

**ומודה רב הונא בחנותא דמחוזא דביממא עבדי ובליליא לא עבדי –**

**And רב הונא admits concerning the shops of מחוזא since they function by day and do not function at night**

### **OVERVIEW**

The גמרא stated that רב הונא admits that חנותא דמחוזא do not require consecutive years of חזקה, since they do not function at night. It is not clear from the גמרא whether the חזקה of חנותא דמחוזא can be accomplished in a total of three daytime-only years (as by fields, etc.), or six daytime-only years are necessary to establish a חזקה (similar to אתרי דמוברי באגי). Our תוספות will be discussing this issue.

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**פירוש<sup>1</sup> ומועיל להם אם החזיקו ג' שנים ואף על גב דלאו שלש רצופות אלא מפוזרות –**

**The explanation** as to what רב הונא admits to, is **that it validates the חזקה for them if they possessed the shops for three complete years and even though these three חזקה years are not consecutive but rather spread out** over six years since the nights are not included; nevertheless it is a valid חזקה –

**כיון דאורחיהו בהכי דהוי כאתרי דמוברי באגי –**

**Since it is their customary way** of conducting business; to be open by day and closed at night, **for this is similar to the places where** the farmers allow the fields of **the valley to lie fallow**. The requirement for חזקה there is three planting seasons (five [six] years). Similarly here too, it is a חזקה if they worked there six years of days. רב הונא requires רב הונא only when the normal usage of the land/property is in a consecutive and continuous manner.

תוספות asks a question:

**ואם תאמר אם כן פשיטא דמודה רב הונא כדפריך לעיל גבי באגי –**

**And if you will say; if this is so** that the customary usage is only by day (and it requires a six year חזקה of days), then **it is obvious that רב הונא agrees** that it is a valid חזקה, **as the גמרא asks previously concerning the חזקה in a valley**, where it was customary to have the land lie fallow on alternating years. The גמרא there asks פשיטא that it will be a חזקה if he had it for three planting seasons. Why does not the גמרא ask the same question

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<sup>1</sup> When תוספות uses the term 'פירוש' it generally indicates that he is disagreeing with some other interpretation. Here תוספות is disagreeing with those [רשב"ם (ד"ה ומודה) תש] who maintain that three daytime only years are sufficient to establish a חזקה דמחוזא by חזקה.

here concerning חנותא דמחוזא; it seems identical to the אתרי דמוברי באגא?!  
answers:

**ויש לומר לפי שבני אדם שאינם חנוונים דרים בהן בין ביום ובלילה –**  
**And one may say,** that the reason that it is not a פשיטא that six years of day חזקות are considered רצופות, is **since the people of מחוזא who are not shopkeepers dwell in the same type of buildings both in the day and in the night -**

**ואותן צריכים ג' שנים רצופות יום ולילה –**  
**And those people,** in order to make a חזקה on their properties, **are required** to live there **three consecutive years by day and by night –**  
**וסלקא דעתין דחנוונים נמי יצטרכו כן קא משמע לן<sup>2</sup> –**

**So it would enter our minds;** we might have assumed **that the shopkeepers should have the same requirement** to be there three consecutive years by day and by night; and not be permitted to establish a חזקה through six years of daytime occupation only, therefore the גמרא **comes to let us know**, that in the case of חנותא six years of daytime occupation is considered a proper חזקה.

will now explain why the חזקה of מחוזא is six daytime years and not merely three daytime years:

**ומהאי טעמא אתי שפיר דבעינן להו שלש שנים שלימות דהיינו ו' שנים –**  
**And from this very same logic** (that others live in the same houses for three continuous years) **it is well understood that we require of them three complete years which means six years** of daytime חזקה, and it is not sufficient to merely have three years of daytime חזקה –

**אף על גב דבשדות ובית הבדים לא בעינן אלא שלש שנים בין הכל –**  
**Even though that by fields and olive presses we only require three years total,** even though the שדות ובית הבדים are not functioning continually for three years without a stop. Why is it that by מחוזא three complete years (six years) are required?–

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<sup>2</sup> This seems to be the same answer the גמרא gives by אתרי דמוברי באגי to explain that it is not פשיטא (that three alternate years are sufficient), since there are those who are not מוברי באגי and always plant their fields. The reason the גמרא here does not ask פשיטא and give the same answer is, because by חנותא דמחוזא it is self-understood that there are many people who live in מחוזא and are not shopkeepers. There is no need to inform us (by חנותא דמחוזא) that we are discussing a particular situation. However by מוברי באגי the original assumption was that all were באגי. Therefore there is the question of פשיטא, and the subsequent answer that we are discussing a particular situation of מוברי באגי. See, however, 'Thinking it over' # 1.

