Daf In Review – Weekly Chazarah

Maseches Bava Basra, Daf מו – Daf נב

Daf In Review is being sent l'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen,

A"H vl'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

----------Daf מו---46----------

- A Braisa says, if someone's keili was switched for that of another when it was by the craftsman (e.g. he was given someone else's coat instead of his own), he is allowed to use it until the other person who got the first person's coat by mistake brings it back to him and claims his keili. If the switch was done by nichum aveilem or at a wedding, the person may not use the one he took by mistake.
    - **Q:** What is the difference between the first and second case? **A: Rav** said that **R' Chiya** told him, that since people at times tell the craftsman to sell their coat for them, what likely happened is that the craftsman sold the first person's coat by mistake and therefore gave him this as a replacement until the error can be corrected. That is why he may use the coat in the meantime.
        - **R' Chiya the son of R' Nachman** said, this is only true if the craftsman himself gave the person the coat. However, if the craftsman's wife or children did so, he would not be allowed to use it. Further, even if he gave it himself, it is only mutar if the craftsman said "here is a coat", but if he said "here is *your* coat" it would be assur (because it is not his coat).
- **Abaye** said to **Rava**, come and I will show you how the craftsmen of Pumbedisa cheat people. When someone asks for his coat they tell him, "you never gave me a coat". When the person then tells the craftsman, "there are witnesses that saw that you had my coat", he responds, "that is a different coat". When the owner then demands, "bring out that coat and we will see", the craftsman says, "I will not take out the coat to show you other people's property!" **Rava** said, the claim of the craftsman is actually a proper claim, because the earlier Braisa said that one can demand the craftsman to produce the item only when he saw it in the possession of the craftsman.
    - **R' Ashi** said, the owner can trick the craftsman into bringing out the coat, by telling him that he knows he owes him money, and therefore tells him to bring out the coat so that they can assess its value and pay from the value of the coat. Once it is seen by him, he can demand its return and the craftsman is not believed to say that it is his. **R' Acha the son of R' Avya** said to **R' Ashi**, the craftsman will not be fooled with this ploy, and will insist that the coat has already been assessed and will therefore not take it out.

ARIS EIN LO CHAZAKAH

- **Q:** Why can't the sharecropper establish a chazakah? As a sharecropper he only got half the produce of the field, but for the trailing 3 years he ate the produce of the *entire* field!? **A: R' Yochanan** said, the Mishna is talking about sharecroppers whose share is an entitlement to the entire field for a number of years, and the same is then done for the owner of the field.
- **R' Nachman** said, if a sharecropper hired other sharecroppers under him, he can establish a chazakah by having these other people work the field for him. This is because people do not stand by quiet and allow other sharecroppers to work their field.
    - **R' Yochanan** said, if a sharecropper hired other sharecroppers under him, but supervised their work, he cannot establish a chazakah by having these other people work the field for him. This is because people do not have a problem with other sharecroppers being brought in to work their field, if their original sharecropper supervises them.
- **R' Nachman bar R' Chisda** sent to **R' Nachman bar Yaakov**, can a sharecropper testify on behalf of his employer? **R' Yosef** said that **Shmuel** said that a sharecropper may do so.
    - **Q:** A Braisa says that he may not testify for his employer!? **A:** The Braisa is discussing where there is still fruit in the field (and the sharecropper therefore has an interest in making sure that his employer keeps the field, so that he will collect his share). **Shmuel** was referring to a case where there was no longer fruit in the field.

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- A Braisa says, a guarantor may testify on behalf of the borrower, as long as that borrower has other land (for the lender to collect from, and thereby protect the guarantor from having to pay). A lender may testify on behalf of the borrower, as long as that borrower has other land (for the lender to collect from). An earlier buyer may testify on behalf of a later buyer, as long as that second buyer has other land that he purchased from that seller (which must be used for collection by a creditor of the seller before he can collect from the land of the earlier buyer). With regard to a "kablan" guarantor (guarantor who may be collected from even before the borrower is attempted to be collected from), some say that he may testify (just like a regular guarantor) for the borrower and some say that he may not (because the more properties that remain in the hands of the borrower, the more likely it is that the lender will decide to collect from the borrower instead of from the kablan guarantor).

