

Three months in the first year

שלשה חדשים בראשונה -

OVERVIEW

The משנה states that a שדה בית הבעל, which does not produce crops continuously, does not require a full three year חזקה. Rather it may be accomplished (according to ר"י) by two, three month, cycles (one month cycles לר"ע) and one twelve month cycle in between; for a total of eighteen (fourteen) months. It is not clear what the מחזיק is required to do in the field during these three months to accomplish a valid חזקה. It is also not clear how it is possible to have three harvests in a בית הבעל, in less than three years, since a בית הבעל produces one only crop a year. תוספות will address these issues.

מתוך פירוש הקונטרס משמע דבעי רבי ישמעאל –

From s' explanation it seems that ר' ישמעאל requires –

שהוא יזרע ויקצור¹ באותן שלשה חדשים ראשונים וכן באחרונים –

That the מחזיק should sow and harvest the field in these first three months (of the first year) and similarly in the last three months (of the third year).

anticipates a question:

ואין תימה שתהא תבואה הנזרעת אחר ניסן גדילה בג' חדשים ואין זמנה עד ניסן הבא –

And it is not surprising that grain which was sown after the month of ניסן would ripen in three months, even though its usual time for ripening is not until the following ניסן. משנה is assuming (and it seems also that רש"י agrees²) that when the משנה states 'ושנים עשר חדש באמצע', we are referring to a regular year from ראש השנה to ר"ה. Therefore the first three months (the first year) are אלול, תמוז, and אב. The last three months (the third year) are אב, תשרי, חשוון, and כסלו. A שדה בית הבעל generally yields one crop a year.³ Grain (in those areas around ניסן ובבל א"י) ripens around ניסן time.⁴ It would seem unusual that grain can be planted and harvested (so quickly) during תמוז – אלול, then planted and harvested again in ניסן⁵ (and planted

¹ In our (ד"ה שדה) רש"י it states that he planted during the three months; it does not specifically state that he also harvested during these three months. ועי' במפרשים.

² See מהר"ן לזרוע לפני ר"ה where he writes, (seemingly) concerning the first three months, that רש"י ד"ה שדה.

³ See שו"ע where he states: אינה עושה פירות אלא פעם אחת בשנה, and at the end of the same רש"י, he states: שזורע. את שדהו לאכול פרי העשוי לשנה.

⁴ The עומר of barley was harvested on the second day of פסח. The מנחה of wheat was brought on שבועות, etc. See יציאת מכת ברד [which (seemingly) took place a short while before where the תורה relates the effect that פ' בא ט', לא ולב מצרים], had on the wheat and barley.

⁵ The תוספות does not ask how it is possible to plant a (second) crop in תמוז-אלול, if a crop was already harvested in the previous ניסן. The reason may be that (according to רש"י) in our case no one planted the field previously during this year. The מחזיק entered a barren field in תמוז and planted it then. See however later in this תוספות (footnote # 9),

and harvested again during ⁶כסלו (תשרי – כסלו).

תוספות maintains that this is not such a difficulty –

דמצינן כעין זה דאמרינן בראש השנה (יג,א) כל תבואה הנקצרת בחג –

For we find something similar to this, for the גמרא states in ר"ה any grain which is harvested on the holiday of סוכות –

בידוע שהביאה שליש לפני ראש השנה –

It is known that it grew a third of its entire growth **before** ר"ה.⁷

אלמא גדלה פעמים באותו זמן –

It is evident that sometimes it does grow in that season; around ר"ה time. Therefore it is possible that grain can be planted and harvested immediately before (or after) ר"ה.⁸

תוספות asks another question:

אבל קשיא לרבינו יצחק דאם כן אמאי צריך י"ח חדשים בט"ו חדשים סגי –

however the ר"י has a different difficulty with רש"י's interpretation **for if this is so;** that it is possible to plant and harvest grain before ר"ה, without negatively affecting the upcoming crop, then **why are eighteen months needed** in order to effect a three season חזקה, it should be sufficient to accomplish the חזקה in fifteen months. תוספות goes on to explain:

