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Kinyan Chazakah

The term *chazakah* has different meaning depending on the *halachic* context in which it is used. In the fourth *perek* this term predominately refers to the possession (or presumption of possession) of land. For example, we learnt that if someone claims he purchased land and has occupied it for a three year period (without protest) he no longer needs to supply documentary proof of ownership. The fourth *Mishnah* however discusses another form of *chazakah* which refers to one of the methods of *kinyan* (acquisition). Probing a debate in the *Rishonim* surrounding this *Mishnah* will help us better understand this form of *kinyan*.

The *Mishnah* states as follows:

When do we say that [a person must occupy the property for three years]? This is when he is trying to *machzik* [in face of protest]. However if he is receiving a gift, or brothers are dividing inheritance or [one is attempting to acquire] the property of a [deceased] convert, he can [either] lock, build a fence or make a small breach and he has [acquired it immediately] through a *chazakah*.

The *Mishnah* provides three different examples of how one can acquire land with a *chazakah* – “locking” or building or breaching a fence. What is meant by “locking”?

The *Rashbam* maintains that this refers to the installation of a lock. In a similar vein the *Bartenura* maintains this refers to the construction of a door. Merely locking the door is insufficient; a physical change to the property is required. The *Tosfot* however argue that the *Mishnah* is understood literally and a *chazakah* is performed by

the simple act of locking the door. What is behind this debate?

Rav Moshe Taragin explains that this debate reflects the two different ways to understand how a *chazakah* forms a *kinyan* in contrast to the use of money or a contact.

One way is to view a *chazakah* in much the same way as *meshicha* (draw an object towards oneself) or *hagbahah* (raising an object) affects a *kinyan* for movable items. There, ownership is asserted by one taking physical control over the object. When it comes to land however, *chazakah* is a demonstration of one exerting his physical control over the land; as slightly more complex task when compared to movable objects. Accordingly, this demonstration requires the person to affect a physical change to the property. The *Rashbam* therefore requires the actually installation of a lock as apposed to a momentary act.

Alternatively, one may understand that a *chazakah* on land (as apposed to the *kinyanim* that apply to moveable objects) is merely an attempt to publicly declare status of the field. As such the *Tosfot* maintain that a symbolic act that demonstrates ownership would suffice. Consequently the simple act of locking the door to the property would effect a *chazakah*.

Therefore a debate about our *Mishnah* has revealed two ways for us to understand a *kinyan chazakah*. The *kinyan* is either formed through a demonstration of control by affecting a physical change to the property or it is a symbolic act the demonstrates ownership.

David Bankier

Revision Questions

בבא בתרא ב' ז' – ג' ו'

- Is there a limit on where trees can be planted outside a city? (ב' ז')
- Which trees have a greater restriction? (ב' ז')
- Is the city required to pay the owners of the trees when clearing them from the outskirts of the city? (ב' ז')
- What are the restrictions on building a threshing floor? (ב' ח')
- What are the restrictions on the location of a cemetery? (ב' ט')
- To which side of the city must a tannery be built? (Include both opinions.) (ב' ט')
- If one wishes to plant leeks, what must he be careful that he does not plant it near? (ב' י')
- If someone wants to plant a tree, how far must he distance it from his neighbour's hole? (ב' י"א)
- What are the two opinions regarding a case where one dug a hole and his neighbour planted a tree near by? (ב' י"א)
- In what situation can one plant a tree in his property very close to his friend's field? (ב' י"ב)
- How deep can a person dig in his field in order to destroy the root's of his neighbour's tree that have entered his field? (Include two cases.) (ב' י"ב)
- Is one allowed to cut the branches of his neighbour's tree that hang over into his field? (Include three cases.) (ב' י"ג)
- If a person's tree hangs over into the public domain, to what height is it trimmed? (ב' י"ד)
- For which things is a *chazakah* three years “*mi'yom le'yom*” and for which things it three years “*ve'einah mi'yom le'yom*”? (ב' י"א)
- What are the two opinions regarding a three-year *chazakah* that is not “*mi'yom le'yom*”? (ב' י"א)
- What are the three “lands” for *chazakah* and why is this important? (ב' י)
- What else is required for a *chazakah* other than occupancy? (ב' י)
- Which four people (that are not related to the person claiming the property back) cannot claim a *chazakah*? (ב' ג')
- Which relatives cannot claim a *chazakah*? (ב' ג')
- What three ways are provided for one to be *machzik* on *nichsei ha'ger*? (ב' 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? (ב' ד')
- What else must one do to claim a *chazakah* if he uses the field to grow chickens? (ב' ה')
- With the placement of which ladder can one claim a *chazakah* and why? (ב' ו')

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Between mincha & ma'ariv
Mizrachi Shul

Friday & Shabbat
10 minutes before mincha
Mizrachi Shul

Audio Shiurim on-line!

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
2 nd September י"ט אלול	3 rd September כ' אלול	4 th September כ"א אלול	5 th September כ"ב אלול	6 th September כ"ג אלול	7 th September כ"ד אלול	8 th September כ"ה אלול
Bava Batra 3:7-8	Bava Batra 4:1-2	Bava Batra 4:3-4	Bava Batra 4:5-6	Bava Batra 4:7-8	Bava Batra 4:9-5:1	Bava Batra 5:2-3

