בבא בתרא נ"ו



Today's Daf Digest is dedicated
 L'ilui Nishmas Mr. Israel Gotlib of Antwerp and Petach Tikva, Yisrael Tzvi ben Zev (23 Av).
 Family Weiss, London

OVERVIEW of the Daf

1) Acquiring the property of a deceased convert (cont.)

The Gemara concludes explaining how the issue of a boundary and the chatzav plant is relevant concerning Shabbos.

It is noted that Rava's explanation of this Baraisaa is consistent with a known position of his.

The Gemara discusses how much of a field that belonged to a deceased convert is acquired when the field is not divided by a boundary or a chatzav plant.

R' Acha bar Avya said in the name of R' Assi bar Chanina that the chatzav plant divides the property of a deceased convert in two.

R' Yehudah in the name of Rav explains the origin of the chatzav plant.

Tangentially, the Gemara records two statements of R' Yehudah concerning the boundaries of Eretz Yisroel.

A Baraisaa is cited that presents a dispute concerning the location of Keini, Kenizi and Kadmoni.

2) **MISHNAH:** The Mishnah discusses what happens if the witnesses who testify that the occupant has been on the property for three years prove to be zomemim witnesses and whether witnesses who testify about different years of the chazakah are considered one group or independent groups of witnesses.

3) The authorship of the Mishnah

(Continued on page 2)

REVIEW and Remember

1. Why does it take forty years to make a chazakah on the property of Persians?
2. When is someone who is unemployed obligated to pay his share of the tax burden?
3. What is the case of tumah where a divider is relevant?
4. What is the point of dispute between Ravin and Rava?

Today's Daf Digest is dedicated
 By the Wolper family
 in loving memory of their father
 ר' שמריהו בן ר' יואל ז"ל

Distinctive INSIGHT

When the testimony of witnesses does not concur

אמר רב יהודה אחד אומר אכלה חטים ואחד אומר אכלה שעורים, הרי זו חזקה

Rav Yehuda discusses the case where a person resided in a land for three years, and he brought two witnesses to testify to that effect. However, one witness testified that he used the field to plant wheat, while the other witness testified that the occupant used the field to plant barley. Rav Yehuda rules that the witnesses are not considered to be contradictory, and, in fact, their testimony can combine and establish the chazakah. The reason is that observers generally do not distinguish between different grains growing in the field, and we assume that they are both speaking about the exact same using of the field.

Rabeinu Yona explains that, technically, we do consider the witnesses to be contradictory. Nevertheless, the chazakah is valid because Rav Yehuda holds (Sanhedrin 41a) that if witnesses merely contradict each other in the cross-examination phase of the testimony (בדיקות), their testimony is valid in monetary cases. The witnesses concur on all details of the case other than the specific grain which was planted, and this is seen as a detail rather than as a critical aspect of their observation. It is only in capital cases that this level of inconsistency disqualifies their input.

There are different approaches to explain what the one occupying the land is claiming as he brings these witnesses. Ta"z (C.M. 30, #2) detects what seems to be an inconsistency in the Tur. In one case, Tur discusses a case where someone claims a מנה from his friend, and he brings two witnesses. One testifies that he lent a white מנה, and the other testifies that he lent a black מנה. Tur rules that the witnesses can combine (using the rule of R' Yehuda, see above), but only where the claimant asked for both a white and black מנה, thus not contradicting any of his own witnesses. Yet, in our case (ibid. 145), Tur rules that where one witness says wheat and the other says barley, the two witnesses can combine even if the מחזיק does not claim that he planted both wheat and barley. Ta"z concludes that if the claimant does not concur with any one of the witnesses, that witness is no longer acceptable. The two witnesses can only join in a case where the claimant said that he planted both wheat and barley.