----------Daf מז---47----------

- **R' Yochanan** said, a craftsman cannot establish a chazakah, but the son of a craftsman can. A sharecropper cannot establish a chazakah, but his son can. Neither a gazlan nor his son can establish a chazakah, but the gazlan's grandson can.
    - **Q:** What is the case being discussed? If they are making a claim to an item based on the ownership of their father, then even the first two sons should not be able to establish a chazakah, and if they are making a claim on their own ownership, then even the son of a gazlan should be able to establish a chazakah!? **A:** The case is that they come with a claim based on their father's ownership, but they also bring witnesses who testify that the father actually bought the item in question from the person who is claiming the item be returned to him, based on an admission of this person to the witnesses. In the case of the craftsman and sharecropper we believe this admission. In the case of the gazlan, we assume the admission was made out of fear, and it therefore cannot be relied upon.
    - **Rava** said, there are times when even the grandson of a gazlan cannot establish a chazakah – when he comes with a claim based on his grandfather's ownership.
    - **Q:** What is the case of the gazlan? **A: R' Yochanan** said it refers to a field that this gazlan is known to have stolen. He can never establish a chazakah in the field, even if it was returned to the owner after the known stealing. **R' Chisda** said, it refers to someone who is known to be a gazlan, and who is willing to even kill for money.
- A Braisa says, a craftsman cannot establish a chazakah, but if he gives up his trade he can then establish a chazakah. A sharecropper cannot establish a chazakah, but if he gives up his trade he can then establish a chazakah. A son who no longer lives by his father, and a woman who is divorced from her husband, are considered like all other people in regard to chazakah.
    - **Q:** The case of the son is necessary to be taught, because we would think that a father allows his son to use his property even if he doesn't live with him anymore, but the case of the divorced woman seems obvious!? **A:** It is needed to teach the case of where it was a questionable divorce, in which case **R' Zeira in the name of R' Yirmiya bar Abba in the name of Shmuel** said that the husband is obligated to continue supporting her. Even though she is being supported, if she establishes a chazakah in her husband's property during that time, it is an effective chazakah.
- **R' Nachman** said that **R' Huna** told him, that with regard to all the people who cannot establish a chazakah, if they bring other proof of ownership, it would be acceptable and we would give the property to them. However, this would not work for a gazlan.
    - **Q:** A Mishna already says that if a Yid bought land from the sikrikon (an extortionist), and he then made a kinyan with the Jewish owner of the land as well, the purchase is void and he must return the land to the Jewish owner. We see from here that when someone gives up his property based on fear, the transaction becomes void, so why did **R' Huna** have to teach this!? **A:** He did so to exclude the view of **Rav**, who says that we only say that he didn't truly transfer ownership of the land if he told the purchaser to make a kinyan of chazaka. However, if he went and wrote a document of sale, that shows that he truly meant to transfer ownership. **R' Huna** is teaching that he holds like **Shmuel** who says, even a document of sale does not show true transfer unless he wrote achrayus into the document as well.

- **R' Bibi** said, that if Beis Din takes away land from the gazlan and gives it back to the previous owner, the owner must return to the gazlan the money that the gazlan paid to him. However, that is only if there are witnesses who actually saw him pay. If there are only witnesses who heard the owner admit that he was paid, the owner would not have to return the money, based on the statement of **R' Kahana**, which said that the person likely did so out of fear.

