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Bava Basra Daf 28

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A commonly accepted principle of halachah is that any property is presumed to belong to the person in whose possession it is found, and it is the onus of anyone wishing to dispute that person's right to the object to bring proof to the contrary. This rule is true for movable goods (except for animals). With land, however, if a certain field was known to belong to Reuven and is now being farmed by Shimon, Reuven may claim that the land was stolen from him, and it is the onus of Shimon to prove differently - i.e., that he either bought the land from Reuven or received it as a gift from him. The present mishnah teaches us that even with land one can gain a chazakah by holding it unchallenged for a period of time. This presumptive title - the chazakah - based on unchallenged use supersedes any claim to the title of the land by its previous owners. This is known as the three-year chazakah, i.e., if Shimon can bring witnesses that he has had unchallenged possession of a piece of land for three years, he acquires chazakah to the land. Then, if Reuven challenges Shimon's ownership on the basis of the fact that the land had commonly been known to belong to Reuven in previous years, Shimon may claim that he bought the land from Reuven but has since lost the deed - and Shimon's claim will be accepted.

The Gemora explains that the reason for the requirement of three years to establish title is that the average person saves his legal documents for no more than three years. If Reuven comes to claim the land after more than three years have elapsed, he is told that he should have lodged a protest against Shimon before witnesses at an earlier time. Had he done so, word would have reached Shimon that there was a question as to his title to the land, and he would have preserved his deed to the land beyond the three years. This mishnah teaches that the time needed to acquire chazakah

to possessions specified in the mishnah depends on whether the object is used on a regular basis throughout the year, or whether it is only used at specific seasons.

### Mishna

A chazakah regarding houses, pits, ditches and caves, dovecotes, baths, olive presses, irrigated fields, slaves, and anything which is continually producing is conferred by three years [unchallenged possession] from day to day. A chazakah regarding a non-irrigated field is conferred by three years' possession not reckoned from day to day. Rabbi Yishmael says: It is sufficient to have three months in the first year, three months in the last and twelve in the middle, making eighteen months in all. Rabbi Akiva says: All that is required is a month in the first, a month in the last, and twelve months in the middle, making fourteen months in all. Rabbi Yishmael says: This refers only to a grain field, but in a field of trees, if a man harvests his grapes, gathers in his olives, and culls his figs, this counts as three years.

### The Basis for Chazakah

Rabbi Yochanan said: I have heard those who attended at Usha reasoning as follows: From where do we derive the concept of a three-year chazakah? From the 'goring ox.' Just as in the case of the 'goring ox,' after goring three times it leaves the denomination of tam (where the owner pays only half damages) into that of mu'ad (where the owner pays full damages), so here also, after a man has used a field for three years it passes [entirely] out of the possession of the seller and is established in the possession of the buyer.

It may be objected to this that just as in the case of the goring ox, its master does not become liable until the fourth goring, so here the property should not become the fixed possession of the holder until the end of the fourth year?

The Gemora responds: How can you compare the two cases? There, as soon as the ox has gored three times, it is regarded as mu'ad, but until it has gored the fourth time there is no reason why the owner should pay, whereas here, as soon as the use of it has been enjoyed for three years, the property becomes the fixed possession of the holder.

The Gemora asks: Now if this is correct [that the law of chazakah is derived from the law of the ox], it would follow that three years' possession would confer a legal title even without a plea [of justification]. Why did we learn in a Mishna that a chazakah which is not accompanied by a plea is not regarded as a (valid) chazakah?

The Gemora answers: The reason why [we confirm the holder in possession when he pleads justification] is because it is possible that his plea is truthful. But if he himself advances no plea, shall we put in a plea for him?

Rav Avira brought a strong objection against this analogy [between the field and the ox]. On this principle, he said, a protest that is not made in the presence of the holder should not be valid, after the analogy of the mu'ad ox; for just as in the case of the mu'ad ox [the warning] must be given in the presence of the owner, so here the protest should be made in the presence of the holder?

The Gemora answers: There [in the case of the ox] the Torah states: And it has been testified to his owner; here [in the case of property] 'your friend has a friend, and the friend of your friend has a friend.'

The Gemora asks: Now [suppose we accept the ruling] according to Rabbi Meir, who said: If there was an interval between the gorings the owner is liable, all the more so then if they followed closely on one another. [On the analogy of

this], if a man harvested three crops on one day, as for instance figs [in three stages of ripeness], this should constitute a chazakah, [should it not]?

The Gemora answers: No; the action must be strictly analogous to the case of the mu'ad ox. Just as in the case of the mu'ad ox at the time when the first goring took place there was as yet no second goring, so here at the time when the first crop exists, the second must not yet be in existence.

The Gemora asks: But suppose he harvested three crops in three days, as of a caperbush, let that be a chazakah?

The Gemora answers: In this case also the [second] crop exists already [when he gathers the first crop] and it merely goes on ripening.

The Gemora persists: But suppose he harvested three crops in thirty days, as of aspasta (a type of plant used for fodder) - let that be a chazakah?

The Gemora answers: How exactly do you mean? That it grows a little and he uses it, and again it grows a little and he uses it!? Then this is merely snatching and using [and not the full eating required to be regarded as a valid chazakah].

The Gemora asks: But suppose then that he consumed three crops in three months, as of clover, let that be a chazakah?

The Gemora answers: Who is meant by the 'Rabbis who attended Usha'? Rabbi Yishmael; and this actually would be the view of Rabbi Yishmael, as we have learned: This refers only to a grain field, but in a field of trees, if a man harvests his grapes, gathers in his olives, and culls his figs, this counts as three years.