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Bava Basra Daf 29

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Source for Chazakah

Rav Yosef suggests that the source for a minimum of three years to establish a *chazakah* was from the passage in Yirmiyahu, where the prophet Yirmiyah, in the tenth year of the reign of Tzidkiyahu, warns people who are currently buying land to write contracts and guard them. The exile was to occur in the next year, allowing these people only two years to show ownership. Since this is less than the minimum three years, Yirmiyah told them to write contracts and guard them, since this would be their only proof of ownership.

Abaye objects to this proof, since Yirmiyah may have just been giving the people good advice - that they should keep their contracts - even if they may not absolutely need them to prove ownership. Abaye points out that Yirmiyah also sent a message to the Jews already in Bavel to settle in for a significant exile – build houses, plant orchards, and enjoy the fruit. This message had no *halachic* import, and was purely good advice. Similarly, Yirmiyah’s message to write contracts may also be only good advice, as is his advice to store the contracts in strong containers, to survive the long exile.

Rava suggests that the reason for the three years of *chazakah* is to establish proof that the original owner has not just forfeited his rights to the produce of his land. For two years, one may not protest, since he has simply forfeited his rights to the produce of those years. However, one does not just forfeit his produce for three years. Therefore, if he did not protest after three years,

this indicates that he sold the land, and does not own it or the produce. Abaye objects, since based on this reasoning, if one protested during the first two years, he should only get his land back, but not the produce, which we assume he has forfeited. However, Rav Nachman says that when the owner protests, he receives both the land and its produce, disproving Rava’s suggested explanation.

Rava instead suggests that one doesn’t mind someone living on his land for two years, but does mind his living there for three years. Therefore, if he did not protest after three years, this indicates that he sold the land.

Abaye objects, since *chazakah* is a standard length of three years, even if one buys land from an excessively possessive seller, who would not allow anyone to trespass his land for even one day.

Finally, Rava says that *chazakah* is established after three years because for three years a buyer retains his contract as proof. After that, he discards it. Therefore, during the first three years, he must present his contract, and if he fails to do so, this indicates that he did not buy it. After three years, he can claim that he no longer has his contract. If the owner protests, even outside of the presence of the buyer, the buyer will hear of it by people spreading the word, and he will know to guard his contract even after three years. (28b – 29a)

Consecutive Period for Chazakah



Rav Huna says that the three years of land usage must be consecutive to establish a *chazakah*. Although the *Mishna* already says that the three years are exact calendar years, we may have thought that the *Mishna* is just excluding partial years, but allowing the calendar years to be non-consecutive.

Rav Chama says that Rav Huna agrees that if the region of this field is left fallow for a year to allow for better planting that the fallow year is counted as one of the three years. This is true even if some plant their fields in the fallow time, since the buyer can claim that he did not bother of planting only one field, or that he preferred to get a better crop in the upcoming years.

The *Gemora* tries to disprove this statement from the *Mishna*, which states that one acquires a *chazakah* on a house by living in it for three years. Witnesses generally only see the person living in the house during the day time, creating disjointed periods of proven usage, but the *Mishna* still considers this a *chazakah*.

Abaye deflects this proof by saying that the witnesses are the neighbors, who see the occupant living there both day and night.

Rava deflects this proof by saying that the *Mishna* is a case where the one claiming a *chazakah* rented the house to tenants, and the tenants say that they lived in it day and night. If they had already paid rent to the one claiming *chazakah*, they would not be accepted as impartial witnesses, since it's in their interest that he be declared the owner, lest they need to pay rent again to the original owner. However, the *Mishna* is a case where the tenants are now presenting the rent money, which will be paid to whomever is declared the owner.

Mar Zutra says that although the court does not insist on witnesses that explicitly testify that he lived there day and night, the original owner does have the right to demand

such witnesses. Further, if the original owner is a traveling merchant, the court demands such witnesses, since someone can easily live in the house for the periods of time when the owner is out of town, thereby falsely create a *chazakah*.

Rav Huna agrees that if the occupant claiming ownership was a merchant occupying a store, which is used only in the day time, that he need not have used it at night to establish a *chazakah*.

Rami and Rav Ukva, both the sons of Chama, jointly bought a maidservant. They split the use by alternating years – one used her on years 1,3, and 5, while the other used her on years 2,4, and 6. Someone then claimed that he owned the maidservant. When they wanted to show a *chazakah*, Rava explained that just as their usage pattern ensured that neither would have a *chazakah* against his brother, this also prevented them from creating a *chazakah* against this claimant. However, if they wrote a contract detailing that they split the usage of their jointly owned maidservant, this is enough notification to everyone that their usage is combined, and establishes a *chazakah*.

Rava says that if one ate the produce of a whole field for three years, except for one section, he has a *chazakah* on all the land, except for that section. This is true even if the section is not arable, since any land has a form of use – e.g., as storage space, or area to spread out fruits to dry. (29a – 29b)

The Burden of Proof

A person claimed that someone was illegally living in his house. The occupant said that he had bought the house, and had lived there for three years, establishing a *chazakah*. The claimant replied that he was living in the inner rooms of the house during that time, and constantly trespassed in the occupant's area. Since he was



constantly impinging on the living space of the occupant, he never felt a reason to protest any further. When the case was brought to Rav Nachman, he required the occupant to prove that he lived in the house for three years, without the presence of the claimant.