שיזרע ג' חדשים לפני ניסן ויקצור בניסן ושניה בסוף הקיץ⁹ ושלישית בניסן הבא –

He should plant the grain three months before ניסן and harvest the first crop in ניסן, as is usual **and the second** crop will be planted and harvested **at the end of the summer;** in תמוז-אלול as stated previously according to רש"י¹⁰ **and the third** crop will be harvested **in the following ניסן.** There will be three crops harvested within fifteen months; beginning with שבט and ending the following ניסן a year and three months later.¹¹

תוספות offers an answer:

where it is apparent that (according to תוספות) two crops can be harvested within a year.

⁶ It may be that תוספות is not (that) concerned about harvesting and planting during תשרי-כסלו for then it is the rainy season, however תמוז-אלול is the driest season, how can grain be planted and harvested then? See however footnote # 5; If it is planted and harvested during תשרי-כסלו, it will not be planted again for ניסן.

⁷ That grain would be therefore considered to 'belong' to the year, previous to the סוכות in which it was harvested. This is relevant to the laws of מעשר and שביעית. It is also relevant to us; since it grew a third before ר"ה, it will be considered a proper harvest (even) before ר"ה in regard to the חזקה.

⁸ See 'Thinking it over' # 2.

⁹ It seems, that תוספות maintains that a field can yield two crops in the same year. See footnote # 5.

¹⁰ According to רש"י a span of six months from harvest to harvest is sufficient. The first harvest occurs before ר"ה and the second before פסח. תוספות question is that this (first) cycle can start with a ניסן harvest, instead of a ר"ה harvest.

¹¹ This difficulty is (only) according to רש"י's opinion that it is possible to plant and harvest within a three month cycle. See later in תוספות for a differing opinion.

ויש לומר דצריך אכילה חשובה של י"ב באמצע –

And one can say that fifteen months is not sufficient, because **we require a substantive consumption of twelve months in between** the two minor usages of three months apiece. A שדה בית הבעל generally yields one crop a year. A חזקה requires (planting and) harvesting three crops. Therefore we require that at least one of the חזקה crops, namely the middle one, be a substantive normative חזקה of one full year. For the other two חזקות we are lenient, allowing two, three month חזקה cycles, for a total of eighteen months.

תוספות anticipates the following question:

אף על גב דאמרינן בגמרא¹² אכל תלת פירי לתלתא ירחי –

Even though the גמרא states, that if one consumes three produce harvests in three months –

כגון אספסתא לרבי ישמעאל הוא חזקה –

For instance in the case of אספסתא which can be harvested once a month, that **according to ר' ישמעאל it will be a valid חזקה**. We can derive from that גמרא that according to ר"י a חזקה can be accomplished in three months and there is no requirement of an אכילה חשובה of twelve months (besides the other two חזקה periods). Why therefore here in the case of a שדה הבעל is there a requirement of an אכילה חשובה of one year.

תוספות responds:

שאני התם לפי שהוא זמן שלה –

For it is different there in the case of אספסתא **for that is its time**. אספסתא can grow in a month, be harvested then grow again in another month, be harvested etc. Therefore it is logical that no twelve month אכילה חשובה period is required, since a month is its proper time to grow and be harvested. However by a שדה בית הבעל, its growing season is one year from harvest to harvest. Therefore even though it is technically possible to induce it to produce three harvests in a shorter period than the normal three years, nevertheless one of these consumption periods must be the normal full year cycle.

תוספות questions רש"י's interpretation:

אבל קשה לרבינו יצחק דאמרינן בגמרא (לקמן דף לו,ב) –

However the ר"י has a difficulty; for the גמרא states –

פירא רבה ופירא זוטא איכא בינייהו דרבי ישמעאל ורבי עקיבא –

That the difference of opinion between ר"י (who requires eighteen months) and ר"ע (who requires fourteen months) is based on whether 'large produce' or 'small produce' are required for a חזקה.

ופירש הקונטרס דרבי ישמעאל סבר פירא רבה –

¹² דף כח,ב.

