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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

Chazakah Exclusions

Rav Yehudah says that if someone takes a scythe and a rope, and says that he is going to a certain person’s palm tree to harvest it, since he bought it from that person, he is believed, since no one would have the audacity to so brazenly cut down a palm tree that is not his. (36a1)

The *Gemara* then lists several exclusions to *chazakah*, some based on how scared a person who doesn’t own the land would be to use it.

1. Rav Yehudah says that if someone ate from the produce on the outer periphery of a field, which is usually left for wild animals, this does not establish a *chazakah*, since the owner assumes this produce is lost to the animals, and does not protest someone eating them.
2. Rav Yehudah says that if one consumes produce from *orlah* years, from the *Shemittah* year, or from a field with prohibited hybrids, this does not establish a *chazakah*. *Orlah* and hybrids are forbidden to eat, and *Shemittah* is ownerless, so the owner did not feel the need to protest. The *Gemara* cites a supporting *Baraisa*: If he harvested only *orlah* produce, the produce of *kilayim*, or the produce of the *Shemittah* year, this does not confer *chazakah*.
3. Rav Yosef says that if one consumes produce from a field when it is only partially grown, this does not establish *chazakah*, since he did not use the field as people generally do. This indicates that he may not own the field, and is scared to use it in the usual manner, and the owner therefore did not protest such use. Rava says that if this was done in the valley of *Mechuza*, where the landowners were wealthy, and would generally use fields for grazing, it does establish *chazakah*, since it is the normal method of consumption.
4. Rav Nachman says that if one used severely cracked land, which is not usable, this does not establish *chazakah*, since the owner does not value the land enough to protest.
5. If he planted a *kor*, but only harvested a *kor*, this is not *chazakah*, since the owners will not protest one who doesn’t gain anything from the land.
6. The *Gemara* says that the people in the exilarch’s household are not party to *chazakah*. We cannot establish a *chazakah* on their land, since they never protest someone on their land, since they will always be able to retrieve the land by force. They cannot establish a

chazakah, since one who owns land that they use will be afraid to protest. (36a1 – 36a2)

Movable or Moving?

The *Mishnah* said that *chazakah* applies to slaves after three years of use. The *Gemara* challenges the *Mishnah* from Rish Lakish's statement that live animals are not assumed to be in the ownership of whoever currently possesses them, since they can move on their own, and may have gone to their current location without a sale. This statement should apply to slaves as well.

Rava says that Rish Lakish was only stating that, unlike other movable items, we do not assume that their current location indicates their ownership, but three years of use still establishes a *chazakah*, since the original owner should have protested during that period.

Rava says that an infant slave is assumed to be owned by whomever is in possession, since it cannot walk itself, and is not subject to Rish Lakish's statement.

What is the novelty of this ruling? - The *Gemara* explains that Rava is teaching us that we are not concerned that the infant was brought there by his mother, who can walk, and is included in Rish Lakish's statement, since a mother would not abandon her infant.

Goats ate some barley, and the owner of the barley grabbed the goats as collateral until he was paid damages for his barley. He claimed a large amount for damages, but Shmuel's father said that he is only believed up to the value of the goats, since he would have been able to keep the goats by claiming that he bought them. Even though Rish Lakish said that animals

are not considered owned by one who is holding them, goats are different, as they are entrusted to the care of a shepherd. – But there are times in the morning and the evening (where they are not supervised)? - As they were in Nehardea, animal thieves were common, and people were therefore careful to directly hand them between owner and shepherd. [As such, these animals are not let to walk on their own, and are not included in Rish Lakish's statement.] (36a2 – 36a3)

Chazakah: What's the Threshold?

The *Mishnah* stated that Rabbi Yishmael says *chazakah* can occur in as little as 18 months – three months in the first year, the whole second year, and three months in the third year. Rabbi Akiva said it can occur in as little as 14 months – one month in the first year, the whole second year, and one month in the third year.

The *Gemara* attempts to explain the dispute between Rabbi Yishmael and Rabbi Akiva. The *Gemara* first suggests they dispute whether plowing a fallow field establishes *chazakah*. Rabbi Yishmael says that plowing does not establish a *chazakah* (as one needs consumption of produce, which takes three months for an initial growth), while Rabbi Akiva says that plowing does establish a *chazakah*.

The *Gemara* rejects this suggestion, since one day should suffice for plowing, yet Rabbi Akiva requires a month. The *Gemara* instead states that both agree that plowing is not sufficient, but they dispute how grown the consumed produce must be to create a *chazakah*. Rabbi Yishmael requires fully grown produce, which takes a minimum of three months, while Rabbi Akiva allows young produce, used for grazing animals, and which takes one month to grow.

Our Rabbis taught in a baraisa: Plowing does not establish a chazakah. Some authorities hold, however, that it does establish a chazakah. Who are 'some authorities'? — Rav Chisda said: This is the opinion of Rabbi Acha, as we see from the following: If a man plows a field fallow one year and plants it two, or [even] plows it fallow two years and plants it one, this does not establish a chazakah. Rabbi Acha, however, says that it does establish a chazakah.