Rava responded that the occupant is currently in possession, so the claimant should have to prove his claim.

The *Gemora* quotes another instance where Rava and Rav Nachman disagreed, but seemingly in opposite directions. Someone sold his friend all of his property that was bought from the house of Bar Sisin. The seller claimed that one of the fields was not included, since it was not bought from Bar Sisin, but was just named “of the house of Bar Sisin.” When they came in front of Rav Nachman, he ruled in favor of the buyer, while Rava said that the field is in the possession of the seller, and the buyer must prove his claim. Although Rava favored the buyer in the first case, and the seller in the second case, he is consistent, since he is always favoring the one who is in possession. Rav Nachman ruled in favor of the buyer in the second case. Since everyone would assume that a field that was known as one from the house of Bar Sisin is included, the seller must prove that this is not the case. However, Rav Nachman ruled in favor of the seller in the *chazakah* case, since *chazakah* is no more proof than a contract. Just as a contract must be investigated and validated, so the *chazakah* must be cleared of any doubt. (29b – 30a)

INSIGHTS TO THE DAF

Chazakah Mechanism

The *Gemora* concludes that *chazakah* occurs after three years, since at that time a buyer does not retain his contract. The exact mechanism of how three years of

usage establishes ownership is debated by the commentators.

The Ramban states that usage itself is fundamentally proof of ownership, even before three years. However, during the first three years, if the occupant cannot provide his sale contract, this suggests that he is not the true owner, and undoes his proof by usage. After three years, his lack of a contract does not impinge on the proof of his ownership by his usage, and he is ruled to be the owner.

The Ketzos (HM 140:2) disagrees, and states that *chazakah* was instituted by the Sages for its social good, since it allows people to remain in possession of their land, even after they have discarded their documents. The Ketzos says that the Rambam seems to rule like him, when he explains that the buyer can tell the seller that he lost his right to claim ownership since he did not protest. This indicates that the seller lost something that would have been his right, and not that we simply accept the buyer’s claim due to its inherent merit.

Stores

The *Gemora* stated that even Rav Huna, who requires a contiguous time period for *chazakah*, agrees that one who bought a store and used it only during the day can acquire a *chazakah*. Since he uses it during the normal time of his usage, the intervening nights are not considered an interruption, just as one who lets his field lay fallow as part of the normal agricultural cycle has not interrupted his *chazakah*.

Tosfos (29b uModeh) says that the *chazakah* is established after three full years of use, which is 6 calendar years.

The Rambam (To'ain 12:3) says that three calendar years are sufficient, since the storekeeper used it in its normal fashion during that time.

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Days and Nights

Abaye stated that when neighbors testify that someone lived in a house for three years, this includes the nights, creating a *chazakah*. Rava said the *Mishna* is a case where the occupants were tenants, who testify that they lived there day and night, and that they rented it from the one claiming *chazakah*.

Rabbeinu Yonah says that Rava and Abaye do not disagree, but Rava is providing another explanation for the *Mishna's* rule. Rava's explanation will account for a situation where there are no neighbors, or when they are non-Jewish, and not qualified to testify in court.

The Rashba and Ritva, however, hold that Rava disagrees with Abaye. Rava holds that if the claimant claims that he came at night and did not see the occupant there, the occupant must provide witnesses who explicitly testify that they saw him there at night.

Did he Forfeit?

The *Gemora* explained that the ultimate rationale for *chazakah* is that after three years a buyer can claim to have discarded his contract. However, *chazakah* is simply working with the parameters of a sale.

The Poskim discuss what is the status of one who claims that he did not buy the land, but claims ownership since he thinks that the owner forfeited his rights to him after he lived there for three years.

The Bach (CM 146) says that if the owner truly did forfeit the land, even if not verbally, the occupant owns it, and

the occupant can therefore demand that the owner swear that he has not forfeited it.

The Maharit (HM 2:45) disagrees, and says that once Rava discarded his suggestion that *chazakah* is an indication of forfeiture, we consider any non-verbal forfeiture to be purely matters of the heart, which has no *halachic* bearing.

DAILY MASHAL

The Mishna (Semachos 13:7) states that one may not remove a buried body from its grave in order to re-inter it elsewhere, even if the second place is a more respectable place. Exceptions are made such as where the destination is a family plot or in Eretz Yisroel. The ShaCH (s"uh 363:2) explains that moving a body causes the deceased anxiety, as he thinks he is about to be judged.

The MaHaram Shick (354) asks why we need the anxiety of the deceased to explain this. After all, the Yerushalmi (Shabbos 12:3) derives from a verse that a beam of the Mishkan that was initially placed on the north side merited to be placed there always, as a form of Chazakah. If so, once a body is buried, it should also remain there always, as it has seized the place, and the place has seized it. He answers that Chazakah would be sufficient if there were no opposition. If a good argument exists to make a change however, additional reasons become necessary.

The Magen Avraham states, based on the placement of the Mishkan beams, that it is customary to attach a "crown" of silk to the top of a Tallis, so that one will always put their Tallis on the same way, ensuring that the Tzitzis in the front will always be in the front. However, he notes that the ARI Z"l apparently did not insist on this.