----------Daf מח---48----------

- **R' Huna** said, if they hanged a person and tortured him until he sold something to them, the sale is a valid sale. The reason is, every sale is based on financial duress of the seller, so physical duress should not be treated any different.
  - **Q:** Maybe when he forces himself (because of financial constraints) it is different than when he is forced by someone else? **A:** Rather, the reason of **R' Huna** is as was taught in a Braisa. The Braisa says, that when someone consents to bring a korbon after being forced to do so, it is considered to be valid consent. The same would be with a sale
    - **Q:** Maybe that case is different because a person is happy to achieve a kaparah, and that is why his forced consent is considered to be a true consent? **A:** The Braisa also says that forced consent is considered to be consent for the giving of a get.
      - **Q:** Maybe that case is different because a person truly wants to listen to what the Chachomim tell him to do, but that reasoning doesn't apply to a forced sale!? **A:** Rather, we say that because of the torture, he fully consents to the sale.
      - **Q: R' Yehuda** asked, a Mishna says, if a husband was forced by a Beis Din into giving a get, it is valid. If he was forced by a non-Jewish court, it is passul. However, the non-Jewish court can beat him and tell him "Do as the Jewish courts told you to do!", and it would then be valid. Now, according to the above reasoning, why don't we say that the forced consent is a valid consent even in the non-Jewish court? **A:** We have learned that **R' Mesharshiya** said, D'Oraisa when a goy forces a Yid to give the get it is effective. The **Rabanan** said it is passul so that women not be encouraged to go to goyim to force their husbands to give a get.
      - **Q: R' Hamnuna** asked, a Mishna says, if a Yid bought land from the sikrikon (one who forces with threats), and he then made a kinyan with the Jewish owner of the land as well, the purchase is void and he must return the land to the Jewish owner. Now, according to the above reasoning, why don't we say that the forced consent is a valid consent? **A:** We have learned that **Rav** said, we only say that he didn't truly transfer ownership of the land if he told the purchaser to make a kinyan of chazaka (and there is no evidence of him being paid for the land). However, if he went and wrote a document of sale (which suggests that he was paid, and it was a forced sale rather than a forced gift), that shows that he truly meant to transfer ownership. You see that a forced sale is valid.
        - **Q:** According to **Shmuel**, who says that even when a document was written the sale is invalid, why is it invalid just because it was forced? **A: Shmuel** would agree that where the person was paid, the sale is valid.
        - **Q:** We have learned that **R' Bibi in the name of R' Nachman** said, even when the owner was paid, the sale is still invalid. This shows that a forced sale is invalid!? **A: R' Bibi** is the statement of an Amora, and **R' Huna** can argue on that.
  - **Rava** said, the halacha is that if they hanged a person and tortured him until he sold something to them, the sale is a valid sale. However, this is only where the "buyer" demanded an unspecified field and the owner chose one to give to him. But, if they demanded a specific field, the sale would not be valid. Further, even if they demanded a specific field, it is only voided if the owner didn't count the money, but

if he did, the sale is valid. Finally, even if he didn't count the money, the sale is only voided if the owner had no way of escaping these people. If he did, the sale would be valid.

- The Gemara paskens that in all cases the forced sale is a valid sale, even if the demanded field was specified. We see this regarding kiddushin, where a woman is like a specified field, and yet **Ameimar** said, that if a man hanged a woman and tortured her until she agreed to marry him, it is a valid kiddushin.
  - **Mar bar R' Ashi** said that the kiddushin would not be a valid kiddushin, because he acted improperly by doing that to her, so the **Rabanan** acted improperly with him and canceled his kiddushin (which would otherwise be valid).
    - **Q: Ravina** asked **R' Ashi**, the **Rabanan** can do so when the kiddushin was done with money. What do they do when the kiddushin was done with bi'ah? **A: R' Ashi** said, the **Rabanan** render the bi'ah to be an act of zenus.

- Tavi hanged Pappi on a tree until he agreed to sell him his field. **Rabbah bar bar Chana** signed on the moda'ah (the document that said the sale was being done under duress) and he signed on the sale document. **R' Huna** said each signature is proper and valid.
  - **Q:** How can they both be valid? If the moda'ah is valid then the sale document is not valid and visa-versa!? **A: R' Huna** meant, that if not for the moda'ah, the sale document would be valid. This follows **R' Huna's** view, that a forced sale is valid.
  - **Q:** We have learned that **R' Nachman** said, if witnesses said that the loan document that they signed was written as a shtar amana, or that the sale document they signed was signed by the seller under duress, they are not believed. Based on this, how could **R' Huna** say that the moda'ah invalidates the document of sale!? **A: R' Nachman** was referring to an oral statement about a written document. An oral statement could not invalidate a written document. However, **R' Huna** is referring to a written document against a written document, in which case the moda'ah does invalidate the document of sale.
    - We have learned, **R' Nachman** said, if witnesses said that the loan document that they signed was written as a shtar amana, or that the sale document they signed was signed by the seller under duress, they are not believed. **Mar bar R' Ashi** said, in the first case they are not believed, but regarding the sale document they are, because the sale document is allowed to be written, whereas a shtar amana may not.

