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Bava Basra Daf 54

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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

What Constitutes a Chazakah?

The *Gemora* differentiates between effective and ineffective ways to acquire land (*through a chazakah – a propriety act*). Throwing a turnip into a hole in the ground does not constitute a *chazakah* and does not acquire the land. The reason for this is because throwing the turnip in the ground does not improve the land, and if the turnip actually takes root, it is considered an improvement that happened by itself. [A *chazakah* has to be an act of improving the land. In this case, in order to be considered normal planting, one must cover up the turnip. Merely throwing it into the ground is not sufficient.]

The following *halachos* were said by Shmuel. Pruning a tree may be considered a *chazakah*; however, it depends on one’s intentions. If one intends to improve the tree, it’s a good *chazakah*. If, however, one’s only intention is to feed the branches to his animal, the act of pruning is not a *chazakah*. The intent is able to be determined by the way the tree is pruned. If it is trimmed evenly from both sides, it is considered for the sake of the tree. If it is trimmed all on one side, it is clearly being done for animal food.

Cleaning sticks and weeds from a field may be considered a *chazakah* depending on one’s intention. If one intends to improve the land, it is

considered a valid *chazakah*. If, however, one intends only to use the sticks as firewood, the *chazakah* is invalid. How can one differentiate? If all the sticks are taken, it can be assumed that the intention was to improve the land. If only the large sticks are taken, it is clear the intent was for firewood.

Leveling ground may be a *chazakah* dependent upon one’s intention. If the intent is to improve the land, it’s a valid *chazakah*. If the intent is to create a temporary threshing floor, it’s not considered a *chazakah*. How can intent be determined? If the land is completely leveled, it was done for the sake of the land. If the land was not completely leveled, it was leveled for a threshing floor.

Diverting water into a field may be considered a *chazakah* depending on intention. If the intention is to water the field, the action is considered a *chazakah*. If the intention is to catch fish, the *chazakah* is invalid. How can intent be determined? If the water diverted into the field and is not allowed out, it is done for the sake of the field. If the water is diverted in, and then out of the field, it is done for the sake of catching fish.

The *Gemora* relates a story. A woman stripped a tree in a manner that appeared not for the sake of the



tree for thirteen years. A man came and dug under it a little bit in order to acquire it. The case came before Mar Ukva, and he awarded the tree to the man because all those years the woman never performed a proper *chazakah*.

Rav says: Someone who paints an image on the property of a deceased convert acquires that property. [*This is considered a chazakah. We are discussing a convert who died without any relatives. Therefore, his property is ownerless and anyone could acquire it through chazakah. It is considered in the Gemora, to be the classic case of ownerless property.*]

Rav and Shmuel have an argument in regard to a field with marked borders. Rav says that by digging once, one acquires the entire field. Shmuel says that one only acquires the place where he dug. In a field without marked borders, Rav says that one can acquire the entire field by plowing two rows the length of the field.

Rav Yehudah says a new *halachah* in the name of Shmuel. The property of a gentile being sold to a Jew is considered ownerless and anyone can acquire it for himself. What is the reason for this *halachah*? The gentile no longer considers himself the owner once he receives money. The Jew does not consider himself the owner until he receives a bill of sale. In the interim period, the field is considered ownerless.

Abaye questions the validity of Rav Yehudah's statement. How could Shmuel have said that when we have another statement from Shmuel which seemingly contradicts it? Shmuel says that the law of

the land is binding. In this case, the king said that an acquisition of land can only be done through a document!?

Rav Yosef brings a case which supports the original *halachah*. In a certain place, a Jew was buying land from a gentile and another Jew made a *chazakah*. Rav Yehudah awarded the land to the Jew who made the *chazakah*.

Abaye responds that this case cannot be used as proof. This is a case of a gentile who did not pay property taxes to the king. The law is that one who doesn't pay taxes loses his land and one who is willing to pay the tax may acquire it.

Rav Huna bought land from a gentile and another Jew performed a *chazakah* on it. Rav Nachman awarded the land to the other Jew. Rav Huna wondered why Rav Nachman went according to one statement of Shmuel that the property of a gentile is considered ownerless, and not the other statement that the law of the land is binding.

Rav Nachman responded to Rav Huna: In that respect, I follow our own teaching as ruled by Rav Huna in the name of Rav: As soon as he has dug one time, he becomes the legal owner of the whole field. (53b – 55a)

INSIGHTS TO THE DAF

The Law of the Land

The Poskim deal with when do we say the law of the land is binding. Rav Moshe Feinstein was asked



about a bankruptcy case. One of the creditors had taken the money he was owed. This was against the law, for the company was protected under bankruptcy laws. On the other hand, according to Torah law, he was entitled to the money.

