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Bava Basra Daf 53

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

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Chazakah as an Acquisition

Rabbi Hoshaya taught the following *braisa* which was included in the *braisos* of Tractate Kiddushin which was taught in the Academy of Levi: If the buyer of a field locked a door, fenced it or made an opening, even a small amount, in the seller’s presence, this constitutes a *chazakah* (a *propriety act*).

The *Gemora* asks: Is this the *halachah* only where the act was done in the seller’s presence, and not otherwise?

Rava replied: The meaning of the *braisa* is as follows: If any of these acts are done in his presence, the seller has no need to say, “Go, make a *chazakah* and acquire ownership.” [After the price has been set, the buyer acquires it with an act of *chazakah* when it is done in the seller’s presence; it is not necessary for the seller to say anything.] If, however, it was done not in the seller’s presence (e.g. it was in a different city), the seller would be required to say, “Go, make a *chazakah* and acquire ownership” (otherwise, it will not be an acquisition).

Rav inquires: What is the *halachah* regarding a gift (when the recipient performs one of those *propriety acts* not in the giver’s presence)? [Is the giver required to say, “Go, make a *chazakah* and acquire

ownership,” or by the fact that the giver told him that he is giving him the field as a gift, it is not necessary?]

Shmuel said: What was Abba (*Rav*) inquiring? If by the case regarding a sale, where money was transferred, nevertheless, it is only an acquisition if the seller said to him, “Go, make a *chazakah* and acquire ownership”; certainly, this should be the *halachah* by a gift, where no money was given!?

The *Gemora* answers that *Rav* was of the opinion that one who gives a field as a gift gives it with a favorable eye (and therefore wants the recipient to acquire it even without explicitly saying, “Go, make a *chazakah* and acquire ownership”). (52b – 53a)

A Propriety Act

We learned above that if the buyer of a field locked a door, fenced it or made an opening, even a small amount, this constitutes a *chazakah*.

The *Gemora* asks: How much is “a small amount”?

The *Gemora* answers: It is as Shmuel states, for Shmuel said: If a man raises an existing fence to ten *tefachim* (handbreadths – one that up until now was less than that) or widens an (existing) opening so that people can enter and exit, this constitutes a



chazakah.

The *Gemora* explains the ruling regarding the fence: What are the circumstances of this fence? If we say that before the addition people could not climb over it and now too they cannot climb it, what has he accomplished? If beforehand people could climb over it but now they cannot, he has done a great deal (*why is that regarded as "a small amount"!*)? We must therefore say that beforehand, it could be climbed over easily but now it can only be climbed with difficulty.

The *Gemora* explains the ruling regarding the opening: What are the circumstances of this opening? If we say that before the addition people could not enter through it and now too they cannot enter through it, what has he accomplished? If beforehand people could enter through it but now they cannot, he has done a great deal (*why is that regarded as "a small amount"!*)? We must therefore say that beforehand, people could enter through it easily but now people can only enter through it with difficulty.

Rav Assi said in the name of Rabbi Yochanan: If a man (*in the property of a convert who died without any heirs; of which, the property is declared to be ownerless*) placed a pebble or removed a pebble, which proved to be beneficial for the land (*closing the gate or opening it*), this action constitutes a *chazakah*.

The *Gemora* explains the ruling: How are we to understand this placing and removing? If we say that by placing the pebble there, he prevented water

from overflowing the field, or by removing the pebble, he allowed water to run out from the field, he is merely likened to a person who "chases a lion away from the possessions of his friend" (*which he is obligated to do, and thus, it should not be regarded as an act of acquisition!*)? It must be that he placed the pebble in the fence, causing the water to remain in the field (*which irrigated it*), and in removing the pebble from the fence, he made a passage for the water to enter (*which irrigated it*).

And Rav Assi said in the name of Rabbi Yochanan: If there were two adjacent fields (*from the property of a convert who died without any heirs*) with a single boundary between them, and a man makes a propriety act on one of them, he acquires ownership of that one (*but not the other*). If he intended to become the owner of both, he becomes owner of that one, but not of the other one (*for the boundary separates the two of them*). If he intended to become the owner of the other one, he does not acquire ownership even of that one.

Rabbi Zeira inquired: Suppose he intended to acquire one of them with the idea of becoming owner of that one and of the boundary and of the other one, what is the *halachah*? Do we say that the boundary goes with each of the fields, and so he acquires everything, or do we say that the boundary and the fields are separate (*for the boundary is either on a higher or lower level than the surface of the field*)?

The *Gemora* leaves this question unresolved.

Rabbi Elozar inquired: Suppose he made a propriety act on the boundary with the intention of acquiring



both fields, what is the *halachah*? Do we say that the boundary is regarded as the reins of the field, and so he acquires everything, or do we say that the boundary and the fields are separate?

The *Gemora* leaves this question unresolved.