----------Daf מט---49----------

V'LO L'ISH CHAZAKAH B'NICHSEI ISHTO…

- **Q:** This seems obvious!? Since the husband has the right to the produce, his eating of the produce cannot establish a chazakah!? **A:** The case is where the husband wrote a document to his wife in which he wrote "I have no claim to your property". Even then, his eating of the produce cannot establish a chazakah.
  - **Q:** A Braisa says that if a partner in a field says, "I no longer have a claim on the property", there is no legal significance to his statement!? **A:** In the yeshiva of **R' Yannai** they said, he wrote this to her while she was an arusah. Since he did not yet get his Rabbinic rights to the property, he can waive off those rights and prevent them from taking effect.
- **Q:** The Mishna suggests that if the husband has proof that he bought the field from his wife, it would be a valid sale. Why is this so? Why can't the wife say that she agreed to the sale only to make her husband happy (but did not really want to sell it)? A Mishna says, if someone bought a property from a husband and then bought it from the wife (to remove her lien on the property), the purchase is void. We see that a wife can say that she only consented to a transaction to make her husband happy, but not because she truly consented. We should say the same thing in our case!? **A:** We have learned that **Rabbah bar R' Huna** said, that when the Mishna says the wife can void the sale, it is referring to 3 specific fields: a field that was written into her kesubah for collection, a field that was orally designated for her kesubah collection, and a field that she owned and brought into the marriage.

----------Daf ב---50----------

- **Q:** We have said that **Rabbah bar R' Huna** said, that when the Mishna says the wife can void the sale, it is referring to 3 specific fields: a field that was written into her kesubah for collection, a field that was orally designated for her kesubah collection, and a field that she owned and brought into the marriage. What property is this meant to exclude? It can't mean to exclude other properties of the husband (that were not specifically designated for collection), because with regard to those fields the wife would certainly not want to hold back on a sale, because that would tell the husband that she is thinking about a divorce or his death!? It also can't refer to her sale of her rights to her melog property, because **Ameimar** has said that a husband and wife who sold melog property have not made an effective transaction!? **A: Rabbah bar R' Huna** could mean to exclude melog property. When **Ameimar** said the sale is not effective, he was referring to where either the husband *or* the wife sold their rights to the property, in which case it would be an ineffective transaction. However, if they both sold their respective rights to a person, or if the wife sold her rights in the melog property to her husband, it would be an effective transaction. **A2:** We can also say that **Ameimar** argues on our Mishna, and follows **R' Elazar** of the following Braisa. The Braisa says, if a person sells his slave with the agreement being that the slave should continue to work for the seller for another 30 days, **R' Meir** says the seller is considered the owner of the slave during those 30 days for purposes of "yom oy yomayim" (if a person kills a slave he is chayuv misah, however, if the owner hits the slave and the slave dies more than 24 hours later, the owner would not be chayuv misah), because the slave is still under his control. [The Gemara says, we see that **R' Meir** holds that ownership of the "produce" is considered ownership of the asset (the slave) itself]. **R' Yehuda** says, the buyer is considered to be the owner for purposes of "yom oy yomayim", because the slave is his property. [The Gemara says, we see that **R' Yehuda** holds that ownership of the produce is not considered ownership of the asset itself]. **R' Yose** says, they are both included in the halacha of "yom oy yomayim" – the seller, because he has the slave under his control, and the buyer, because the slave is his property. [The Gemara says, **R' Yose** is uncertain whether ownership of the produce is considered ownership of the asset, and because the result deals with putting someone to death, we must go l'kulah]. **R' Eliezer** says, neither of them are included in the halacha of "yom oy yomayim" – the seller is not, because the slave is not his property, and the buyer is not, because the slave is not under his control. **Rava** says, **R' Eliezer's** view is based on the pasuk of yom oy yomayim, which says "ki kaspo hu" (it is *his* property), which teaches that the slave must belong *solely* to the master. In the same way, **R' Eliezer** would hold that since neither the husband nor the wife has full rights to the melog property, a sale by them would not be effective.

