



Chazaka

The third *perek* of *Bava Batra* opens by introducing the concept of a *chazaka* in property. The *Bartenura* explains that if one was witnessed using a property for three years, and the previous known owner has not contested his presence, he is believed if he claims that he purchased the property; even without any supporting documentation. The *Bartenura* explains that one is only careful to retain their contracts for three years. Furthermore, we tell the previous owner, that if the field was indeed stolen, he should have objected to the presence of the other party within the first three years. We shall try to understand this logic.

The *Gemara* probes the basis of a *chazaka*. The *Bartenura* cited *Rava's* conclusion that one is only careful to look after their contracts for three years. While *Rava's* reason explains why the current occupant cannot present proof of his acquisition, where do we find support that he owns the property? Furthermore, the second answer that the *Bartenura* brings (that the previous owner should have objected during that time) was *Rava's* first answer that was rejected by *Abaye*. *Abaye* argues that when considering a property of a certain family who are sensitive if another simply walked through their field, a *chazaka* should be established after the first uncontested use. This however is not the case. Why then does the *Bartenura* cite this answer as well?

The *Rashba* explains, that the two answers of *Rava* work together. In other words, because the original owner was silent during the first three years, it appears as though he was waiting until the purchaser misplaced the contract of sale in order to contest the ownership of the land. To be clear, the first answer of *Rava* is insufficient – the lack of objection alone is not a proof of ownership. It is more that since the objection was delayed until a time where one is no longer careful to keep the contract, the claim is questionable.

The *Rashba* continues that by explaining that the three-year limit is not arbitrary. It once again relates to the first answer. Initially, the purchaser will be careful to store the contract safely in case the sale is contested. It is only once he has lived there in peace for three years, that he will no longer feel he

needs to look after the contract. This explains why the time required to establish a *chazaka* can vary with how the field is used. For example, a field that is planted then left fallow in alternating years, requires six years for a *chazaka*. He explains that it would take that amount of time for the new owner to feel comfortable that his presence will not be contested.

The *Ritva* however argues that *Rava's* first answer (that the original owner did not contents the occupants use) should really be enough. He explains that this should be similar to the law that one possessing a movable object is proof of ownership. However, since land is generally purchased with contracts, the fact the current occupant does not have one when questioned within the first three years, weakens his claim of ownership. He likens this to a case of a women who claims she was just divorced but does not have a *get*.

The *Ketzot HaChoshen* (140:2) however reasons that this law is a *takanat Chachamim* – rabbinic decree. In other words, since the *Chachamim* realised that most people do not look after their documents for more than three years, they implemented a time limit for one to protest the presence of another in their property. Otherwise, if one could protest beyond this time, it would have a devastating impacting on genuine sales.

The *Ketzot HaChoshen* cites the *Nimukei Yosef* (14a) in support of his position: "for more than [three years], one is not careful since they think that the original owner will not protest... and this is according to the general understanding, which is why the *Chachamim* instituted three years. Furthermore, the *Ketzot* cites the *Rambam* who explains, "since [the original owner] did not object [in the first three years he] loses out." The *Ketzot* argues that if the reason was like the *Ramban* (who maintains that same position as the *Ritva* above) the language of "losing out" does not fit. Recall that the *Ritva* understands that the occupant has a valid claim from the outset. Instead, it is more appropriate when dealing with a rabbinically instituted time limit that expired on the original owner. (See the *Ketzot* for a fuller discussion including the opinion of the *Tosfot*.)

Revision Questions

בבא בתרא ב' ט' – ג' ח'

- What are the restrictions on the location of a cemetery? (ב' ט')
- To which side of the city must a tannery be built? (Include both opinions.) (ב' ט')
- If one wishes to plant leeks, what must he be careful that he does not plant it near? (ב' י')
- If someone wants to plant a tree, how far must he distance it from his neighbour's hole? (ב' י"א)
- What are the two opinions regarding a case where one dug a hole and his neighbour planted a tree near by? (ב' י"א)
- In what situation can one plant a tree in his property very close to his friend's field? (ב' י"ב)
- How deep can a person dig in his field in order to destroy the root's of his neighbour's tree that have entered his field? (Include two cases.) (ב' י"ב)
- Is one allowed to cut the branches of his neighbour's tree that hang over into his field? (Include three cases.) (ב' י"ג)
- If a person's tree hangs over into the public domain, to what height is it trimmed? (ב' י"ד)
- 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*"? (ג' א')
- What are the two opinions regarding a three-year *chazakah* that is not "*mi'yom le'yom*"? (ג' א')
- What are the three "lands" for *chazakah* and why is this important? (ג' ב')
- What else is required for a *chazakah* other than occupancy? (ג' ב')
- Which four people (that are not related to the person claiming the property back) cannot claim a *chazakah*? (ג' ב')
- Which relatives cannot claim a *chazakah*? (ג' ב')
- 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? (ג' ד')
- What else must one do to claim a *chazakah* if he uses the field to grow chickens? (ג' ה')
- With the placement of which ladder can one claim a *chazakah* and why? (ג' ו')
- 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*? (ג' ז')
- List some of the restrictions placed on the construction or modification of windows or entrances to a house? (ג' ח')
- When do these restrictions not apply? (ג' ח')
- What are the two opinions regarding whether one can dig under the public domain? (ג' ט')

Melbourne, Australia

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

Friday & Shabbat
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Efrat, Israel
Shiur in English

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

ONLINE SHIURIM

Yisrael Bankier
mishnahyomit.com/shiurim

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

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
24 February י"ט אדר	25 February כ' אדר	26 February כ"א אדר	27 February כ"ב אדר	28 February כ"ג אדר	1 March כ"ד אדר	2 March כ"ה אדר
Bava Batra 4:1-2	Bava Batra 4:3-4	Bava Batra 4:5-6	Bava Batra 4:7-8	Bava Batra 4:9-5:1	Bava Batra 5:2-3	Bava Batra 5:4-5

