



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

Bava Basra Daf Lamed Zayin

AMAR R' YISHMAEL BAMEH DEVARIM AMURIM BISDEI HALAVAN

- **Abaye** said, from the words of **R' Yishmael** we can deduce what the **Rabanan** would hold in the following case. If someone had a field with 30 trees planted in the ratio of ten trees to a beis se'ah, and the person in the field harvested 10 trees one year, 10 in the second year, and 10 in the third year, the **Rabanan** would say that this establishes a chazakah. We can deduce this based on the fact that **R' Yishmael's** view is that a chazakah can be made even within one year (with 3 harvests in that one year), and can be done so based on his harvesting of one type of produce (he does not need to harvest the same produce 3 times, but can rather harvest 3 different types of produce). The **Rabanan** only seem to argue on the first point, where he says that it can be done within one year (they say it must be done over 3 years), but don't seem to argue regarding the second point (that a chazakah on one crop can act as a chazakah on another type of crop). Therefore, in this case they would view the harvest of some of the trees as a harvest of all of the trees for all three years. However, this is only if the 20 trees he is not harvesting did not produce fruit that year. If they did, and he did not harvest them, he would not have established a chazakah. Also, this is only if the 10 trees that he harvests are spread out over the entire field. However, if they are within one section of the field, his harvest cannot act as a chazakah for the rest of the field.
- If a person sells his land to one person and the trees on that land to another person, and the buyer of the land makes a kinyan chazakah on the land, and the buyer of the trees makes a chazakah on the trees, **R' Zvid** says that the buyer of the trees is koneh the trees without any land, and the buyer of the land is koneh all of the land.
 - **Q: R' Pappa** asked, if the buyer of the trees gets no land at all, then when the tree dies, the buyer of the land would be able to demand that the tree be removed from the land and not allow him to plant a new tree, which doesn't seem right!? **A:** Rather, **R' Pappa** said, the buyer of the trees is koneh the trees and the land under and around the trees, and the buyer of the land is koneh the rest of the land. Therefore, if a tree died, the owner of the tree would be allowed to plant a new one in its place.
- It is obvious that if a person sells his land, but not his trees, he retains some land around the trees for himself, and would be allowed to plant a new tree if an old one died. Even according to **R' Akiva**, who holds that a seller sells in a generous fashion (not retaining anything for himself), that is only regarding the case of a seller of a field who keeps ownership of the bor within the field, in which case **R' Akiva** says that the seller does not retain a right to walk through the field to get to the bor. The reason is, that walking through the field does not damage the field and the seller sees no reason why the buyer would not let him walk through. Therefore, he sells it all and retains nothing for himself. However, in the case of trees, which ruin the surrounding ground, even **R' Akiva** would agree that the seller of the land means to retain some land for himself, because if he does not do so, the buyer of the land will make him uproot the tree and leave once it dies.
 - If a person sells only his trees, but not his land, there would be a machlokes between **R' Akiva and the Rabanan**. According to **R' Akiva**, who says that a person sells in a generous fashion, the buyer also gets the land under and around the trees. According to the **Rabanan** who argue, the buyer would not get that land.
 - According to **R' Akiva** the buyer would get the land even according to **R' Zvid**, because **R' Zvid** said the buyer of the trees doesn't get land when the seller sold the land to someone else. In that case, the buyer of the land can tell the buyer of the trees, "just as I get no portion of the trees, you get no portion of the land". However, when the seller retains the land for himself, **R' Zvid** may agree

that a seller sells generously, and the buyer of the trees therefore gets land as well.

- According to the **Rabanan** the buyer of the trees will not get any land even according to **R' Pappa**, because **R' Pappa** said the buyer of the trees gets land only when the seller sold the land to someone else. In that case, the buyer of the trees can tell the buyer of the land, "just as you were sold to generously (and have rights to the field forever), so too I was sold to generously (and should have rights to have trees here forever). However, when the seller retains the land for himself, **R' Pappa** may agree that a seller does not sell generously, and the buyer of the trees therefore does not get land as well.
- Nehardai said, if the field of 30 trees was planted more densely than 10 trees per beis se'ah, the person who harvests them cannot establish a chazakah (because the trees are destined to be uprooted, because there are too many in too small a space).
 - **Q: Rava** asked, if so, how can one ever establish a chazakah on aspasta, which is planted densely and later moved? **A:** Rather, **Rava** said, the ruling must have been, that if someone bought trees that were planted too densely, he does not get any land along with the trees (because the trees will be uprooted, and it is therefore not a field of trees).
 - **R' Zeira** said, this is actually a machlokes among Tanna'im. A Mishna says, if a vineyard is planted with less than 4 amos between rows, **R' Shimon** says it is not considered to be a vineyard (like **Rava** said), and the **Rabanan** say that it is considered to be a vineyard and we view the middle rows as if they are not there (since they are destined to be removed).
- Nehardai said, if someone sells a palm tree, the buyer is koneh the earth under the tree, from the trunk until the depths of the earth.
 - **Q: Rava** asked, why can't the seller say "I sold you the tree like people sell 'kurkima d'rishka' (which is sold when still attached to the ground, but must be removed, and the buyer gets no rights to the ground at all)"!? **A:** Rather, **Rava** said, the case that the buyer gets the ground is where he makes a claim that the land was specifically included in the sale.
 - **Q: Mar Kishisha the son of R' Chisda** asked **R' Ashi**, if so, how does the seller prevent a buyer from making a false claim like this when the deal was that he was not including any land in the sale? **A: R' Ashi** said, he must protest within 3 years of the sale, by letting people know that he sold the tree without including 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.