



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

Bava Basra Daf Lamed Hey

- There was a dispute over property, where one person said it belonged to his fathers, and another person said the same, and neither was able to prove his claim. **R' Nachman** said, Beis Din steps back and "kol d'alim gavar" (whoever is stronger should win).
 - **Q:** Why is this different than the case we learned elsewhere, that if there are 2 deeds given for a gift of a property, written on the same day (and held by 2 different people), **Rav** said they split the property and **Shmuel** said, we leave it up to the discretion of Beis Din to decide who to give it to? **A:** The difference is, in that case we will never be able to determine that the property belongs to one over the other. However, in our case, it is possible that one of them will eventually find witnesses to prove his claim. Therefore, we say kol d'alim gavar, rather than settle it some other way.
 - **Q:** Why is this different than the case we learned elsewhere, that if a person trades a cow for a donkey of another person, and at some point the cow gave birth, or if one sold his maidservant to another and she gave birth, and the seller (of the cow or the maidservant) says it gave birth before the transaction took place, and the buyer says it happened after the transaction took place, they divide the value of the calf or the child. Now, that is a case where proof may later be found, and still we say that they are to divide the disputed property!? **A:** The cases are different. In that case each person has a true claim to the property (they both owned the mother at some point, and the question is only when the offspring was born) and therefore Beis Din can't simply remove itself from the dispute. However, in our case, only one of the people truly own the property, and the other is lying. Therefore, we say kol d'alim gavar.
 - In Neharda'ah they said, if an outsider to the dispute comes and takes possession of the disputed property, Beis Din would not take it away from him (since it is possible that it does not belong to either of the other people making a claim). We can see this from a Braisa taught by **R' Chiya** that says that one who steals from the public is not considered to be a gazlan. This must refer to the case of where the outsider grabbed it, and we see he is not considered to be a gazlan.
 - **R' Ashi** said, the outsider would have to give back the property. When the Braisa says he is not considered to a gazlan, it means that he doesn't have the avenue of teshuva that a gazlan has (a gazlan can simply return the stolen property, whereas he does not know who to give it to, and therefore cannot simply return it).

CHEZKASAN SHALOSH SHANIM MIYOM LIYOM...

- **R' Abba** said, if the person who is contesting the ownership of the occupant is seen by witnesses to have helped load a basket of fruit onto the shoulders of the occupant, it creates an immediate chazakah.
 - **R' Zvid** said, if this person claims that he had made the occupant a sharecropper, and was therefore helping him with produce that was his share, he would be believed, and it would not create an immediate chazakah. However, this is only if this happened within the first 3 years of his occupancy. If it was after that, he could not say that the reason he did not protest is because the occupant was his sharecropper.
 - **Q:** **R' Ashi** asked **R' Kahana**, if someone has a sharecropper for multiple years, what can he do to protect himself from the sharecropper claiming a chazakah? **A:** **R' Kahana** said, he must protest, by letting people know that the occupant is a sharecropper, and not the owner of the land. For if you will not say this, how could the **Rabanan** have instituted for a lender to take collateral and use the

field for a number of years as payment for the loan? It leads to the risk that the lender can claim that he bought the property and has established a chazakah!?

Rather, we must say that the owner can protest and thereby prevent a chazakah from being established. The same is true for our case.

- **R' Yehuda in the name of Rav** said, if a Yid occupies a field that he bought from a goy, and it was known that this land used to belong to a Yid before, the occupying Yid is treated like a goy in the sense that he cannot establish a chazakah. **Rava** said, if the occupying Yid says that the goy told him that he bought the field from the previous Jewish owner, he would be believed.
 - **Q:** Can it be that the goy would not be believed to say that he bought the land from the Yid, but the Yid who bought it from the goy is believed when he says that the goy told him that he bought it from the Yid!? **A:** Rather, **Rava** said, if the Yid says that he was present when the goy bought the property from the other Yid, he is believed, with a miguy that he could have said that he bought the property directly from the Yid, in which case he would be believed based on his chazakah.