Rav Nachman said in the name of Rabbah bar Avuha: If there are two (*ownerless*) houses (*of which the inside one can only be reached through the outer one*), and a man makes a propriety act on the outer house with the intention of becoming its owner, he acquires ownership of that one (*but not the other*). If he intended to become the owner of both houses, he becomes owner of that one, but not of the other one. If he intended to become the owner of the other one, he does not acquire ownership even of that one. If he makes a propriety act on the inner house with the intention of becoming its owner, he acquires ownership of that one (*but not the other*). If he intended to become the owner of both houses, he does acquire ownership of both (*for since the only way to get to the inner one is through the outer one, the outer one is viewed as secondary to the inner*). If his only intention was to acquire the outer one, he does not acquire ownership even of the inner one.

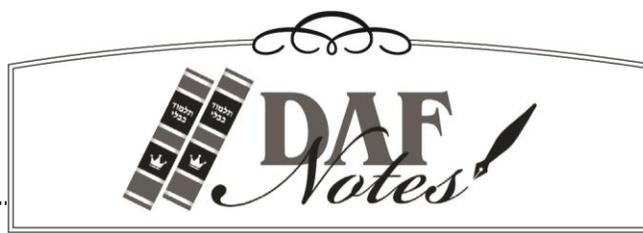
Rabbi Nachman said in the name of Rabbah bar Avuha: If a man builds a large mansion on the estate of a deceased convert (*with no heirs*) and another man comes and puts the doors on, the second person becomes owner. Why is this? It is because the first one merely arranged bricks there (*for without the doors, there is no use for the mansion more than there already was with the land itself; it is the installation of the doors that completes the building*).

Rav Dimi bar Yosef said in the name of Rabbi Elozar: If a man finds a mansion already erected on the estate of a deceased convert, and he smears it with lime or he engraves one design on it, he acquires it. How much must he do? Rav Yosef says: A square cubit. Rav Chisda added: It must be by the door (*where it will be noticed*).

Rav Amram said: The following *halachah* was taught to us by Rav Sheishes, and he enlightened our eyes by proving it from a *braisa*. If a man spreads mattresses on the floor of a convert's estate (*and lies on them*), he acquires ownership (*for he benefited from the ground*).

The *Gemora* cites the supporting *braisa*: How is a Canaanite slave acquired through a propriety act? If the slave puts on his master's shoe, or if he takes off his master's shoe, or takes his clothing with him to the bathhouse, takes off his clothing, bathes him, anoints him, scrubs him, dresses him, puts his shoes on, and picks him up, he has acquired him. [*Evidently, using the slave is a chazakah; so too, using the ground constitutes a chazakah.*]

The *braisa* continues: Rabbi Shimon says: A *chazakah* should not be more stringent than picking up, as picking up acquires anywhere. What does this mean? The following is what was meant: [*The Tanna Kamma held:*] If the slave lifts his master up (*onto a bed*), the master acquires possession (*since he is serving him*), but if his master lifts him up, he does not (*for he is not like a movable object which can be acquired through lifting*). Rabbi Shimon said: *Chazakah* cannot be more effective than lifting,



seeing that it acquires anywhere (*so if the master lifts the slave, he does acquire him*). (53a – 53b)

DAILY MASHAL

Doors on the Third Beis Hamikdash

Rashi (*several places in Shas*) wonders how the Beis Hamikdash could be built on *Shabbos* (*which Chazal say is a distinct possibility*); isn't that a desecration of *Shabbos*? Rashi answers that it is only regarding a Beis Hamikdash built by humans that there is a restriction of building it on *Shabbos*. The third Beis Hamikdash, however, will descend from Heaven miraculously, thus there are no restrictions regarding its building.

The Maharil Diskin is troubled by this answer, as the Jewish People have an obligation to build the Beis Hamikdash, so why would Hashem prevent us from performing this *mitzvah*?

He answers based on a Medrash in Eichah (2:9). It is written: "*Tavu b'Aretz She-areha...*" -- the gates of the Beis Hamikdash were hidden away, sunken into the ground, before the Beis Hamikdash itself was destroyed. When the Beis Hamikdash was destroyed, its gates sunk into the ground, and in the future, the Jewish People will excavate the gates and affix them to the Beis Hamikdash.

Our *Gemora* rules as follows: If a man builds a large mansion on the estate of a deceased convert (*with no heirs*) and another man comes and puts the doors on, the second person becomes owner. Why is this? It is because the first one merely arranged bricks

there (*for without the doors, there is no use for the mansion more than there already was with the land itself; it is the installation of the doors that completes the building*).

Accordingly, we can say that we will fulfill the *mitzvah* of building the Beis Hamikdash when the Third Beis Hamikdash will descend from Heaven; it will be missing one thing. It will not have doors! The *mitzvah* will be fulfilled when we secure its gates.

This can also be the explanation of the words that we recite in the Shemoneh Esrei of Mussaf on the festivals: *Show us its rebuilding (v'har-eynu b'vinyono) and gladden us with its perfection (v'samchenu b'tikuno)*. "Show us its rebuilding" refers to the sending down of the virtually completed third Beis Hamikdash. We will then complete the Beis Hamikdash by attaching the doors and will be gladdened by its perfection and by the fact that we fulfilled the *mitzvah* of building it.