Rav Bibi inquired of Rav Nachman: What is the reason of those authorities who lay down that plowing does establish a chazakah? — [He answered:] A man will not see someone else plow his field and keep quiet. And what is the reason of those who say that plowed fallow does not establish a chazakah? - Because the owner says to himself, "The more he plows, the better for me."

The people of Pumbedra sent a query to Rav Nachman bar Rav Chisda: Let our master teach us whether plowing a field establishes a *chazakah* or not. Rav Nachman bar Rav Chisda said to them that it does establish a chazakah, since Rabbi Acha and all the Torah leaders rule so.

Rav Nachman bar Yitzchak disagreed: You gain nothing by citing authorities; for Rav and Shmuel in Babylon and Rabbi Yishmael and Rabbi Akiva in Eretz Yisrael held that plowing does not help to establish a chazakah.

The views of Rabbi Yishmael and Rabbi Akiva [on the subject] can be derived from the Mishnah. Where do we find the view of Rav on the subject? — In the following statement: Rav Yehudah said in the name of Rav: This is the view of Rabbi Yishmael and Rabbi Akiva, but the Sages say that the chazakah [of such a field] is established only by occupation for three full years. -

Now the expression 'full years' is intended to exclude plowed fallow, is it not?

Where is the view of Shmuel on the subject expressed? — In the following statement: Rav Yehudah said in the name of Shmuel: This is the view of Rabbi Yishmael and Rabbi Akiva, but the Sages say that chazakah is not obtained until the occupier has gathered in three crops of dates and culled three vintages and plucked three crops of olives.

Where does the difference arise between Rav and Shmuel? — The difference arises in the case of a young date tree. (36b1 – 36b2)

How much of the Field?

Rabbi Yishmael stated in the *Mishnah* that if one harvests three types of produce in the field, these join together to establish a *chazakah*, even in one year.

Abaye says that although the Sages require three years, we can extrapolate from Rabbi Yishmael that if the use of the field over the three years was in different realms, this establishes *chazakah*. Therefore, if one had an orchard with 30 trees, and each year only 10 trees produced fruit, which he ate, this establishes a *chazakah*. Just as Rabbi Yishmael allows consumption of one produce to join with consumption of other produce, the Sages will allow consumption of one section of the field to join with consumption of a different section over the three years to establish *chazakah*. This is only true if he ate all that was produced in any given year, just as Rabbi Yishmael requires the buyer to eat all of the produce of any given time to establish *chazakah*. Finally, it is only true if the 10 trees that produced each year were scattered throughout the field, just as Rabbi Yishmael's case is a

field which has different types of trees intermingled. If the producing trees were not scattered, the consumption of each year does not apply to the whole field. (36b2 – 37a1)

DAILY MASHAL

A Disputed Vehicle

Levi was known to have a car and Shimon started using it but when Levi asked him to desist, Shimon retorted that he bought it from him. The licensing bureau was on strike and the true ownership could not be documented, so Levi summoned Shimon to a *beis din*. Shimon claimed the above-mentioned right of *chazakah* that anything a person now holds is assumed as his (*Shulchan Aruch, C.M. 133:1*). Apparently, the solution to the problem depends on the two explanations in Rashbam's commentary on our *Gemara*: Anyone purporting to own real estate known as another's must produce a bill of sale or other proof and, if not, relinquish his claim. Regarding chattels, though, the present holder of the goods may claim the above right of *chazakah* without further proof of acquisition as his physical possession proves his ownership: We assume he did not enter the owner's premises and steal them, but made a legal purchase.

Our *sugya*, though, tells of a person with goats in his possession, claimed by the original owner, and asserts that *chazakah* in this case is inapplicable but that he must prove he bought them. Rashbam (s.v. *Hagoderos*) offers two reasons to differentiate goats from other chattels: (a) They move about by themselves, as opposed to other, immobile chattels. (b) Other chattels are kept at home whereas goats are usually out grazing. *Chazakah*, we said, stems from the assumption that a holder of chattels has not stolen them as most people

are not so brazen to rob others' homes. Goats, though, may be stolen in two ways without invading another's premises: (a) They could wander into the holder's premises by themselves. (b) He could take them from a public or ownerless area. The ease of their theft undermines the claim of *chazakah*.

How is a goat different from a car? In his *Netzach Yisrael* (41), HaGaon Rav Yisrael Grosman asserts that according to Rashbam's first reason, cars are not like goats: They don't move by themselves. According to his second reason, however, cars may be compared to goats as they are not kept at home.

To decide if *chazakah* applies to a car, then, we must determine whether Rashbam links the two reasons – i.e., *chazakah* doesn't apply only if **both** reasons prevail, as in the case of goats – or if merely one reason suffices to overrule *chazakah*. Rav Grosman learns from Tosfos in Gittin (20b, s.v. *Ta shema*) that one reason is enough and Shimon must therefore prove his ownership.

Still, in his *Darchei Choshen* (I, p. 197), HaGaon Rav Y. Silman insists that entering and driving another's car is the same as breaking and entering into his premises. Most people are not suspect of such crimes and Shimon does not have to prove his ownership.