explains: תוספות

– (אלא) היינו משום דכמו שאר בני אדם הדורים שם שאין חנוונים בעו ג' שנים ביום ובלילה –

**The answer is because just like the other people who dwell there in מחוזה who are not shopkeepers; when they need to make a חזקה they are required to live there for three years by day and by night –**

– הכי נמי חנוונים בעו ג' שנים שלימות דהיינו ו' שנים –

**It is the same also by shopkeepers; they require a חזקה of three complete years which is six years** of daytime חזקה. The fact that the חנותא do not function at night exempts them from the rule of רצופות, but does not exempt them from the requirement of שלימות.

anticipates an additional question: תוספות

– והא דלא אייתי להא לעיל גבי ומודה רב הונא –

**And the reason the גמרא did not cite this ruling (of ומודה רב הונא) previously by** the previous **ומודה רב הונא** (concerning דמוברי באגי). It would seem that the two **ומודה רב הונא** should have been taught together. However after the first **ומודה רב הונא**, the גמרא went on to discuss a different issue and inserted there **ומודה רבא** (or **ומודה רבא**) and only after this intermission does the גמרא cite this second **ומודה רב הונא**. Seemingly the two **ומודה רב הונא** should be together without any interruption [of the other 'ומודה'].

replies: תוספות

– אומר רבינו תם משום דלא סלקא שמעתתא דבתי –

**The ר"ת** says that the reason the גמרא did not mention this **ומודה רב הונא** immediately, is **because the discussion of houses did not arise** (and was not concluded) as of yet. It was necessary to first establish that houses require **ג"ש ביום ובלילה**; otherwise even **חנותא דמחוזא** would not require six years. Once the גמרא ascertained that **ג"ש ביום** are required, the discussion of houses continued with the statements of **מר זוטרא** and **רבא** clarifying the rulings of **ג"ש ביום ובלילה**. Then after concluding discussing houses, the גמרא stated this last **ומודה רב הונא**.

offers a similar example: תוספות

**וכי האי גוונא איכא בסוף [הכונס] (בבא קמא דף סא,ב) גבי ומודו חכמים לרבי יהודה<sup>3</sup>:**

**And there is a similarity to this in the end of פרק הכונס concerning the משנה** which states that **the חכמים admit to ר"י**, etc. This admission of the חכמים to ר"י is not

<sup>3</sup> The משנה there first cites the מחלוקת between ר"י וחכמים if טמון באש is פטור or not. Following this מחלוקת the משנה cites other unrelated דינים in which there is no מחלוקת. The משנה concludes לר"י ומודו חכמים that there is a case where חייב is טמון באש.

cited immediately after their מחלוקת, but rather the משנה first discusses there other issues (in which there is no מחלוקת between the חכמים and ר"י, and) which do not seem relevant to the 'ומודו'. We can derive from there that occasionally a 'ומודו' can somewhat be postponed.<sup>4</sup>

## **SUMMARY**

A חזקה in חזקת דמחוזא requires six daytime years, as opposed to a regular field, etc. which requires only three (daytime) years. Three complete years are required by חזקת דמחוזא since other homeowners require three complete years as well.

## **THINKING IT OVER**

1. If we are to assume the explanation offered in footnote # 2, then, a) why does תוספות even ask that the גמרא should have asked פשיטא, when the answer is obvious, and b) why indeed does the גמרא have to teach us the second ומודה by חזקת דמחוזא, seemingly we can derive it from the first הונא רב ומודה by מוברי באגי?

2. Why is תוספות so sure that רב הונא requires six years by חזקת דמחוזא; from where does he derive it?<sup>5</sup>

3. It seems from תוספות that if there were only shops in מחוזא then three daytime years would be sufficient. However by מוברי באגי even if everyone is מובר, nevertheless three planting seasons are required. How do we explain this difference?<sup>6</sup>

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<sup>4</sup> This is certainly true in our case where תוספות offers a reason for the postponement (as opposed to the משנה in הכונס).

<sup>5</sup> See מהרש"א, סוכ"ד (אות ס"ו).

<sup>6</sup> See בל"י (אות עג). This may also explain # 1.