Ketzos HaChoshen (82:#19) resolves the inconsistency in the Tur. There is a difference between testimony which is brought to collect money as opposed to retain money. When a person wishes to collect a מנה, he cannot do so unless his claim matches the witnesses. When he wishes to retain the land which he planted for three years, the witnesses can help him even if he does not claim that he planted wheat and barley. ■

HALACHAH Highlight

The disqualification of providing only half of the needed testimony

ר' עקיבא אומר דבר ולא חצי דבר

R' Akiva said, "A matter" and not half a matter

Tumim¹ expresses uncertainty whether the requirement that witnesses provide full testimony rather than partial testimony (דבר ולא חצי דבר) applies when witnesses are needed to certify a document which is only a Rabbinic enactment. Do we take a lenient approach since we are looking for information (גילוי) rather than actual testimony or perhaps we would adopt a stringent approach since it is referred to as witness testimony? Kesav Sofer² suggests that the matter depends upon the type of testimony that is needed. If both parts of the testimony are the result of Rabbinic enactments, it is logical that the disqualification of דבר ולא חצי דבר does not apply. However, where one half of the needed testimony is Biblically required and the other half is Rabbinically required, it is logical to conclude that the enactment requiring the second half of the testimony also renders the half that is Biblically mandated as only חצי דבר and therefore insufficient as testimony.

There was once an incident in which a get was going to be sent to a woman in a distant city and there was a concern that the person delivering the get would not find two witnesses to confirm the identity of the woman who was to receive the get. It was decided that witnesses would come and testify that Reuven's daughter is Shimon's wife. When the delivery man reaches the distant town he will find witnesses who could testify that this

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It is noted that the Mishnah that allows different sets of witnesses to testify about different years of the chazakah is not consistent with R' Akiva who maintains that one set of witnesses must testify about all three years.

The Gemara searches for the exposition that Rabanan make from the word דבר that forms the basis for the disagreement with R' Akiva.

4) Combining testimony to establish a chazakah

R' Yehudah rules that we can combine the testimony of witnesses even if one testifies that the occupant consumed wheat and the second witness testifies that it was barley.

R' Nachman challenges this ruling based on his misunderstanding of R' Yehudah's ruling.

R' Yehudah clarifies the intent of his ruling. ■

woman is Reuven's daughter and by extension he would have confirmation that this woman is Shimon's wife. Darchei Moshe³ challenged this ruling since neither set of witnesses are providing all of the necessary information. From his question it seems that he adopts the position that even in a case where only one witness is needed there is a requirement that that witness provide the entire testimony and not just some of it. Toras Gittin⁴ disagrees and maintains that the disqualification of דבר ולא חצי דבר is limited to actual testimony but when all that is needed is information (גילוי מילתא) it is unnecessary for a single person to provide all of the needed information. ■

1. תומים סיי מ"ו סק"כ ד"ה ויש.
2. שו"ת כתב סופר אהע"ז סי' כ"ג בסופו ד"ה ועיי.
3. דרכי משה אהע"ז סי' קמ"ב אות י'.
4. תורת גיטין שם סעי' י"ב. ■

STORIES Off the Daf

A strong precedent

"הרי זו חזקה..."

Today's daf discusses the three years of chazakah, of establishing a precedent.

A certain man lived on land for well over three years and had many witnesses to prove it. Several years later, the old owner claimed that he had never sold him the land in the first place. The man with the chazakah denied this, although when the beis din asked for his bill of sale, he admitted that there had never been such a document. He claimed that he had trusted the owner and had given him the money for the property with no proof of sale at all.

When he noticed the incredulous

look on the faces of the dayanim on the beis din, he added, "The past is water already under the bridge. For now, I have an iron-clad chazakah that this land was sold to me, since the previous owner never protested my living on what he claims to be land that he never sold in the first place. How could he have failed to protest, especially since he knew I had no document of sale?"

The original owner disputed this claim by explaining that they had been good friends and he had been allowing him to stay on his property rent free but nothing more. "It never crossed my mind that he would claim he has a chazakah!"

When this case came before the Remetz, zt"l, he ruled that the chazakah is accepted. "Since the original owner knew that after chazakah we believe a man who

claims to have lost his document of sale, he should have understood that we will believe any other plausible claim as well."¹

But the Divrei Geonim, zt"l, was unsure about this psak. "I am afraid that this is at least a big question mark. After all, there is surely a considerable chazakah that a person would never pay good money for property for which he has no proof and which the original owner could sell out from under him and cause him to lose all his money! Who would ever do such a thing? What person would ever purchase land that the non-Jewish government will not allow him to register in his name since he has no document? Surely this is very unlikely and it is hard to accept this man's claim despite his chazakah!"² ■

1. שו"ת רמ"ץ, סוף חו"מ, בדיני חזקות, סי' י"ג
2. דברי גאונים, כלל ל"ז, סי' א' ■