

22.3.8

38a (משנה ב') → 39a (אמר לה ולא אדעתיה)

- I חזקה "out of town" about חכמים ר' יהודה dispute משנה ב'
- a חכמים: there are three regions for חזקה – Judea, Transjordan, Galilee
- i Application: if the owner is in region A and his property – now occupied – in B or C – no חזקה
- 1 Question: what is their essential position?
- (a) If: they validate absentee protest – even cross-regional חזקה should be valid
- (b) And if: they don't validate absentee protest – even intra-regional חזקה should not be valid
- 2 Answer (רב): they validate absentee protest (מחאה שלא בפניו)
- (a) Explanation: in our case, it is times of danger (when you can't get from A to B etc.)
- (b) Teaching: the default situation of these three regions is impassability.
- b ל"י: purpose of 3 years is to allow for furthest travel, a year for notification to arrive and a year to return
- II Tangential application: חזקה on the property of one who has fled
- a רב (version #1): חזקה of the property of a בורח is invalid (since they are absent)
- i Challenge (שמואל): no need for presence of מחזיק
- ii Answer: רב holds that absentee protest is invalid
- 1 Challenge: רב stated that it is valid (above, in explaining our משנה)
- 2 Explanation: רב was presenting that as an explanation of חכמים' position – he holds in accord with ר' יהודה
- b רב (version #2): חזקה of the property of a בורח is valid
- i Challenge (שמואל): this is obvious – מחאה שלא בפניו הוי מחאה
- 1 Answer: teaches that even if he protested in front of 2 people who cannot get directly to מחזיק (to inform him) – this is a valid מחאה
- (a) Contra: שמואל, who holds that absentee protest only works if those present can get to the מחזיק
- (b) Response (רב): the word spreads in any case (...אית ליה...)
- c Ruling (רבא): possession of בורח נכסי does not constitute a חזקה - and absentee protest is valid!
- i Challenge: these two seem to be contradictory
- ii Answer: depends on the reason for his flight
- 1 If: he fled due to financial reasons (and isn't hiding), he may protest anywhere → חזקה on his property is valid
- 2 But if: he fled due to a homicide (he committed – must stay in hiding), he cannot show his face → חזקה on his property is invalid
- III Formulae of מחאה:
- a If: he claims (about the מחזיק) that he is a thief – this isn't a מחאה
- i But if: he claims that the מחזיק is a thief and has stolen his land – and the claimant plans to take him to דין the next day - this is a valid מחאה
- b If: the claimant tells the witnesses not to tell the מחזיק
- i ל' זביר: he told them to be silent → no מחאה
- ii ל' פפא: he told them not to tell the מחזיק, but they may tell others, ...אית ליה...
- c If: the עדים tell the claimant that they will not tell the מחזיק (after he told them to tell him)
- i ל' זביר: they said they wouldn't tell him → no מחאה
- ii ל' פפא: they said they wouldn't tell him; but they may tell others, ...אית ליה...
- d If: he told them not to say a word (to anyone)
- i ל' זביר: after all, he told them not to utter a word – no מחאה
- e If: they told him that they wouldn't utter a word (to anyone)
- i (even) ל' פפא: they told him they wouldn't tell anyone → no חזקה
- ii ל' הונא בריה דר"י: anything for which someone isn't directly accountable, they won't attend to so delicately and will share → all these cases are a מחאה
- 1 Exception: if he told them not to utter a word (as per ר"ח's ruling)