



## Chazaka without a Taana

The third *perek* discusses a *chazaka* in property. In other words, if someone is witnessed using a property for a period of three years and his presence was not contested by the previous owner, he is believed if he claims that he purchased the property, even without holding any contract of sale. In the past we discussed this basis of this law in detail (volume 16, issue 15).

The third *Mishnah*, however teaches, that a *chazaka* without any *taana*, is not considered a *chazaka*. In other words, for a *chazaka* to have a legal force, the person occupying that property must claim that he purchased it from the previous owner. His presence alone is not enough. The example the *Mishnah* brings is if the person who has been on the land for there years is challenged, he simply responds that no one told him not to be there, then he would not have a *chazaka*.

The *Gemara* (41a) notes that fact that a *chazaka* must be supported with a claim of ownership appears obvious. The *Gemara* however explains that one might have thought that, even without a supporting claim, that the person may have indeed purchased the property. However, he subsequently lost the contract. He kept silent, because he may have thought that if he said that he purchased the land, then the contract would be requested as proof. Not being able to present the contract, he would think that his position would be worse and support the claim that the land was stolen. That is why he was silent. Therefore, one might have thought we must follow the directive “open your mouth for the mute” (*Mishlei* 31:8). In other words, we assist this individual to organise his legal claim, assuming he is incapable of doing so. It was therefore necessary for the *Mishnah* to teach that this is not the case and the *chazakah* has no force.

That said we need to probe a little deeper to understand what the issues is with a *chazakah* that lacks a *taana*.

The *Chazon Yechezkel* (*Hashmatot U'miluim Le'Chidushim* 2:1) explains that there are potentially two ways to understand the importance of a *taana*. The first is that the *taana* adds a positive force to the *chazaka*, strengthening it. The *Chazon Yechezkel* however maintains that this is not the explanation. Instead, the *chazaka* on its own has sufficient force to provide legal ownership. If however, the person occupying the land does not claim the he purchased the land from the previous owner or that it was gifted to him, then it detracts from the *chazaka*, weakening it. The *chazaka* loses its force if the individual does not know why he has a legal claim to the land. Is there a difference between these two understandings?

The *Chazon Yechezkel*, explains that the following case supports the second understanding. We find that if someone inherited land he need not have a definite claim for him to have a *chazaka*. The *Rashbam* explains that the heir is not versed in his father's assets. Consequently, there is no expectation that the son should know how his father came into possession of that land. Recall that according to the second understanding the *chazaka* on its own has sufficient legal force. Considering that there is no expectation that the heir has detailed knowledge of the origins of the estate, this lack of knowledge does not detract from the *chazaka*. If however one would understand that the *taana* is required to give the *chazaka* force, it would be difficult to understand how the heirs could claim a *chazaka* without a clear *taana*.

The *Chazon Yechezkel* continues, that the *Gemara* explains that the reason why the *chazaka* works for an heir is because we provide the claim for him – *toanim leyoresh*. When the *Rambam* brings this *halacha* (*To'en Venitan* 14:12) he brings the law without the above justification brought in the *Gemara*. The *Chazon Yechkel* answers, as we explained above, that this because an heir does not need a claim. The *chazaka* alone has sufficient legal force, and their inability to provide a *taana*, does not weaken it.

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## Revision Questions

בבא בתרא ג' ג' – ד' ד' ח'

- What else is required for a *chazakah* other than occupancy? (ג' ג')
- Which four people (that are not related to the person claiming the property back) cannot claim a *chazakah*? (ג' ג')
- Which relatives cannot claim a *chazakah*? (ג' ג')
- What three ways are provided for one to be *machzik* on *nichsei ha'ger*? (ג' 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? (ד' ד')
- What else must one do to claim a *chazakah* if he uses the field to grow chickens? (ג' ג')
- With the placement of which ladder can one claim a *chazakah* and why? (ג' ג')
- 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' ג')
- List some of the restrictions placed on the construction or modification of windows or entrances to a house? (ג' ג')
- When do these restrictions not apply? (ג' ג')
- What are the two opinions regarding whether one can dig under the public domain? (ח' ג')
- What components are not part of the sale of a house? (Only list those things listed in the first *Mishnah*.) (ד' ד')
- Considering that a *bor* is not included in the sale of a house, what is debated regarding such a case? (ב' ב')
- What is the debate regarding the sale of a *bor* on a property? (ב' ב')
- When is an oven included in the sale of a house? (ג' ג')
- What is included in a the sale of a *chatzer*: (ד' ד')
  - Always?
  - Sometimes? (When?)
  - Never?
- What is and is not included in the sale of an olive press? (ד' ד')
- What is never included in the sale of a *merchatz* no matter the stipulation? (ד' ד')
- What is and is not included in the sale of:
  - A city? (ד' ד')
  - A field? (ח' ד')

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
24 November כ"ג חשוון	25 November כ"ד חשוון	26 November כ"ה חשוון	27 November כ"ו חשוון	28 November כ"ז חשוון	29 November כ"ח חשוון	30 November כ"ט חשוון
Bava Batra 4:9-5:1	Bava Batra 5:2-3	Bava Batra 5:4-5	Bava Batra 5:6-7	Bava Batra 5:8-9	Bava Batra 5:10-11	Bava Batra 6:1-2

