

Three months in the first year. – שלשה חדשים בראשונה

Overview

The משנה states that a שדה בית הבעל, which does not continuously produce crops, 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 שדה בית הבעל produces one only crop a year. תוספות will address these issues.

From s'י' explanation it seems –
 that requires ר' ישמעאל – דבעי רבי ישמעאל
 that the מחזיק should sow and harvest the field – שהוא יזרע ויקצור
 in these first three months (of the first year) – באותן שלש חדשים ראשונים
 and similarly in the last three months (of the third year)¹.

anticipates a question:

and it is not surprising that grain – ואין תימה שתהא התבואה הנזרעת אחר ניסן
 which was sown after the month of ניסן –
 would ripen in three months, even though – גדילה בג' חדשים
 its usual time for ripening is not until the following – ואין זמנה עד ניסן הבא
 משנה states (and it seems also that רש"י agrees²) that when the משנה states
 'ושנים עשר חדש באמצע' ר"ה, we are referring to a regular year from ראש השנה to ר"ה. Therefore
 the first three months (the first year) are תמוז, אלול and אב. The last three months (the third
 year) are חשוון, כסלו and תשרי. A שדה בית הבעל generally yields one crop a year³. Grain (in
 those areas around א"י ובבל) ripens around ניסן time⁴. It would seem unusual that grain can
 be planted and harvested (so quickly) during אלול – תמוז, then planted and harvested again
 in ניסן⁵ (and planted and harvested again during כסלו⁶).

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. במפרשים.

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

³ See רש"י ד"ה שדה 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 תמוז-אלול crop of wheat was brought on פסח. The תמוז-אלול crop of barley was harvested on the second day of פסח. לא ולב ט, לא ולב ט, etc. See תורה relates the effect that מכת ברד [which (seemingly) took place a short while before יציאת מצרים] had on the wheat and barley.

⁵ תוספות does not ask how is it 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), where it is apparent that (according to תוספות) two crops can be harvested within a year.

תוספות maintains that this is not such a difficulty –

for we find something similar to this – דמצינו כעין זה

– מסכת ר"ה גמרא states in – דאמרינן בראש השנה (יג,א)

any grain which is harvested on the holiday of סוכות – כל תבואה הנקצרת בחג

–

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

– 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:

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:

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 summer⁹; in תמוז-אלול as stated previously according to רש"י,¹⁰

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 later¹¹.

תוספות offers an answer:

one can say that fifteen months is not sufficient, because –

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.

– we require a substantive consumption – דצריך אכילה חשובה

– of twelve months in between של י"ב חודש באמצע 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.

anticipates the following question:

¹² **– even though the גמרא states, that if – אף על גב דאמרינן בגמרא**

– one consumes three produce harvests in three months – אכל תלת פירי לתלתא ירחי

– for instance in the case of אספסתא which can be harvested once a month, that – כגון אספסתא

– 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.

responds:

– for it is different there in the case of אספסתא – דשאני התם

– for that is its time. לפי שהוא זמן שלה חזקה. 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.

questions רש"י's interpretation:

– However the ר"י has a difficulty; for the גמרא states – אבל קשה לרבינו יצחק דאמרינן בגמרא (לקמן דף לו,ב)

– 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.

– and רש"י explains that גמרא to mean – ופירש הקונטרס

– that ר"י maintains that consuming a פירא רבה is required in order to effect a חזקה. What is a פירא רבה?

– for instance barely and oats – כגון שעורים ושבלות שועל

¹² דף כח,ב.

that grow 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 רבה פירא זוטא. However –

– **פירא זוטא maintains that** even **ר"ע – ורבי עקיבא סבר 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. Therefore now concludes his question. How can ר"ע state that ר"י requires פירי רבה of three months for a חזקה –

for the גמרא states – **והא אמרינן בגמרא** (לקבן עמוד ב')

– **that harvesting once a month** three times –

is considered a חזקה according to ר"י! The אספסתא would be considered a פירי זוטא according to ר"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 ר"י who says that for each of the two minor חזקה cycles both זריעה and קצירה are required.

– **And the ר"י maintains** – **ונראה לרבינו יצחק**

– **that ר' ישמעאל does not require** – **דלא בעי רבי ישמעאל**

– **that the grain be both planted and harvested** – **שיזרע התבואה ויקצור**

– **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 – **או הוא יזרענה**

– **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

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

– **and this is what ר"ע and ר"י are arguing over:**

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 בעל שדה, and nevertheless three אכילות can be accomplished in eighteen months. The original owner planted his field in the first year and the מחזיק harvested it in the last three months of the first year. The next year was a regular year of planting and harvesting by the מחזיק. In the first three months of the third year the מחזיק 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 (second question) for that would require more than one crop a year. There will also be no question from אספסתא (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 planting or harvesting, therefore we require a three month cycle and a twelve month חשובה in between.

for maintains ר"י – דרבי ישמעאל סבר

that it necessary that the produce should grow in his possession an extended amount of time –

for instance three months – כגון ג' חדשים

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.

however ר"ע maintains – ורבי עקיבא סבר

that it is not necessary that it grow in his possession three months but rather only one month is sufficient.

