

OVERVIEW of the Daf

1) Selling a tree (cont.)

Rava challenges Nehardai's ruling that one who purchases a tree acquires the land beneath it and offers another version of the ruling.

R' Ashi explains the steps a seller of a tree must take to prevent the purchaser from claiming a chazakah on the land beneath the tree.

2) **MISHNAH:** The Mishnah discusses whether one could establish a chazakah if the previous owner is in a different province. The Mishnah concludes with an explanation why three years are necessary to establish a chazakah.

3) A protest when not in the presence of the occupant

It is noted that the Mishnah presents contradictory implications whether a protest made when not in the presence of the occupant is effective.

R' Abba bar Mamal resolves the contradiction and concludes that a protest that is made when not in the presence of the occupant is valid.

The reason the Mishnah discussed the case of Yehudah and Galil is explained.

4) Establishing a chazakah on the property of a fugitive

R' Yehudah in the name of Rav rules that one cannot establish a chazakah on the property of a fugitive.

Shmuel disagreed with this ruling.

Rav's position is unsuccessfully challenged.

According to a second version Rav also ruled that one can make a chazakah on the property of a fugitive.

The necessity for Rav to rule in two instances that a protest made when not in the presence of the occupant is explained.

The subsequent exchange between Shmuel and Rav on this matter is recorded.

Rava rules that one may not establish a chazakah on the property of a fugitive but a protest may be made when not in the presence of the occupant.

The Gemara explains why these rulings are not contradictory.

5) The language of a protest

R' Zevid identifies the correct wording of a valid protest. ■

Distinctive INSIGHT

The source for the time framework of three years

אמר רבי יהודה לא אמרו שלש שנים אלא כדי שיהא באספמיה ויחזיק שנה וילכו ויודיעוהו שנה ויבא לשנה אחרת

Rashbam and Rambam (in his Commentary to the Mishnah) note that Tanna Kamma and R' Yehuda disagree in two points. One of them is where the current occupant of the land or house does establish his occupation in the presence of the previous owner. According to Tanna Kamma, the chazakah will still take three years. This is the time frame during which a person is expected to keep track of his sales document. Before three years have elapsed the original owner can demand that the proof of purchase be produced. According to R' Yehuda, however, the chazakah would be effective immediately, as the Gemara mentions later (41a), the reason a period of three years was established as necessary for a chazakah was that sometimes the owner is not present, and we must allow time for him to hear that someone is in his land. Upon hearing about it, the owner is expected to react immediately. The assumption is that no one would tolerate someone else residing in his property even for a moment and remain silent. If the previous owner sees what is happening and remains silent, this is a sign that he acknowledges that the land was indeed sold.

A second situation where this dispute surfaces is where the chazakah is being made in one district but the owner is in a different district, and a *שעת חירום* is in place, where communication is disrupted across the borders. Tanna Kamma clearly states that the chazakah cannot materialize, as the communication barrier prevents the protest of the owner from reaching the ears of the occupant. Rabbi Yehu-

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REVIEW and Remember

1. What step must be taken to protect oneself from a long-term tenant establishing a chazakah on one's property?

2. Is a protest made not in the presence of the occupant valid?

3. What is the rationale behind the ruling אין מחזיקין
 בבכסי בורח?

4. Why are Rava's rulings regarding a protest when not in the presence of the occupant not contradictory?

HALACHAH Highlight

The language of a valid protest

אמר ר' זביד פלניא גזלנא הוא לא הויה מחאה

R' Zevid said: A statement, "Ploni is a thief," is not a valid protest

R' Zevid teaches that a challenger who merely states that the occupant is a thief did not make a valid protest. A valid protest must include the statement that the occupant is a thief for he is occupying my land and tomorrow I will take him to Beis Din. Rishonim disagree about a protest in which the challenger states that the occupant is a thief for he is occupying my land but did not mention that he is planning on taking the occupant to Beis Din. Rosh¹ cites Rabbeinu Chananel who asserts that if the challenger does not mention that he plans on taking the occupant to Beis Din it is not a valid protest. The assumption is that he left out the statement that he plans on taking the occupant to Beis Din because his intent is to merely besmirch the reputation of the occupant and he has no real intent to take him to Beis Din, therefore it is not taken seriously as a protest to his occupancy.

Others² disagree and maintain that even the simple statement by the challenger that the occupant is a thief for he is occupying my land constitutes a valid challenge. The only reason R' Zevid added the additional phrase, "and tomorrow I will take him to Beis Din" is because that is a common phrase that challengers say but it is not necessary for the challenge to be valid. To further support this position these Poskim assert that if the phrase, "and tomorrow I will take him to Beis Din" was essential, R' Zevid should have empha-

(Insight...continued from page 1)

da holds that the owner can and should find someone to convey his opposition to the chazakah, in spite of the breakdown of normal lines of contact. The three years were allocated specifically to allow time for information to travel even over far distances, and a שעת חירום is no different.

Tosafos Ri"ד, Rabeinu Yona and Ritva ask how the Gemara knows that according to R' Yehuda a chazakah in the presence of the original owner works immediately. Perhaps the time framework of three years is designed for the typical case, but it then is to be used as a standard (לא פלוג).

Rabeinu Yona explains that this is determined from the Baraisa in the Tosefta (2:1) which states explicitly that three years is only necessary when the owner is in a distant land, but if he is local, the chazakah occurs immediately with his seeing his land being occupied and his being silent.

Ritva writes that the period of three years is a standard for any owner who lives outside the city, whether closer or farther. If the owner is in the city, the chazakah can occur immediately. ■

sized that point. Since the only phrase that R' Zevid identified as invalid is when the challenger merely refers to the occupant as a thief it is evident that as long as he explained why the occupant is a thief, e.g. he is occupying my land, he has made a valid protest. Furthermore, the phrase, "and tomorrow I will take him to Beis Din" is intended as an explanation why he is protesting rather than bringing the occupant to Beis Din today, e.g. today I don't have time to take the occupant to Beis Din but tomorrow I will. ■

1. רא"ש פ"ג ס"י כ"ח.

2. ע"י תוס' ד"ה ולמחר והרא"ש הנ"ל. ■

STORIES Off the Daf

No trespassing

"פלניא גזלנא הוא..."

Once, a group of chassidim were discussing very lofty concepts found in chassidus. Suddenly, one of the group looked very serious and said, "But how can we speak about such sublime ideas when we are truly not on the level at all?"

As everyone pondered this very trenchant question, Rebbe Yitzchok of Skver, zt"l—who in passing had heard the question—answered it himself.

He said, "Even if one is not on the levels discussed by the great chassidic masters, it is still worthwhile to discuss these concepts. Just talking about such uplifting levels serves as a mecha'ah, a halachic protest, against the encroachment of the yetzer hara. We find on Bava Basra 38 that if the owner of land protests before witnesses that a certain person has stolen his property and that he plans on taking the thief to beis din in the future, this serves as a protest against the squatter. This means that the squatter cannot later claim that he has a chazakah on the land even if he lived there unmolested for three years.

"Similarly, when those who fear Ha-

shem sit together and talk about avodas Hashem, they are in effect lodging a protest that the yetzer hara is no more than a squatter—he is not the baal habayis. Sooner or later, there will be a reckoning over all of his years of trespass. Their protest, which finds its voice in wistful discussions about the great levels of the tzaddikim of earlier generations, proves that they are not happy with their present spiritual condition and wish to change for the better. In their deepest selves, they want to do what is right and avoid all evil!"¹ ■

1. מפי סופרים וספרים, ח"ג, ע"ד. ■

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