V'LO L'ISH CHAZAKAH B'NICHSEI ISHTO

- **Q: Rav** has said that a married woman must protest if someone tries to make a chazakah on her melog property. Now, who was he referring to as the person attempting to make the chazakah? It can't be someone other than her husband, because **Rav** said that a person cannot make a chazakah in the property of a married woman!? Rather, it must refer to the husband himself making a chazakah, and **Rav** says that she must make a protest, which is contrary to what our Mishna said!? **A: Rava** said, the Mishna is not problematic for **Rav**, because he is talking about a situation where the husband dug ditches in the property (not just ate the produce). That is something he has no right to do, and therefore, it can act as a chazakah, which the wife must protest.
    - **Q:** We have learned that **R' Nachman in the name of Rabbah bar Avuha** said, that there is no such thing as a chazaka for damage (so how can there be a chazaka based on the damage of digging ditches)!? **A:** We can say that he means that it doesn't create a chazakah that needs 3 years, but rather creates an *immediate* chazakah. **A2:** We have learned regarding **R' Nachman's** statement that **R' Mari** said, a chazaka can only not be established for smoke damage. **R' Zvid** said a chazaka can only not be established to use something as a bathroom.
    - **R' Yosef** said that **Rav** is referring to a married woman having to protest possession of someone other than her husband, and the case is that this person began eating the produce while her husband was still alive, and continued to do so for 3 years after the husband's death. In this case, the occupant would be believed to say "You sold it to your husband, who sold it to me", with a miguy that he could have simply said, "you sold it to me".

- We have learned that **Rav** said, one cannot establish a chazakah in the property of a married woman. The dayanim of the golus (referring to **Shmuel and Karna**) said that one can establish a chazakah in the property of a married woman. **Rav** said, we pasken like the dayanim of the golus. **R' Kahana and R' Assi** asked **Rav**, "did you retract from your earlier psak?" **Rav** answered, what I meant is that their psak is appropriate in the set of circumstances of **R' Yosef**.

----------Daf אכ---51----------

V'LO L'ISHA B'NICHSEI BAALAH…

- **Q:** This is obvious!? Since the wife is supported by the husband, her eating of the produce is her support, not a sign of ownership!? **A:** The case is where the husband designated a piece of land from which she was to take food for her support, and she went and ate the produce from different land. The Mishna teaches, that even then it does not establish a chazakah.
- **Q:** The Mishna suggests that although she cannot establish a chazakah, if she were to produce proof that she bought a field from her husband (e.g. she produces the document of sale), it would be a valid sale. Why can't the husband say that he "sold" her the field in form only, to try and see if she had any money hidden? Should we learn from here that if a husband sells a field to his wife and then makes that claim, that the sale would be valid? **A:** The Mishna means, that if she claims it was given to her as a gift, and she is able to produce the gift document, it would be a valid gift.
    - **R' Nachman** said to **R' Huna**, you were not in Beis Medrash last night when we taught some fascinating things. **R' Huna** asked what was taught. **R' Nachman** said, we taught that if someone sells a field to his wife, she is koneh, and we don't say that his intention was to see if she had any hidden money. **R' Huna** said, that is obvious! Even if the money can't act as the kinyan, the fact that he gave her a document does, because a person can be koneh land with money, a document, or chazakah! **R' Nachman** said, **Shmuel** said that a document only acts a kinyan for a *gift* of land, but a sale would need a transfer of money as well. That is why we had to teach that the sale to the wife is a valid sale. **R' Huna** asked, **R' Hamnuna** asked on **Shmuel** from a Braisa that says that a sale of land can be koneh with a document alone!? **R' Nachman** said, **R' Hamnuna** himself answered, that the Braisa is talking about the sale of inferior land, and it is only in that case that a document alone would suffice.
        - **R' Ashi** said that the Braisa is referring to a case where the husband *gifted* the field to his wife, but wrote in the document that he was selling it to her, so that her position be strengthened like that of a seller, in that if the field is ever taken from her, she would be able to sue her husband for reimbursement of the value of the field.
        - **Q:** A Braisa says, if someone borrowed money from his slave and then freed him, or from his wife and then divorced her, and in each case he had written a promissory note, he does not have to repay the loan. Presumably, this is because he can claim that he intended to see if they were hiding any money, and never meant to obligate himself to pay. This contradicts **R' Nachman**!? **A:** The case of a loan is different than **R' Nachman's** case of a sale. We assume that no person would voluntarily make himself into a debtor for money that is truly his own. However, when it comes to selling something, we would say that he truly meant to sell the property.
    - **R' Huna bar Avin** said, if a man sells a field to his wife, the sale is effective, and the husband is entitled to eat the produce of that field (as with any field that the wife owns). However, **R' Abba, R' Avahu,** and all the Gedolei Hador said that the husband would not be entitled to the produce, because in truth he gave it to her as a gift (in which case he would not be entitled to the produce) and the reason he wrote in the document that he sold it to her was so that she receive the benefits of a buyer.
        - **Q:** A Braisa says, if someone borrowed money from his slave and then freed him, or from his wife and then divorced her, and in each case he had written a promissory note, he does not have to repay the loan. Presumably this is because he can claim that he intended to see if they were hiding any money, and never meant to obligate himself to pay, which is contrary to the