פירא זוטא 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 קצירה or זריעה but not (necessarily) both. תוספות questions this.

You may ask; How will it be apparent – ואם תאמר היאך יהא ניכר

that he was in possession of the field all of the first three months – שהחזיק בה כל ג' חדשים ראשונים

or of the last three months. – או אחרונים

for in one or two days - כי ביום אחד או בב'

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:

and perhaps you will say that he will weed the field and improve it by removing any defects; that is the way he will be מחזיק for the three month cycles. תוספות rejects this answer –

חזקה is not a מתקן or מנכש – הא לא הויה חזקה

for it is similar to plowing, concerning which the גמרא – מידי דהוי אניר

later says, that plowing is not a חזקה – דאמר לקמן (דף לז,ב) דלא הויה חזקה

¹⁵ פירא who maintains that each yearly חזקה cycle must consist of both קצירה and זריעה, cannot interpret פירא רבה, 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 קצירה. Therefore ר"י must interpret that ר"י and ר"ע are arguing whether a פירא זוטא, a produce that requires no more than a month from זריעה until 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 סתירה (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.

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 plowing¹⁸. 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 work²⁰. 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 performs a חזקה for three months.

answers:

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).

anticipates a difficulty:

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

responds:

these words (that שחת לא היא 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 – אכלה שחת לא היא חזקה –

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 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 שחת לא היא אכלה שחת.

however if he was שחת – אבל אם אכלה שחת

in a manner that the grain does not spoil; there will be a crop of grain even after שחת –

¹⁸ See gloss.

¹⁹ See ד"ה כל רשב"ם there.

²⁰ See 'Thinking it over' # 5.

²¹ See 'Thinking it over' # 6.

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 –

חזקה. This is the type of שחת that תוספות mentioned
which is eligible for the three month חזקה.²²

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

and concerning an orchard, in which –

the רבנן, who argue with ר"י as
mentioned in the ²³גמרא, **require** that the חזקה be –

three full years ‘from day to day’ –

even though that 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

answers: תוספות

nevertheless even though there is no 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.

anticipates a question: תוספות

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?

answers: תוספות

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

²² See ‘Thinking it over’ # 7.

²³ לקמן לו,ב.

²⁴ See ‘Thinking it over’ # 8.

²⁵ See gloss.

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** is considered a **חזקה** for it shows (exclusive) ownership.

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

– **ר"י** – **and furthermore, says the ר"י** – **ועוד אומר רבינו יצחק** – **that he made a חזקה in the field in this manner** – **דאחזיק בה בכהאי גוונא** – **that he made a lock²⁶ and fenced in the field** – **שנעל וגדר את השדה** – **and he continually locks it with a key**, when he leaves the field – **ונועל במפתח** – **and he permits no person to enter**. This is considered a **חזקה** for it shows (exclusive) ownership.

anticipates a question on this explanation:

– **גמרא says** – **And concerning that which the גמרא says** – **והא דאמר בגמרא (דף כט,ב) צונמא במאי קני לה** – **how can one acquire possession of a rocky area**; since there can be no planting there? This concludes the quote from the **גמרא**. **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:

– **it is possible to answer** as follows: **איכא למימר** – **that locking alone is insufficient** to be a **חזקה** – **דאין נעילה מועלת** – **unless there is a harvest together with the locking** – **or planting** with the locking – **או זריעה** – **however locking alone** without **זריעה** or **קצירה** – **אבל נעילה גרידא** – **is not sufficient at all**, there is no **חזקה²⁷**. Therefore by **צונמא** where there can be no **זריעה** and **קצירה**, the **גמרא** could not have said that the **חזקה** was made by **נעל וגדר**. However by a **שדה הבעל** where there is **זריעה** or **קצירה**, then **נעל וגדר** can complete the three month **חזקה** cycle.

concludes:

– **and now** that we are stating that **נעל וגדר** can accompany **קצירה** or **זריעה** to complete a **חזקה**, then – **it will also be understood according to the רבנן 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.

²⁶ See תוס' 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.

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 ר"ה? ²⁸ בית השלחין a חזקת ג' שנים; וכו' לפני ר"ה?

3. Can we answer תוספות's final question on רש"י in the following manner; similar to תוספות's 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 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 ²⁹.

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. Why is זריעה a חזקה? ³¹

²⁸ See footnote # 8.

²⁹ See footnote # 13. See רשב"א.

³⁰ See footnote # 16.

³¹ See footnote # 20. See בל"י אות יא.

6. Tosfos asks, that the גמרא states לא הוי חזקה שחת לא הוי חזקה; this conflicts with Tosfos suggestion that he be אכלה שחת.³² Why does not Tosfos answer that the גמרא is discussing a case where it is only שחת; he never harvests the crop; here, however, he is harvesting the crop?

7. If it was אכלה שחת in the manner³³ א עושים is that a חזקה? Why?

8. Tosfos asks how one makes a חזקה in a שדה אילן³⁴. Is this question applicable according to רש"י?

³² See footnote # 21.

³³ See footnote # 22.

³⁴ See footnote # 24.