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Chazakah when Buying a Field from an Idolater

Rav Yehudah quoted Rav saying that a Jew who bought a field from an idolater has the same claiming rights in court as his seller – he must produce a contract to prove ownership, and a *chazakah* claim is not accepted. Rava says that if he claims that the idolater told him that he bought it from the original owner, his *chazakah* is accepted.

The *Gemora* rejects this statement, since the Jew relating what the idolater told him cannot be more credible than the idolater. Just as we would not believe such a statement from the seller without further evidence, we will not believe the buyer. Instead, Rava said that if the Jew says that he saw the idolater buy the field from the original owner, he is believed. Since he has lived on the field for three years, he would be believed if he claimed to buy the field from the original owner. This gives him credibility in his current claim through *migu* – if he were to lie, he would have had a better claim - and we therefore accept his current claim. (35b – 36a)

Chazakah Exclusions

Rav Yehudah says that if someone takes a sickle and a basket, 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 take someone’s property.

The *Gemora* 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 *Gemora* cites a supporting *braisa*.
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. Rav

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 *Gemora* 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. (36a)

Movable or Moving?

The *Mishna* said that *chazakah* applies to slaves after three years of use. The *Gemora* challenges the *Mishna* 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.

The *Gemora* 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, these goats were in Nehardea, where 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. (36a)

Chazakah: What's the Threshold?

The *Mishna* 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 *Gemora* attempts to explain what the dispute between Rabbi Yishmael and Rabbi Akiva is. The *Gemora* first suggests they dispute whether plowing a fallow field establishes *chazakah*. Rabbi Akiva says it does, so one month suffices, while Rabbi Yishmael says

one needs consumption of produce, which takes three months for an initial growth.

The *Gemora* rejects this suggestion, since one day should suffice for plowing, yet Rabbi Akiva requires a month. The *Gemora* 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.

The *Gemora* brings a *braisa* that records a dispute whether plowing a fallow field establishes a *chazakah*. Rav Chisda identifies the opinion that plowing a field establishes *chazakah* as that of Rabbi Acha, who states in another *braisa* that if one only plows for part of the three years, he establishes *chazakah*. Rav Ashi further states that he was told by the Torah leaders that plowing a field does establish a *chazakah*.

The *Gemora* explains that the rationale for both opinions. Plowing may establish a *chazakah* since one does not allow another person to plow his field without protesting. Plowing may not establish a *chazakah*, since a field owner allows people to plow his field, since they are only improving the land, without benefiting from it.

The people of Pumbedra sent a query to Rav Nachman bar Rav Chisda whether plowing a field establishes a *chazakah*. Rav Nachman bar Rav Chisda said that it does, since Rabbi Acha and all the Torah leaders rule so. Rav Nachman bar Yitzchak disagreed, and cited the many sages who ruled that it does not establish a *chazakah*:

1. Rabbi Yishmael and Rabbi Akiva require at least a month of usage, since they do not accept

plowing as a *chazakah* (as the *Gemora* explained earlier).

2. Rav said that the Sages disagree with both Rabbi Yishmael and Rabbi Akiva, and require a full three calendar years to establish a *chazakah*, indicating that plowing is not sufficient.
3. Shmuel said that the Sages disagree with both Rabbi Yishmael and Rabbi Akiva, and require three full agricultural harvest cycles.

The *Gemora* explains that the different descriptions of the Sages' opinion given by Rav and Shmuel has a ramification for a young palm tree, which produces fruit in less than a year. According to Rav, the Sages still require three calendar years, while according to Shmuel, the Sages say that three harvests, even in less than three full years, is sufficient. (36a – 36b)

How much of the Field?

Rabbi Yishmael stated in the *Mishna* 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. (36b – 37a)

INSIGHTS TO THE DAF

A Disputed Vehicle

By: Meoros HaDaf HaYomi

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 *Gemora*: 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.