DAF Notes
Insights into the Daily Daf
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Daf Notes is currently being dedicated to the neshamot of

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

The *Gemora* states: Three successive purchasers of the same property can count as one. [*If each buyer occupied the property for one year and then sold it to another, they establish a chazakah after three years, and the original owner has no claim.*]

Rav said: This is only if all the purchases were recorded by a contract (*for we can then presume that the original owner heard about it*).

The *Gemora* asks: Does this indicate that in Rav's opinion, a sale recorded by a contract becomes generally known, but a sale in the presence of witnesses does not become generally known? Surely Rav himself has ruled that if a man sells a property (*with a guarantee*) in the presence of witnesses, the purchaser may recover even from mortgaged property (*if the seller's creditors seized the land, he may collect from property that the debtor sold; evidently, witnesses make the matter public knowledge*)!?

The *Gemora* answers: In that case, the purchasers can only blame themselves (*for they did not investigate if the land was sold with a guarantee*).

The *Gemora* asks: Did Rav say that (*if a man sells a property with a guarantee in the presence of witnesses, the purchaser may recover even from mortgaged property*)? But we learned in a *Mishna*: If a man lends money to another with a document, he may recover his debt even from mortgaged property (*provided that there is no free property*). If, however, the loan was made only in the presence of witnesses, he may only recover from free property. And should you answer that Rav is himself regarded as a *Tanna* and may dispute [the ruling of a Mishnah], this can hardly be, since Rav and Shmuel have both laid down that a loan [contracted] by word of mouth cannot be recovered either from the heirs [of the debtor] or from those who have [subsequently] purchased [from him].

The Gemora answers: Are you arguing from a loan to a sale? When a man borrows money, he does so as secretly as possible, in order that his property may not depreciate. If he sells land, however, he does so as publicly as possible, in order that people may know about it. (41b – 42a)

The Gemora cites a braisa: If the father uses [the property] a year [and then died] and the son two years, or the father two years and the son one year, or the father one year, the son one year and the purchaser one year, such occupation constitutes a chazakah.

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

The Gemora notes: Now this would indicate, would it not, that when a man purchases [a piece of land] it becomes public knowledge!

The Gemora asks: But this would seem to conflict [with the following braisa]: If a man uses a property in the presence of the father one year and two years in the presence of the son, or two years in the presence of the father and one year in the presence of the son, or one year in the presence of the father, one year in the presence of the son, and one year in the presence of the purchaser, such occupation constitutes a chazakah. Now, if you assume that the purchase [of a property] becomes public knowledge, surely there can be no protest stronger than this, [that the son has sold the property]? [This should invalidate the chazakah!?]

Rav. Pappa said: The case of which this braisa speaks is where the son sells all his properties without specifying [any one in particular]. [As in that case the occupier can claim that he understood that the sale did not include the property in question and therefore did not constitute a protest. But if he specifically sells that property, this constitutes a protest, because the sale is bound to come to the knowledge of the occupier, and the occupation therefore does not constitute a chazakah.]

Craftsmen, partners, sharecroppers, and trustees cannot establish a chazakah. A man cannot establish a chazakah in the property of his wife, nor can a woman establish a chazakah in the property of her husband. A father cannot establish a chazakah in the property of his son, nor can a son cannot establish a chazakah in the property of his father. These statements apply only to cases [where ownership is claimed] on the ground of possession. In the case, however, where land is presented as a gift, or of brothers dividing an inheritance, or of one who seizes the property of a [deceased] convert, a chazakah may be established as soon as the first step has been taken towards making a door or a fence or an opening. (42a)

Shmuel's father and Levi taught [a version in the Mishnah] that a partner has no chazakah, and certainly a craftsman.

Shmuel, however, taught that a craftsman has no chazakah, but a partner has.

The Gemora notes: Shmuel in this is consistent, for Shmuel has said that partners may establish a chazakah against each other and can give evidence in one another's favor and can become paid custodians for each other. (42b)

Rabbi Abba pointed out the following contradiction to Rav Yehudah in the [burial] cave of Rav Zakkai's property: Did Shmuel really say that a partner may establish a chazakah? Hasn't Shmuel said that a partner is regarded as having freedom of entry [into the whole of the joint field], and is not this equivalent to saying that a partner may not establish a chazakah [against the other partner]? [He replied:] There is no contradiction. In the one case [Shmuel is speaking of a partner] who takes possession of the whole [of the joint property], in the other of one who takes possession of only half of it. Some explain the answer one way and some explain the other way. [Some say that by taking possession of the whole property the

partner establishes a chazakah, because it is not usual for the other partner to allow this, and that by taking possession of one half, even the better half, he does not establish a chazakah, because one partner will often allow the other to do this several years running. Others say that by taking possession of the whole a partner does not establish a chazakah because it is the custom of joint owners that each should occupy the whole property several years running, but by taking possession of one particular half he does establish a chazakah, because the presumption is that had the property not been divided he would not have confined himself to this particular half.]

Ravina said: In both cases [Shmuel is speaking] of a partner who takes possession of the whole [of the joint property], but still there is no contradiction, because in the one case he speaks of a property which has to be divided [if either partner demands] and in the other of a property which has not to be divided [if either partner objects]. (42b)

[To revert to] a previous text: Shmuel said that a partner is regarded as having freedom to work the whole of the joint field. What does this tell us? That a partner may not establish a chazakah? Why does he not say distinctly that a partner has no chazakah?

Rav Nachman said in the name of Rabbah bar Avuha: [He chooses the other mode of expression] to show that the partner is entitled to a full half of the mature produce in a field that is not meant for plantation in the same way as he would be in a field meant for plantation. [If a man plants in another man's field without the latter's permission, he is entitled to the whole of the 'mature produce that reaches the shoulders,' but only on condition that the field was meant for plantation and not for sowing. Otherwise he can recover no more than his outlay. If, however, he has the consent of the owner, he takes the whole of the produce in any case. Shmuel here tells us that the partner in this respect is on the same footing as the sharecropper who works the field with the owner's consent.]

DAILY MASHAL

In Rav Zakai's Cave

Our Gemara mentions that a certain *sugya* was learnt not in a *beis midrash* but in a cave. Commenting thereon, Rabbi Yaakov Emdin zt"l remarks that the Gemara does not inform us of this detail perchance but teaches us that even hiding in a cave from the enemy, they continued learning as "the Torah was so dear to them" (see the *Bach*, who chose a variant text).