פירא And ר"י explains that גמרא to mean **that** ר"י maintains that consuming a **פירא** is required in order to effect a חזקה -

כגון שעורים ושבולת שועל שגדלים בג' חדשים -

For instance barley and oats that grows in three months. Therefore, eighteen months are required; twelve months in the middle; and the two cycles of three months, to plant and harvest the פִּירָה רַבָּה. Harvesting פִּירָה זוּמָה is not sufficient to establish a חֲזָקָה. However -

ורבי עקיבא סבר פירא זוטא כגון ירק הגדל בחדש אחד –

ר"ע maintains that even פירא זוטא such as vegetables that grow in one month are also sufficient to constitute a חזקה. Therefore fourteen months are sufficient. This concludes the citing of the גמרא and פירש"י. **רש"י** now concludes his question. How can **רש"י** state that **ר"י** requires **פירי רבה** of three months for a חזקה –

והא אמרינן בגמרא (לקמן עמוד ב') דאספסתא בחדש אחד הויא חזקה לרבי ישמעאל –

For the גמרא states that harvesting אספסתא once a month three times is considered a חזקה according to ר"י! The אספסתא would be considered a פירי זוטא according to רש"י. How can we reconcile these two issues; that ר"י requires פירי רבה and nevertheless by אספסתא there is a חזקה in (three) one month cycles?!¹³

On account of this last question (and the previous difficulties) תוספות disagrees with רש"י who says that for each of the two minor חזקה cycles both זריעה and קצירה are required.

ונראה לרבינו יצחק דלא בעי רבי ישמעאל שיזרע התבואה ויקצור –

And the ר"י maintains that ר' ישמעאל does not require that the grain be both planted and harvested -

אלא אפילו זרעה הראשון או הוא יזרענה בשלשה חדשים אחרונים אף על פי שלא קצרה –

But rather even if the first (previous) owner planted the field and the present מחזיק harvested it during the (last) three months of the first year, it would be considered a proper אכילה for the first year cycle of the חזקה, **similarly if** the מחזיק only **plants** this field **in the last three months** of the חזקה (i.e. the first three months of the third year) **even though** the מחזיק **did not harvest** the grain that he planted, nevertheless the planting of the last three months is also considered a valid אכילה for the third year of the חזקה.¹⁴

¹³ See ‘Thinking it over’ # 3.

¹⁴ The advantage of this interpretation is that we may now maintain that only one crop a year can be harvested from a שדה בעל, and nevertheless three אכילות can be accomplished in eighteen months. The original owner planted his field in the first year and the מהזיק harvested it in the last three months of the first year. The next year was a regular year of planting and harvesting by the מהזיק. In the first three months of the third year the מהזיק planted the field, and he now has a חזקה even before the harvest of the third crop, which will take place later in the year. It also explains why the חזקה cannot be accomplished in fifteen months (תוספות second question) for that would require more than one crop a year. There will also be no question from אפססתא (see מהרש"א) [where no twelve month middle cycle is required, and a one month cycle is sufficient], for there he is both planting and harvesting; however here he is either

will now explain the מחלוקת between ר"ע ור"י concerning זוטא and it will not conflict with the case of אספסתא, according to this interpretation.

ובהא פליגי דרבי ישמעאל סבר בעינן שיהא גדל הפרי ברשותו הרבה כגון ג' חדשים –

And this is what ר"י and ר"ע are arguing about: for ר"י maintains that it is necessary that the produce should grow in his possession an extended amount of time for instance three months -

והיינו פירא רבה –

And this is what פירא רבה means; that it is growing for an extended time of three months. Otherwise it cannot be counted for a yearly חזקה cycle.

ורבי עקיבא סבר דאין צריך שיגדל ברשותו אלא חדש אחד והיינו פירא זוטא –

However ר"ע maintains that it is not necessary that it grow in his possession three months but rather only one month is sufficient and that is the meaning of פירא זוטא. However neither ר"י nor ר"ע require that it must be planted and harvested in that time (i.e. one or three months); either קצירה or זריעה is sufficient.¹⁵

According to תוספות the חזקה in each three month cycles (one month for ר"ע) is accomplished either by זריעה or קצירה but not (necessarily) both. תוספות questions this.