Rav Moshe brings two opinions found in the Rema. The first opinion is that we only say the law is binding when the king has direct benefit like paying taxes, otherwise, we go according to our laws. The second opinion is that we always say the law is binding. Rav Moshe qualifies this opinion. This means that the king has a right to make laws so that commerce runs orderly. If there are no uniform rules for commerce and debt collection, the country would fall apart. The laws of the land would not be binding, however, in laws of damages or laws governing marriage and divorce. In these areas, one must follow Torah laws. Since we hold like the second opinion, Rav Moshe ruled that the debt could not be collected and had to be returned.

Obeying a Jewish King in Eretz Yisroel

It is evident from the *Gemora* that the law of the kingdom has the full force of *halachah* behind it. The Ritva writes that we do not find anyone that disagrees with this principle.

The Rashbam explains the rationale for this *halachah*: All citizens of a country voluntarily accept upon themselves to obey the king's decrees and laws. All of their laws are therefore binding. Accordingly, one who possesses his fellow's property

based upon that particular country's law, does not violate a prohibition of stealing at all.

The Rashba explains it differently: Since the entire land belongs to the king, he is entitled to chase anyone away from his land if he wishes, and he has the right to tax everyone for the privilege of residing in his land.

A difference between these two opinions may be if this *halachah* would apply in *Eretz Yisroel* with a Jewish king. According to the Rashba, it might not apply in *Eretz Yisroel*, for every Jew has an inalienable right to live there, and no king would have the jurisdiction to banish anyone from the Land.

The Ra"n in Nedarim (28a) rules that this principle applies only in the lands of the exile. The reason for this, he explains, is that in these countries, the land is the property of the kingdom, and one is therefore obligated to abide by the laws and ordinances of the country in which he resides. But, in *Eretz Yisroel*, which belongs to the entire Jewish nation, there is no obligation to comply with the laws of a Jewish king. The Rambam and Shulchan Aruch both rule that this principle does apply to a Jewish king in *Eretz Yisroel*.

DAILY MASHAL

The Law of the Kingdom is the Law

Shmuel states: The law of the government is the law (*even according to our law*).

The *Gemora* in Shabbos (88a) teaches that when *Bnei Yisroel* stood at Mount Sinai and heard the word of

Hashem, He held the mountain over our heads. Hashem declared, "If you'll accept the Torah, all will be well. If not, this will be your burial place!" Rav Acha bar Yaakov said: This can now be used as an excuse for *Klal Yisroel* when they do not perform the *mitzvos*. For when they are summoned for judgment, they can claim that they were coerced into accepting the Torah; it was not done willingly.

The Perashas Derachim asks from our *Gemora* which states that the law of the kingdom is the law. If so, this should certainly apply by The Holy One blessed is He, Who is the King of all Kings. How could *Klal Yisroel* use the coercion as an excuse? The law of the kingdom is the law, and they took an oath obligating themselves to perform His *mitzvos*!

He answers that Rabbeinu *Tam* holds that the principle of the law of the kingdom is the law is only applicable if the king decrees on all his subjects. However, if the decree is issued only on part of his kingdom, this principle does not apply. Since Hashem is the King over all the nations of the world and He only forced *Bnei Yisroel* to accept His *mitzvos*, this principle would not apply and hence, a claim of coercion can be effective.

It emerges that regarding the seven *mitzvos* that were given to all *Bnei Noach*, the principle of the law of the kingdom is the law would apply, and a claim of coercion would not be valid.

According to this, the *Ketzos HaChoshen* explains the argument between Pharaoh and the midwives. Pharaoh asked them, "Why didn't you listen to my commandment? The law of the kingdom is the law

and since I the king decreed that all the Jewish children should be killed, you are obligated to listen to me!" They responded to him, "Your decree is not a universal one; it was only issued regarding the Jewish children and not to any others. Accordingly, the principle does not apply and we are not obligated to adhere to the laws of the kingdom. Thereupon, Pharaoh immediately decreed that all children born must be thrown into the sea.

Reb Shlomo Kluger uses this principle to explain Adam HaRishon's response to Hashem. He answered, "The woman that you gave to me gave me from the tree and I ate." What kind of answer was this? Adam HaRishon was saying that since his wife was here as well and she was not commanded not to eat from the tree. Therefore, the law of the kingdom does not apply and that is why he ate.