

22.3.6

35b (חזקתן שלש שנים) → 36b (דקל נערה איכא בנייהו)

- I Analysis of rest of 1st clause of משנה – terms of חזקה
- a Exception (אבא): if the claimant came and helped the מחזיק lift a basket of fruit – loses his claim
 - i Caveat: if he claims that the מחזיק was on the field for פירות (e.g. sharecropper), no חזקה
 - 1 However: if he does this (and claims) after 3 years – חזקה still valid
 - 2 Challenge (אשי → ר' כהנא): how can a sharecropper be prevented from claiming חזקה?
 - (a) Answer: just as we do with a משכנתא דסורא – have protests at frequent intervals (less than 3 years)
- II רב's ruling: if a ישראל claims property as bought from a non-Jew, he "inherits" rights of non-Jew (no חזקה w/o שטר)
- a רבא: if the ישראל claims that the non-Jew told him he bought it from another ישראל – חזקה is valid
 - i Challenge: how could he be believed? If the non-Jew himself made that claim, he wouldn't be believed, rather
 - b רבא: if the ישראל claims he witnessed the non-Jew buying it from this תובע and he subsequently bought it – believed
 - i Reason: he has a מיגו – could have said that he bought it from the תובע directly (and would be believed)
- III רב's rulings: יהודה
- a If: someone takes harvesting tools (e.g. scythe, climbing rope) and goes onto another's property, explaining that he's going to harvest a particular tree whose fruit he bought – believed
 - i Reason: people aren't brazen enough to lie about that
 - b If: someone possesses (and eats up) the growth outside of someone's fence (that's put there to keep animals away from his property) – no חזקה;
 - i Reason: owner can claim that that food is eaten by wild animals, so he didn't care to protest this fellow's presence
 - c If: someone was on the land for years of ערלה – doesn't count as a חזקה (i.e. must be usable, edible years)
 - i Parallel צרייתא: devouring during years of ערלה or שמיטה or if the field is כלאים – no חזקה
 - d ד' יוסף: if someone is מחזיק on a field of fodder – no חזקה
 - i Reason: abnormal use of field
 - 1 דבא: but if he is in the "neck" of מחווא,
 - (a) Reason: people are rich there, have lots of cattle and feeding them שחת is usual
 - e ד' נחמן
 - i land which has cracks in it cannot generate חזקה
 - 1 Reason: the owner isn't מקפיד about such a poor piece of land
 - ii if: it produces no more than it sows – no חזקה
 - iii And: the ריש גלותא's family cannot claim חזקה (no one will protest) nor may their property be occupied
- IV Analysis of end of 1st clause – "slaves"
- a Challenge: sheep aren't subject to חזקה (as they move around) – all the more so slaves
 - i דבא: they have no immediate חזקה, but after 3 years – the claim is valid
 - ii דבא: if the slave was a baby in its crib – חזקה is immediate (and we don't consider that mother may have left him)
 - b Case: goats went to נהרדעא, ate peeled barley; owner of barley seized them and claimed a great amount for his loss
 - i Ruling (ר' שמואל's father): he can claim up to the value of the goats; as a מיגו that he could claim ownership
 - 1 Challenge: ruling that חזקה אין להן חזקה
 - 2 Answer: in נהרדעא, goats are always watched, due to proliferation of rustlers
- V Analysis of middle clause- dispute between ר"י/ר"ע about 14 vs. 18 months for הבעל
- a Suggestion: they disagree as to whether a plowing is a חזקה
 - i Block: if so, ר"ע should allow one day on each end (plus 12 months in the middle)
 - b Rather: they agree that plowing isn't a חזקה; their disagreement is whether he needs to harvest fully ripened fruit or not
 - c Related צרייתא: two opinions as to whether plowing is a חזקה
 - i Note: opinion that confirms identified as ר' אחא, who says that if 1 (or even 2) of the 3 years was plowing – חזקה
 - ii Reason: no one sits idly by while an interloper plows his field without protesting
 - iii Counter: owner is happy for another to expend his plow on his field
 - d Ruling (ר' חסדא): (ר"נ בר ר' חסדא): citing ר' אחא ר"ע, ר"י, רב ושמואל (רנב"י)
 - i Challenge (רנב"י): רב ושמואל (רנב"י) all disagree (ר"ע ור"י) as above
 - 1 דב: commenting on our משנה – "but חכמים insist on 3 years מיום ליום → plowing isn't reckoned
 - 2 שמואל: commenting on last clause – "חכמים insist on 3 seasons of each tree's harvest" → plowing is insufficient
 - (a) Split the difference: a young tree that produces three yields in a year (שמואל – valid; רב – insufficient)