

Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

Bava Basra Daf Chuf Tes

- Q: We have given the source from where R' Yishmael learns the concept of chazaka, but from where do the Rabanan learn the concept of chazaka? A: R' Yosef said, the pasuk tells how Yirmiya spoke during the 10th year (of Tzidkiyahu's reign) and told the people that they should make sure to keep their documents of purchase, because the galus would begin after the 11th year. That means, that 2 years (years 10 and 11) would not be sufficient for chazaka, which shows that at least 3 years are needed.
 - Q: Abaye asked, maybe a chazaka is established even after one year, and the Navi was giving the people advice to hold onto their documents so that they do not need to find witnesses later on to prove that they established a chazaka!? In fact we see that the Navi told them to build houses and plant gardens in Bavel, since they would be there for a while. The Navi also told them how to preserve their documents. This shows that the Navi was giving them good advice!? A: Rather, Rava said, the reason why 3 years creates a chazaka is, that a person is moichel when he sees someone using his property for the first year. He is even moichel for a second year as well. He is not moichel for a third year. Therefore, if he allowed someone to be in his field for 3 years without protest, it must be that the user of the field actually took ownership of the field.
 - Q: Abaye asked, if so, if a protest is made after 2 years, the user should only have to return the land, and not the produce that he ate from the land, so why did R' Nachman say that the land and the produce of the 2 years must be returned!? A: Rather, Rava said, the reason why 3 years creates a chazaka is, that a person does not protest when he sees someone using his property for the first year. He also does not protest for a second year as well. He does protest in the third year. Therefore, if he allowed someone to be in his field for 3 years without protest, it must be that the user of the field actually took ownership of the field.
 - Q: Abaye asked, based on this, people like the household of Bar Elyashiv, who are particular and protest if someone even walks on their boundary, if someone used their property and they did not immediately protest, would that create a chazaka immediately? If you say that it does, then there is no set time for chazaka, rather we would have to look at each case individually!? A: Rather, Rava said, for the first 3 years after purchasing a property, the buyer is careful to retain his purchase documents. Beyond that he is not careful if there has been no challenge to his use of the property.
 - Q: Abaye asked, if so, a protest that is made without this person present should not be a valid protest, because he is not informed to keep onto his documents!?
 A: Any protest informs him to do so, because people talk, and eventually he will hear that his use of the land was protested.
- **R' Huna** said, 3 years create a chazaka only when the person used the field for 3 *consecutive* years.
 - Q: This was already stated in the Mishna, when it said that the chazaka is established by use of 3 years "from day to day"!? A: We would think that the Mishna is teaching that the 3 years must be complete years, not partial years, but those 3 years need not be consecutive. R' Huna therefore teaches that they must be consecutive.
 - R' Chama said that R' Huna would agree that if the local custom was to only plant every other year (and leave the field empty in the alternating years), that the 3 years of use do not have to be consecutive (however, the chazaka would only be established after the field had been used for 3 years – Rashbam).

- Q: This seems obvious!? A: The case is that some people in the area only plant on alternating years and some plant every year. This field in question was immediately surrounded by fields that were only planted on alternating years, and the person also only planted on alternating years. We would think that the original owner can claim that there is no chazaka, because the field was not used in consecutive years. R' Chama is teaching that he can respond and say that he could not have planted and hired someone to watch only his field, or he could say that he simply believed in the method of only planting on alternating years, and therefore the chazaka is valid.
- Q: Our Mishna said that the chazaka on a house is established after 3 years. Now, during the day we see that someone is living in the house, but at night we do not. According to R' Huna, who said that there must be proof of consecutive use, how can that be proven with regard to a house? A: Abaye said, it is the neighbors who testify regarding occupancy of a house, and they know who was there by day and by night. Rava said, the case can be that witnesses come and say "We rented the house from this person (the one claiming ownership) and lived there for 3 years, day and night".
 - Q: R' Yeimar asked R' Ashi, these people wouldn't be believed, because if they don't testify as they did, they would be required to pay rent for 3 years to the original owner, and therefore they are "nogeya b'davar" and shouldn't be believed!? A: R' Ashi said, clearly, the case must be where these people come to Beis Din with 3 years worth of rent in their hands, ready to pay. It is then that they are believed, because they don't care who they must give this money to.
- Mar Zutra said, if the original owner claims that he wants the user of the house to bring witnesses who can testify that he was there for 3 years by day and by night, we accept this claim, and such witnesses must be brought.
 - Mar Zutra would agree, that if the original owners are peddlers who are often out of town, then even if the original owner did not demand that such witnesses be brought, we would make that claim for him, and require that such witnesses be brought.
- R' Huna would agree that for a chazaka on a store in Mechuza, which is only meant to be used by day and not by night, that the user would only have to prove that he used the store for 3 consecutive years during the day.
- Rami bar Chama and R' Ukva bar Chama bought a maidservant together. One of them used her in years 1, 3, and 5, and the other used her in years 2, 4, and 6. The original owner then claimed that he never sold this maidservant to them. Rava said to them, the reason you alternated years of use was so that neither of the two of you partners establish a chazaka against the other. The same way you prevented a chazaka from being established against each other, you also prevented a chazaka from being established against the original owner as well.
 - This is only if there was no document written describing how they would divide use of the jointly purchased asset. If such a document was written, it becomes known and the combined use would serve to establish a chazaka.
- Rava said, if the user of the field used the entire field for 3 years, except for a piece the size of ¼ of a kav, he has established a chazaka on the entire field except for that ¼ kav.
 - R' Huna the son of R' Yehoshua said, that is only if that ¼ kav piece was suitable to be
 planted. If it was not, he would have a chazaka on it along with his use of the rest of the
 land.
 - Q: R' Bibi bar Abaye asked, based on this, how would one make a chazaka on a rocky field? It must be that he would do so by putting his animals there or spreading out his fruits to dry there. Here too, if that piece is not suitable for planting, he would only establish a chazaka on it by using it in some other way (like by putting his animals or his fruit there).