views, above!? **A:** The case of a loan is different than the case of a sale. We assume that no person would voluntarily make himself into a debtor for money that is truly his own. However, when it comes to selling something, we would say that he truly meant to sell the property.

- **Rav** said, if a man sells a field to his wife, the sale is effective, and the husband is entitled to eat the produce of that field (as with any field that the wife owns). However, if he gives it to her as a gift, he is not entitled to the produce. **R' Elazar** says that in both these cases the wife would be koneh, but the husband would not be entitled to the produce.
  - **R' Chisda** paskened in practice like **R' Elazar**. **R' Ukva and R' Nechemya**, the grandsons of **Rav**, asked him, "you have decided not to follow the great one (**Rav**) and to instead follow the smaller one (**R' Elazar**)? **R' Chisda** said, I have followed other great ones by paskening as I did, because **Ravin in the name of R' Yochanan** said like **R' Elazar** said.
  - **Rava** said, the halacha is that if a man sells a field to his wife she is not koneh and the husband eats the produce of the field, but if he gives it to her as a gift, she is koneh and the husband is not entitled to the produce of the field.
    - **Q:** If she is not koneh, the husband obviously continues to keep the produce, so why does **Rava** say that he keeps the produce, which suggests that she is koneh something? **A:** When **Rav** said she is not koneh the field he was referring to a case where she bought the field with money that was hidden. Where he said that the husband keeps the produce, meaning that she is koneh the field, he is referring to where she bought the field with money that the husband knew about all along. In fact, we find that **R' Yehuda** makes this exact distinction.

----------Daf נב---52----------

- A Braisa says, we do not accept a deposit from married women, from slaves, or from children (we are concerned that they stole the money). If one did accept a deposit from a married woman, he must return it to her (she can't be suspected as a thief). If she died, it should be returned to her husband. If one did accept a deposit from a slave, he must return it to the slave. If he died, it should be returned to his master. If one did accept a deposit from a child, it should be given to a trust for the benefit of the child. If he died, it should be returned to the child's heirs. If any of these people, at the time of their death, said that the deposit truly belongs to a particular person, the shomer should give it to that person. If the shomer does not believe the statement, he should return it to the husband, master, or heirs, as the case may be.
  - When **Rabbah bar bar Chana's** wife was dying, she said "these earrings belong to Marsa and his grandchildren". When **Rav** was asked how to deal with this, he told **Rabbah bar bar Chana**, if you trust your wife, you should give the earrings as per her statement. If you do not, you may keep them for yourself. **Others** say that **Rav** told him, if you feel that Marsa is wealthy enough to own such earrings, give them to him. If not, you may keep them for yourself.
  - **Q:** What is meant when the Braisa says that a trust should be set up for the child? **A: R' Chisda** said that the money should be used to purchase a Sefer Torah, from which the child will learn. **R' Huna** said that a date tree should be bought for the child to eat the fruit from.