ואם תאמר היאך יהא ניכר שיחזיק בה כל ג' חדשים ראשונים או אחרונים –

And if you will say; How will it be apparent that he was in possession of the field all of the first three months or of the last three months -

כי ביום אחד או בב' יוכל לקצור או לזרוע –

Since, in one or two days he is able to harvest (concerning the first three months) or to plant (concerning the last three months).¹⁶ What does it mean that he made a חזקה for three months? What did he actually do during the entire three month period?¹⁷

תוספות anticipates a possible answer:

וכי תימא שמנכש את השדה ומתקנו –

And if you will say that he will weed the field and improve it by removing any

planting or harvesting, therefore we require a three month cycle and a twelve month חשובה in between.

¹⁵ פירא רבה ופירא זוטא, cannot interpret ר"י who maintains that each yearly חזקה cycle must consist of both זריעה וקצירה, the way תוספות explains it. There can be no חזקה by produce that requires more than a month from the זריעה until קצירה, even according to ר"ע since there was no זריעה וקצירה. Therefore ר"י must interpret that ר"י and ר"ע are arguing whether a זוטא, a produce that requires no more than a month from זריעה to קצירה, is eligible to be considered a חזקה, or that only a פירא רבה which requires three months is eligible for a חזקה. Therefore תוספות has the חזקה (according to ר"י) between ר"י of the משנה, where three months are required and ר"י of אספסתא where one month is sufficient for a חזקה.

¹⁶ See 'Thinking it over' # 4.

¹⁷ According to ר"י it is understood. He planted in the beginning of the three months and harvested at the end of the three months, therefore it is considered as if he was מחזיק all three months, for this is the normal manner in which a person tends to his field.

defects; that is the way he will be מחזיק for the three month cycles. תוספות rejects this answer -

הא לא הויה חזקה מידי דהוה אניר דאמר לקמן (דף לו,ב) דלא הויה חזקה –

For מנכש or מתקן **is not a חזקה for it is similar to plowing**, concerning which the גמרא later says that plowing is not a חזקה –

משום דמימר אמר כל שיבא דכרבא ניעול בה¹⁸ –

Because the original owner **certainly** says, ‘let every chip of the plow go into the soil’. The original owner is saying let the מחזיק plow so much until his whole plow will be consumed chip by chip from the wear and tear of plowing.¹⁹ The owner is happy that a stranger is plowing his field. After the מחזיק is finished plowing the owner will be able to plant the field and avoid all the difficult work of plowing. Therefore just as plowing is no חזקה similarly weeding and repairing is no חזקה for the same reason. The owner is happy that someone else is doing his work.²⁰ A חזקה is only when the מחזיק is infringing on the rights of the owner in some way; when he harvests the crops, etc. The question remains; how does he perform a חזקה for three months.

תוספות answers:

ויש לומר כגון שאוכלה שחת –

And one can say; that he consumes it for fodder, for instance. He harvests the growing stalks [of grain] before they mature and uses them as animal fodder. That will be considered as a חזקה for the three months (in addition to the planting [or regular harvesting] of grain).

תוספות anticipates a difficulty:

והא דאמרינן (שם [לו,א]) אכלה שחת לא הויה חזקה –

And concerning that which the גמרא states: **If he consumed שחת it is not a חזקה.** This seemingly contradicts what תוספות just said that his חזקה is accomplished by שחת.²¹

תוספות responds:

הני מילי כשאוכל בענין זה שאין התבואה חוזרת לבא –

These words (that הויה חזקה לא הויה חזקה) were said **when he consumed it in such a manner that the grain will not come back**; he cut the stalks in such a manner that they will never recover and grow back to produce grain. In that case חזקה לא הויה חזקה –

דשייך לומר לאו אחזקת כדמחזקי אינשי לפיכך לא חש למחות –

For then it is **applicable that the** original owner says, ‘**you did not take possession** of this field **in the manner which people usually take possession.**’ A

¹⁸ The לעייל ביה amends this to read מסורת הש"ס.

