

22.3.10; 41a (משנה ג) → 42a (במוכר שדותיו סתם)

1. פתח פיד לאלם אל דין כל בני חלופ: משלי לא, ח

- I מושנה גו requires a claim
- a A חזקה without an explanation for his presence on the property is insufficient
- i Example: if he claimed "no one said anything to me" – no חזקה
- 1 Challenge: this is obvious
 - 2 Answer: סד"א that we should claim, on his behalf (v.1), that he lost his שטר and had a "lame claim" because he didn't want to admit that he had lost it... קמ"ל
- ii But: if he claimed that the claimant or his father sold it to him or gave it to him - חזקה is valid
- iii And: anyone who claims he is an heir of the owner needs no further claim (i.e. to explain how it got to the מוריש)
- II Stories
- a ר' ענן:
- i Case: A flood erased his property boundary, inadvertently he rebuilt it on neighbor's property
- 1 Ruling (ר"ג): must return it
 - 2 Counter: he was already מחזיק
 - (a) Block: follows ר"י ישמעאל & ר"י - חזקה in presence of טוען is immediately valid – we don't follow that ruling
 - 3 Counter: the neighbor was מוחל
 - (a) Block: that is מחילה based on misinformation (מחילה בטעות) – he thought it was ענן ר' property) – which is invalid, as even ענן ר' would have backed off had he seen it
- b ר' כהנא:
- i Case: A flood erased his property boundary, inadvertently he rebuilt it in neighbor's vineyard, he brought witnesses, one testifying that he had moved it 3 rows into neighbor's property, the other that it was only 2
- 1 Ruling (ר"ב יהודה): following רשב"א's analysis of dispute ב"ש/ב"ה about contradictory witnesses, if there is one set which presents narrow and broader information (e.g. one testifies that X owes Y 100, the other that X owes Y 200), ב"ה accept the inclusive testimony (ב"ש rejects the entire set) – and he ruled like ב"ה
 - (a) Therefore: he had to move 2 rows back
 - (b) Counter: in א"י ruled against רשב"א (and in such a case, even ב"ה agrees that there is no testimony at all)
 - (c) Block: when ר' כהנא can produce proof of that ruling, he'll accept it; until then, עדות is valid for 2 rows
- c The loft dweller
- i Case: man lived in a loft for 4 years; when challenged by house-owner, he replied that he had bought the loft from another that had (he presumed) bought it from this owner
- 1 Ruling (ר' חייא): if the מחזיק could provide testimony that the "seller" had lived there – even for one day – he could keep it; else, it would be returned to claimant.
 - (a) Note: רב challenged ר' חייא – don't people sometimes buy and sell in the same night (without moving in)?
 - (b) In any case: ר' חייא seemed to believe that if the מחזיק had claimed that the "owner" had sold it to the "seller" in his presence – and he subsequently bought it from him – would be valid, מינו that he could have claimed that he bought it directly from the "owner" and would be believed due to his חזקה.
 - 2 דבא: supports ר' חייא, as our משנה only exempts a יורש (:לוקח?) doesn't need a claim → does need proof
 - (a) Rejection: perhaps יורש needs neither
 - (b) Or: even if יורש needs proof, לוקח doesn't - wouldn't expend money on sale w/o clarifying status of פרקע
 - 3 Question: what if the "seller" was seen around the property (but not living there)?
 - (a) אב"י: same as him living there (supports חזקה)
 - (b) דבא: sometimes a person will "tour" a property without buying it; his presence is no proof
- III חזקה-Combination
- a Ruling: 3 buyers (1 year each) can combine to form a חזקה; דב: all must buy with a שטר
- 1 Challenge: רב maintains that קול עדים (→ if a field is sold in front of עדים it can be seized from משועבדים)
 - (a) Answer: in that case, the buyers (afterwards) lost their rights by not checking the status
 - 2 Challenge: משנה rules that a loan made in front of עדים can only be collected from בני חורין
 - (a) Answer: loans are made discreetly; sales are deliberately publicized
- b Ruling: if father, son and לוקח each spent a year, this constitutes חזקה
- i Challenge: if the מחזיק was there for 1 year of the father's life, 1 of the son's and one of the לוקח – חזקה
- 1 But: if לוקח is publicized – this is the greatest מחאה of all! (the owner selling it during 3 years)
 - (a) Answer (ר"פ): in that case, the seller was selling his fields, without attending to the חזקה