V'LO L'AV B'NISCHSEI HABEN V'LO L'BEN B'NICHSEI HA'AV

- **R' Yosef** said, this applies even after the son has become financially independent and is no longer being supported by his father. **Rava** said, this applies only when the son is still being supported by the father.
  - **R' Yirmiya MiDifti** said that **R' Pappi** paskened like **Rava** in an actual case. **R' Nachman bar Yitzchak** was told by **R' Chiya** of Hurmiz Ardeshid that **R' Acha bar Yaakov in the name of R' Nachman bar Yaakov** paskened like **Rava**.
  - The Gemara paskens like **Rava**. A Braisa says like **Rava** as well.
- We learned, if one of the brothers was managing the estate on behalf of all the brothers, and we then find purchase documents or loan documents which say that this managing brother bought property or lent money, and the managing brother says these were done from his own assets (and not the assets of the estate), **Rav** said,

he must prove that what he is saying is true, and **Shmuel** said, the others brothers must prove that it is not true. **Shmuel** said that **Rav** would agree, that if the managing brother died, the other brothers would have to prove that the money used for the purchase or the loan was from the estate.

- **Q: R' Pappa** asked, why would **Rav** agree in that case? We would not make a claim on behalf of orphans that their father would not be able to make, so if **Rav** holds that the managing brother would have to prove his statement, we would not make the other brothers have to prove the falsity of the statement just because he died!? We see **R' Pappa's** point from the way **Rava** paskened in a case as well! This remains a KASHYEH.
- **R' Chisda** said, **Rav** only said his halacha in a case in which they all even bought their food from jointly owned funds, paid directly from the estate (as opposed to them each having an allowance to spend as they chose). However, if they were given an allowance, we would say that the managing brother may have spent less than needed for normal eating and used the saved money to invest on his own behalf.
- **Q:** How would the managing brother prove that he used his own money? **A: Rabbah** said, he must produce witnesses to his claim, and **R' Sheishes** said, he can also just have the purchase document certified in Beis Din.
  - **Rava** asked **R' Nachman**, we have the views of **Rav and Shmuel**, and the views of **Rabbah and R' Sheishes**. Who do you hold like? **R' Nachman** said, I know of a Braisa that supports **Rav**. The Braisa says, if a brother is managing an estate, and there are sale documents or loan documents in his name which he claims were entered into with his own, personal money, he must prove his claim. The Braisa continues and says, likewise a woman who was managing her late husband's estate, and there are sale documents or loan documents in her name which she claims were entered into with her own, personal money, she must prove her claim.
    - **Q:** What does the Braisa mean to add with the word "v'chein" (similarly)? **A:** We would have said that if Beis Din puts a woman in charge of her husband's estate on behalf of the orphans, it gives her the reputation of an extremely honest person, and she would therefore not steal any money from the estate. The Braisa therefore teaches that even she must prove her claim.

BAMEH DEVARIM AMURIM B'MACHZIK AVAL B'NOSEIN MATANAH V'HA'ACHIN SHECHALKU…

- **Q:** Do all these people listed not have the ability to make a kinyan chazakah? **A:** The Mishna is missing words and should be read as saying, "when was it said that no chazakah can be established? Only in regard to a chazakah which is disputed – the seller says he did not sell the land and the buyer says that he bought the land – and would require 3 years to establish. However, if there is no dispute – for example if one gave a gift, or brothers who divided an estate, or one who took possession of the property of a deceased ger – where the chazakah acts as the kinyan, then even if he only locks the gate, builds a fence, or breaks through the fence even a little, it is considered to be a chazakah.
- **R' Shravya** taught a Braisa, which is in the Braisos in Kiddushin gathered by the yeshiva of **Levi**, and the Braisa says, if the buyer locked the gate, built a fence, or broke through the fence even a little in the seller's presence, it is considered to be a chazakah.
  - **Q:** Is it only a chazakah when done in the seller's presence, but if not it is not a valid chazakah? **A: Rava** said, the Braisa means that if the seller is there, he does not need to tell the buyer "go, make a chazakah and be koneh". However, if he is not present, he must tell the buyer, "go, make a chazakah and be koneh".
    - **Rav** asked, what would the halacha be regarding a gift? If the giver was not there would he have to tell the recipient, "go, make a chazakah and be koneh"? **Shmuel** said, what is **Rav's** question!? If even in a case where the one being koneh gave money (a case of a sale) we require the seller to say "go, make a chazakah and be koneh", then we would certainly require that in a case of a gift where the giver receives no money!? **Rav** was not so certain about that, because he felt that the giver of a gift does so generously, and therefore it may be that we do not require him to tell the recipient, "go, make a chazakah and be koneh".