¹⁹ See ד"ה כל רשב"ם there.

²⁰ See ‘Thinking it over’ # 5.

²¹ See ‘Thinking it over’ # 6.

person who is in possession of a field does not willfully destroy his crops of grain and instead feed the stalks to animals. Therefore since the מחזיק did not make a regular חזקה **therefore** the original owner **was not concerned to protest** this unusual occupation of his field. This explains the גמרא of אכלה שחת לא הויא חזקה.

אבל אם אכלה שחת בענין שאין התבואה מתקלקלת –

However if he was אכלה שחת in a manner that the grain does not spoil; there will be a crop of grain even after שחת –

כדרך שבני אדם עושים בעוד שהוא ירק ולא בא עדיין גבעול שלה הויא חזקה –

As is the custom of some people, who perform the אכילת שחת while the plant is still green and it did not reach the stalk stage; then even if you cut it, it will regenerate and produce grain, in that case **it will be a חזקה**. This is the type of שחת אכלה that תוספות mentioned which is eligible for the three month חזקה.²²

תוספות concluded that there can be a continuous חזקה in a שדה through שחת אכלה. However, תוספות anticipates a difficulty:

ובשדה אילן דבעו רבנן דפליגי ארבי ישמעאל בגמרא²³ מיום ליום ג' שנים –

And concerning an orchard, in which the רבנן, who argue with ר"י as mentioned in the גמרא, require that the חזקה be three full years 'from day to day' –

אף על גב דלא שייך התם אכלה שחת –

Even though that אכלה שחת is not possible there, by an orchard; there are no stalks to be harvested. How can there be a חזקה for three full years? What is he doing during all this time to show that he is מחזיק? Seemingly he only harvests the fruit, which requires a relatively short time.²⁴

תוספות answers:

מכל מקום איכא למימר כגון שזומר ומעכב העצים לעצמו –

Nevertheless even though there is no אכלה שחת, we can say that he makes a חזקה continually that he prunes the trees for instance and he retains the pruned wood for his usage; for firewood, building, etc.

תוספות anticipates a question:

ואף על גב דמתקן בכך והוי כמו ניר –

And even though that by pruning, he is merely improving the orchard for the owner and it is similar to plowing; which the גמרא says is not a חזקה, as mentioned previously. How can pruning be a חזקה?

²² See 'Thinking it over' # 7.

²³ לקמן לו,ב.

²⁴ See 'Thinking it over' # 8.

replies: תוספות

כיון (שמתקן)²⁵ העצים לעצמו לא שייך למימר כל שיבא דכרבא ניעול בה –

Since, however, he is retaining the wood for himself, it is not appropriate for the original owner **to say let every chip of the plow go into** the soil. The owner is not happy that he is taking the wood for himself and away from the owner. We cannot compare plowing to pruning. By plowing the owner is only gaining, however by pruning even if the owner is gaining somewhat, but he is losing his wood. Therefore זומר ומעכב לעצמו is considered a חזקה.

will offer another way how the חזקה is accomplished in the three month cycle. תוספות

ועוד אומר רבינו יצחק דאחזיק בה בכהאי גוונא –

And furthermore, says the ר"י that he made a חזקה in the field in this manner - שנעל²⁶ וגדר את השדה ונועל במפתח ואין מניח אדם ליכנס –

That he made a lock and fenced in the field and he continually locks it with a key, when he leaves the field and he permits no person to enter. This is considered a חזקה for it shows (exclusive) ownership.

anticipates a question on this explanation: תוספות

והא דאמר בגמרא (דף כט,ב) צונמא במאי קני לה ולא קאמר כגון שנעלה וגדרה –

And concerning that which the גמרא says how can one acquire possession of a rocky area (with חזקת ג"ש); since there can be no planting there? This concludes the quote from the גמרא. The גמרא **does not say** that a צונמא may be acquired, if **for instance he locked it and fenced it**. The fact that the גמרא did not give this answer would seemingly indicate that נעל וגדר is not a valid חזקה, contrary to what תוספות said.

