



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h
Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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 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 *Gemara* 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. (29b2 – 30a1)

Chazakah and Protest

A certain man once said to another, “Why are you in this house (*which was known to belong to me*)?” He replied, “I bought it from you and used it for the period of a *chazakah*.” The original owner said, “I was in the markets abroad all the time (*and therefore I did not know to protest*).” The occupant said, “I have witnesses to prove that you used to come here for thirty days every year.” The original owner replied, “All thirty days I was occupied with my business (*and I did not realize that you were here*).” Rava said: It is quite possible for a man to be fully occupied with his business for thirty days (*without realizing that another person has occupied his house*). (30a1 – 30a2)

A certain man once said to another, “Why are you in this land (*which was known to belong to me*)?” He replied, “I bought it from So-and-so, who told me that he had bought it from you.” The original owner said, “You admit then that this land was once mine and that you did not buy it from me. Get out! You are not my litigant.” Rava said: He is within his rights in what he said to him. (30a2 – 30b1)

A certain man once said to another, “Why are you in this land (*which was known to belong to me*)?” He replied, “I bought it from So-and-so, and used it for the period of a *chazakah*.” The original owner said, “So-and-so is a thief.” The occupant said, “I have witnesses that will testify that I came and consulted you and you advised me to buy the property.” The other one said, “I did that for I preferred to litigate with you

rather than with him.” Rava said: He was quite within his rights in what he said to him.

The *Gemara* asks: Whose opinion is Rava following? The viewpoint of Admon!? [We hold like the *Chachamim*!?] For we have learned in a *Mishna*: If a person (*Reuven*) contests a field (*claiming that Shimon stole it from him*), but he himself is signed on a document as a witness (*which states that Shimon sold it to Levi*), Admon says: He could say, “The second one (*Levi*) is agreeable to me (*and I think that I can recover the field from him*), but the first one (*Shimon*) is more difficult than him.” The *Chachamim* say: He lost his right to the field (*by signing as a witness*).

The *Gemara* answers: You may even say that Rava is in agreement with the *Chachamim* as well. For in the *Mishna*’s case, he has actually done something to show that he does not own it (*by signing the document*), but in this case, a man may sometimes say something to hurt his cause (*but that is not enough evidence for him to forfeit his rights*). (30b1 – 30b2)

A certain man once said to another, “Why are you in this land (*which was known to belong to me*)?” He replied, “I bought it from So-and-so, and used it for the period of a *chazakah*.” The original owner said, “So-and-so is a thief.” The occupant said, “I have witnesses that will testify that you came the evening before and said to me, “Sell it to me.” The owner said, “I did that in order to buy what I was already legally entitled to.” Rava said: It is not unusual for a man to buy what is already his in order to avoid litigation. (30b2)

A certain man once said to another, “Why are you in this land (*which was known to belong to me*)?” He replied, “I bought it from So-and-so, and used it for the period of a *chazakah*.” The original owner said, “But I have a contract proving that I bought it from him four years ago.” The occupant said, “Do you think that when I said that I used it for the period of *chazakah*, I meant only three years? I meant that I had it for many years.” Rava said: It is not unusual to refer to a long period of years as “the period of *chazakah*.”

The *Gemara* rules that this would only apply in a case where the occupier has had the use of the land for seven years, so that his *chazakah* years came before the contract; however, if it was only for six years, there cannot be a greater protest (*for it emerges that the original owner sold it to a different person two years after this person began his chazakah, and therefore, his chazakah is ineffective*). (30b2 – 31a1)

DAILY MASHAL

Chazakah is doing something consistently over a certain period of time.

Rabbi Zev Leff says something very interesting: The Almighty is particularly annoyed by inconsistency, i.e. hypocrisy. Hashem can deal less harshly with a person who may be bad, but who is at least consistent in his evil ways. But a person who demonstrates hypocrisy and inconsistency really riles the Almighty.

This is reminiscent of the Medrash regarding Yosef’s first question to his brothers after revealing himself to them: “Is my father still alive?” [Bereishis 45:3] The Medrash comments: “Woe to us from the Day of Judgment. Woe to us from the day of humiliation. The Tribes had no answer to Yosef’s chastisement.”

What was the chastisement? Rabbi Yissochar Frand explains: It was their hypocrisy. Their whole interchange with Yosef had been that they could not bring down Binyamin, because if they separated him from his father, their poor old father would die. Yosef challenges them, “If you are so worried about your poor father, why weren’t you worried about him twenty some years ago, when you separated him from his favorite son?”