

## פרק שלישי – חזקת הבתים – Introduction to

Our chapter includes some of the most engaging material in ש"ס בבלי and is one of the foci of study in ישיבות. As you will see, ר"ש's editing of his commentary came to a halt near the beginning of our chapter and in traditional volumes, מ"ש wordier commentary is substituted for his grandfather's – until the end of the מסכת. The main topic of the פרק is claims of ownership of real estate. The key word חזקה in our context means "possession" (as opposed to one of the other three common meanings in הלכה) and is understood as a demonstration of ownership by dint of the defendant's having lived and worked on the land in question for a duration of time or seasons.

### 22.3.1

28a (משנה א') → 29a (חברא דחברך חברא אית ליה)

1. ואם שור נגח הוא מתמל שלשם והועד בקעליו ולא ישמרנו והמית איש או אשה השור יסקל וגם בעליו יומת: שמות פרק כא פסוק כט  
 2. שדות בפסוף יקנו וכתוב בספר וחתום והעד עדים בארץ בגימון ובסביבי ירושלים... ירמיהו פרק לב פסוק מד  
 3. בנו בתים ושבנו ונטעו גנות ואכלו את פרין: ירמיהו פרק כט פסוק ה  
 4. ... לקוח את הספרים האלה את ספר המקנה הזה ואת החתום ואת ספר הגלוי הזה ונתתם בכלי חרש למען יעמדו ימים רבים: ירמיהו לב: יד

- I א משנה א: properties for which the חזקה is 3 years; some requiring 36 full months, others requiring 3 (incomplete) years
- a 3 full years: Houses, cisterns, bunkers, dove-cotes, bathhouses, olive-presses, irrigated fields and slaves
- i And: anything which consistently produces פירות
- b 3 incomplete years: שדה הבעל (fields which subsist on rain water)
- i ר' ישמעאל: 18 months (3 of the first and last years, one full year in the middle)
- ii ר"ע: 14 months (1 of the first and 1 of the last and one full year in the middle)
- c Caveat (ר' ישמעאל): this requirement is only for a vegetable or grain field
- i But: regarding an orchard, once he's completed 3 harvests – that's considered 3 years
- II Source for 3 years:
- a Suggestion #1 (from שור המועד: ר' ישמעאל – הולכי אושא – identified as v. 1)
- i Challenge: in that case, he doesn't pay full until the fourth act of goring
- 1 Answer: but his status is מועד after 3, there's simply no one to pay until he gores again
- ii Challenge: a חזקה without a claim should be valid (as the 3<sup>rd</sup> goring is inherently meaningful)
- 1 Answer: this חזקה is meant to arbitrate the truth between their claims; if the מחזיק doesn't make a claim, why should we offer one on his behalf?
- iii Challenge: a protest (against his settling on the property) in his absence should be invalid (as is required for מועד)
- 1 Answer: in case of שור המועד, v. 1 stipulates that it be in the presence of the owner
- (a) However: in our case, word travels and he will hear about the protest and respond
- iv Challenge: according to ר"מ who rules that 3 acts of goring in one day certainly renders the cow מועד, if he eats from three trees in one day, that should be a חזקה
- 1 Answer: parallel to שור המועד; when one act is happening, the other is not; here, all the פירות are there at same time
- 2 Challenge: what if he ate 3 fruit on consecutive days from, e.g. a caperbush, where blooming is staggered?
- (a) Answer: the fruit is there, it just hasn't ripened yet
- 3 Challenge: what if he ate three fruit over 30 days
- (a) Block: case could only be with אספסת (lucerne – used as animal food)
- (i) If: he cut it as he grew, this isn't a normal usage and can't be presented as חזקה
- (b) Rather: what if he ate 3 fruit over 3 months (like אספסת)
- (i) Answer: indeed – ר' ישמעאל (who is "הולכי אושא") accepts that as per the end of our משנה
- b רבנן (who require 3 full years):
- i ד' יוסף v. 2 – ירמיהו is telling people in 10<sup>th</sup> year (of צדקיהו) that they will be exiled in 11<sup>th</sup> year and they should write שטרות → חזקה of 2 years is insufficient
- 1 Block (אבני): perhaps he's just giving good advice, to avoid needing to find עדים later, as per vv. 3-4
- ii רבא (1): a person is מוחל someone else being on his property until 3 years
- 1 Challenge (אבני): then he shouldn't have to return the פירות of the first 2 years (contra ruling of ר"נ)
- iii רבא (2): until 3 years, the person isn't מקפיד on someone being there (but isn't the מוחל the פירות)
- 1 Challenge (אבני): if someone is מקפיד on any trespass, חזקה should work immediately!
- iv רבא (3): people are careful to guard their שטרות until 3 years
- 1 Challenge (אבני): protest in his absence should be invalid, as the מחזיק would have guarded his שטר longer
- 2 Defense: The מחזיק hears about a protest in his absence – word travels (חברך חברא אית ליה וחברא דחברך חברא א"ל)