replies: תוספות

איכא למימר דאין נעילה מועלת אלא אם כן איכא אכילה בהדה או זריעה –

It is possible to answer that locking alone is insufficient to be a חזקה **unless there is a harvest together with the locking, or planting together with the locking – אבל נעילה גרידא לא מהני מידי²⁷ –**

However, locking alone without זריעה or קצירה **is not sufficient at all**, there is no חזקה. Therefore by צונמא where there can be no קצירה וזריעה, the גמרא could not have said that the חזקה was made by נעל וגדר. However by שדה הבעל where there is זריעה or קצירה, then נעל וגדר can complete the three month חזקה cycle.

²⁵ See שמעקב for others substitute מסורת הש"ס.

²⁶ See לקמן נב,ב ד"ה נעל ודו"ק.

²⁷ It could be he is merely a watchman, or he wants to protect his neighbor's property. However when he harvests [or plants], the locking indicates that he is protecting his produce.

תוספות concludes:

והשתא אתי שפיר נמי לרבנן דרבי ישמעאל:

And now that we are stating that גדר וגדר can accompany זריעה וקצירה to complete a חזקה, then **it will also be understood according to the** ר"י who argue **with** ר"י concerning a שדה האילן. They maintain that a full three year חזקה is necessary. That חזקה can be accomplished if in addition to harvesting the fruit he will fence and lock the orchard.

SUMMARY

There is a dispute between רש"י and תוספות whether during the two, three (one) month, cycles the מחזיק is required to both plant and harvest the crops (רש"י); or whether it is sufficient that he either harvest or plant the crops (תוספות).

A similar dispute is whether פירי רבה ופירי זוטא is referring to the growing cycle of the crop (רש"י); or whether it merely refers to the time the מחזיק is working with it. According to רש"י planting and harvesting (is all that) is required for the חזקה. According to תוספות, in addition to the harvesting or planting, he is also required to be אכלה שחת in a manner that the crop is not destroyed. Alternatively he may fence and lock up the field that he is harvesting or planting for a valid חזקה.

Plowing, weeding, pruning (unless he retains the wood), repairing, locking etc. are not acts of חזקה (for חזקת ג' שנים as opposed to חזקת קנין).

THINKING IT OVER

1. Does the חזקה of eighteen (fourteen) months need to begin only at a specific date (תמוז, for instance), or from any time that the מחזיק begins the חזקה, it will conclude eighteen months later (רש"י, תוספות)?

2. What proof does תוספות bring from the גמרא in ר"ה that כל תבואה וכו' בחזקת וכו' לפני ר"ה? ²⁸ בית השלחין; perhaps that is concerning ר"ה;

3. Can we answer תוספות final question on רש"י in the following manner; ²⁹ similar to תוספות answer on the previous question of אספסתא. In the case of אספסתא since its cycle is one month, therefore three one month cycles are sufficient. However concerning a בית הבעל where its intrinsic cycle is one year, the חכמים were willing to lessen the two minor cycles but only if there would be an אכילה חשובה of פירי רבה – three months.

²⁸ See footnote # 8.

²⁹ See footnote # 13. See רשב"א.

4. According to תוספות, when is he required to plant/harvest in the three month cycle; in the beginning, at the end, or there is no difference?³⁰

5. תוספות cites that plowing is not a חזקה.³¹ Why is זריעה a חזקה?³²

6. תוספות asks, that the גמרא states חזקה לא הוי חזקה; this conflicts with תוספות suggestion that he be אכלה שחת.³³ Why does not תוספות answer that the גמרא is discussing a case where it is only אכלה שחת; he never harvests the crop; here, however, he is harvesting the crop?

7. If it was אכלה שחת in the manner עושים שבנ"א is that a חזקה?³⁴ Why?

8. תוספות asks how one makes a חזקה in a שדה אילן.³⁵ Is this question applicable according to רש"י?

³⁰ See footnote # 16.

³¹ See footnote # 20

³² See בל"י אות יא.

³³ See footnote # 21.

³⁴ See footnote # 22.

³⁵ See footnote # 24.