



False Testimony about a Chazaka

In the third *perek* we learnt about the law of *chazaka*. After a person has occupied a property for longer than three years and claims that he purchased it or it was given to him as a gift, he need not bring any evidence supporting his claim despite the previous owners' objections. The *Mishnah* (3:4) deals with cases of people that have testified that a person has occupied a particular property for a number of years, yet these witnesses are found to be false – *eidim zommemin*.

Normally, the punishment given to *eidim zommemin* is the loss they wished to cause, i.e. a reciprocal punishment. If for example two witnesses testified about the entire three-year period, they would be required to pay the real owner the value of the field. If there are two different witnesses for each of the three years then the *Mishnah* explains that they divide the full fine between them since they were all required to establish the *chazaka*.

The *Tosfot* (56b) however raise a question on this ruling. We have learnt that if an ox causes damage to another ox, the compensation depends on whether the ox is a repeat offender. To simplify, the first two times only half the damages are required in payment; it is defined as a *tam*. The third time it is defined as a *mu'ad* and full compensation is demanded. The *Gemara* (24b) discusses a case where three sets of witnesses, each testify to separate incidents involving a particular ox and are all found to be false. The first two pairs would be obligated to pay the half damages as they claimed. The last set would be required to pay the full amount on their own. Even though the first two sets of witness would have effectively contributed to the full amount being paid, they could claim that that was never their intention; their only want to

wrongly extract the half damages from the falsely accused. The *Gemara* does add that if the three sets arrived together and motioned to each other, then they would all be required to share the second half of the damages that were referred to in the final testimony.

The *Tosfot* continues that in this case as well, the first two sets of false witnesses could claim that they only intended to obligate the person (they said was occupying the property) to recompense the real owner for unlawful enjoying from the produce of the field. They were playing for the other team! So why are they required to contribute to the full compensation?

The *Tosfot* answers that since the person claiming to have the *chazaka* brought the three sets to *Beit Din*, they can no longer claim that they had other motives. The *Rashba* however answers that – much like the above *Gemara* explains – they would only be required to share in the full cost if they were gesturing to each other.

Considering the full payment, what is included? The *Rashbam* explains that they would be required to pay the value of the land alone – this is what they intended the real owner to lose. The *Rashba* explains that the false witnesses would not be required to pay from the produce that they said the supposed *machzik* consumed (to that person) since the *ba'al* denied the *machzik* consumed anything in that three-year period. Had he admitted that *machzik* consumed produce for the three years, it would mean that he admitted that the *machzik* had a *chazaka* and would thereby lose his field.

Yisrael Yitzchak Bankier

Revision Questions

בבא בתרא ג' א' ד' ו'

- For which things is a *chazakah* three years “*mi’yom le’yom*” and for which things it three years “*ve’ainah mi’yom le’yom*”? (א': ג')
- What are the two opinions regarding a three-year *chazakah* that is not “*mi’yom le’yom*”? (א': ג')
- What are the three “lands” for *chazakah* and why is this important? (ב': ג')
- What else is required for a *chazakah* other than occupancy? (ג': ג')
- Which four people (that are not related to the person claiming the property back) cannot claim a *chazakah*? (ג': ג')
- Which relatives cannot claim a *chazakah*? (ג': ג')
- What three ways are provided for one to be *machzik* on *nichsei ha'ger*? (ג': ג')
- If a set of witnesses testified that a person was *machzik* a field one year, two others testified regarding the next and two more regarding a third year, and they are all found to be false witnesses, how are they all punished? (ד': ג')
- What else must one do to claim a *chazakah* if he uses the field to grow chickens? (ה': ג')
- With the placement of which ladder can one claim a *chazakah* and why? (ו': ג')
- If someone is already a party to a shared *chatzer* and purchases another property that backs on to that *chatzer*, can he build a doorway from that new property onto the *chatzer*? (ז': ג')
- List some of the restrictions placed on the construction or modification of windows or entrances to a house? (ז': ג')
- When do these restrictions not apply? (ז': ג')
- What are the two opinions regarding whether one can dig under the public domain? (ח': ג')
- What components are not parts of the sale of a house? (Only list those things listed in the first *Mishnah*.) (א': ד')
- Considering that a *bor* is not included in the sale of a house, what is debated regarding such a case? (ב': ד')
- What is the debate regarding the sale of a *bor* on a property? (ב': ד')
- When is an oven included in the sale of a house? (ג': ד')
- What is included in a the sale of a *chatzer*: (ד': ד')
 - Always?
 - Sometimes? (When?)
 - Never?
- What is and is not included in the sale of an olive press? (ה': ד')
- What is never included in the sale of a *merchatz* no matter the stipulation? (ו': ד')

Local Shiurim

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha*
Beit Ha'Roeh
Melbourne, Australia

Efrat, Israel
Shiur in English

Sunday -Thursday
Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
In US dial: 718 906 6400
Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
2 nd June כ"ד סיון	3 rd June כ"ה סיון	4 th June כ"ו סיון	5 th June כ"ז סיון	6 th June כ"ח סיון	7 th June כ"ט סיון	8 th June ל' סיון
Bava Batra 4:7-8	Bava Batra 4:9-5:1	Bava Batra 5:2-3	Bava Batra 5:4-5	Bava Batra 5:6-7	Bava Batra 5:8-9	Bava Batra 5:10-11

