

רב and – ומודה רב הונא בחנותא דמחוזא דביממא עבדי ובליליא לא עבדי
admits concerning the shops of מחוזא since they function by
day and do not function at night, etc.

Overview

The גמרא stated that רב הונא admits that חנותא 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 מחוזא 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 דמוברי באגי). תוספות will be discussing this issue.

The explanation¹ as to what רב הונא admits to, is –
and it validates the חזקה for them if they
possessed the shops for three complete years –
and even though these three years חזקה are
not consecutive –
but rather spread out over six years since the nights are not included; nevertheless it is a valid חזקה –
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 חזקה only when the normal usage of the land/property is in a consecutive and continuous manner.

תוספות has a question:

you may 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 here concerning מחוזא; it seems identical to the דמוברי באגי?!

תוספות answers:

¹ 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)] who maintain that three daytime only years are sufficient to establish a חזקה by מחוזא.

one may say, that the reason that it is not a פשיטא that six years of day and night are considered רצופות, is –

since the people of מחוזה who are not shopkeepers –

dwell in the same type of buildings both in the day and in the night –

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 –

and 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 only², therefore the גמרא –

comes to let us know, that in the case of מחוזה six years of daytime occupation is considered a proper חזקה.

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

and from this very same logic (that others live in the same houses for three continuous years) **it is well understood** why –

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 –

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 מחוזה three complete years (six years) are required?–

explains:

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 -

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

they are required to live there for three years by day and by night – בעו ג' שנים ביום ובלילה

– it is the same also by shopkeepers – הכי נמי חנוונים

– they require a חזקה of three complete years – בעו ג' שנים שלמות

– 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 שלמות.

has an additional question:

– and the reason the גמרא did not cite this ruling (of previously – ומודה רב הונא בחנותא וכו') – והא דלא אייתי להא לעיל

(אתרי דמוברי באגי **ומודה רב הונא** by the previous **גבי ומודה רב הונא**). 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** (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'].

answers:

– 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 **שנים ביום ובלילה**; חזקת ג' שנים; otherwise even **חנותא** would not require six years. Once the גמרא ascertained that **שנים ביום ובלילה** are required, the discussion of houses continued with the statements of **מר זוטרא** and **מר זוטרא** clarifying the rulings of **שנים ביום** and **בלילה**. Then after concluding discussing houses, the גמרא stated this last **ומודה רב הונא**.

offers a similar example:

– and there is a similarity to this in the end of פרק הכונס [הכונס] (בבא קמא דף סא,ב)

concerning the משנה which states that the חכמים admit to ר"י, etc³. This admission of the חכמים to ר"י is not 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 postponed⁴.

Summary

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

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

A חזקה in חנותא דמחוזא requires six daytime years, as opposed to a regular field, etc. which requires only three (daytime) years. Three complete years are required by חנותא 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 רב הונא by חנותא דמחוזא, seemingly we can derive it from the first מוברי באגי by מוברי באגי?
2. Why is תוספות so sure that רב הונא requires six years by חנותא דמחוזא; from where does he derive it?⁵
3. It seems from תוספות that if there were only shops in מחוזא then three daytime years would be sufficient. However by אתרי דמוברי באגא, even if everyone is מוביר, nevertheless three planting seasons are required. How do we explain this difference?⁶

⁵ See מהרש"א, סוכ"ד (אות ס"ו).

⁶ See בל"י. This may also explain # 1.