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פסחים ד' ע"א

“חזקתו בדוק או אין חזקתו בדוק”

⌘ Why does רש"י say that the rental occurred at “שחרית”?

The גמ' asks: “If one rents a house on י"ד ניסן, (and he does not know for certain whether the משכיר performed the בדיקה,) is there a חזקה (presumption) that the house has been searched, or is there no such חזקה?”

The גמ' does not specify exactly when on י"ד ניסן the rental occurred. However, רש"י explains that the rental occurred at “שחרית”; in the morning! What compelled רש"י to say this?

Many אחרונים answer¹: If the rental occurred on ליל י"ד, the משכיר would not necessarily have made the effort to search the property prior to renting it out, and there is therefore no reason to suggest that the house might be בחזקת בדוק. Accordingly, רש"י writes that the question of the גמ' only concerns a rental which occurred during the morning, for only then is there reason to suggest that the house is בחזקת בדוק.

In any event, the פוסקים rule that the question of the גמ' applies even to ליל י"ד, as long as the rental occurred after enough time elapsed for the משכיר to perform the בדיקה. [Presumably, this is determined on a case-by-case basis.]

What are רש"י and the פוסקים arguing about? Various possibilities²:

- a. Perhaps they are arguing about whether the עיקר זמן בדיקה (**main** time of בדיקה) is at the very beginning of ליל י"ד, or whether it spans the entire night. The פוסקים clearly rule that the עיקר זמן בדיקה is at the very beginning of ליל י"ד, when there is still some vestiges of light. [See Alter Rebbe in סי' תל"א סעיף ה', and קונטרס אחרון at length.] Therefore, immediately after that time, there is already reason to suggest that the house is בחזקת בדוק. Conversely, רש"י **may** hold that the עיקר זמן בדיקה spans the entire night, and it is merely preferable to search as soon as possible. Therefore, until the entire night concludes, there is no reason to presume that the house is בחזקת בדוק. [See צל"ח.]
- b. Even if רש"י agrees that the עיקר זמן בדיקה is at the very beginning of ליל י"ד, nevertheless, the argument may hinge upon whether everyone actually performs the בדיקה when they are supposed to! In other words, רש"י holds that some people might postpone the בדיקה, (even though they are not supposed to,) with the intention of completing it by night's end. Therefore, until the entire night concludes, there is no reason to suggest that the house is בחזקת בדוק. [This seems to be the פרי מגדים's explanation.] However, the פוסקים presume that everyone fulfils the מצוה of בדיקה during the עיקר זמן בדיקה.

¹ See פנ"י for alternate explanation.

² See שפ"א for alternate possibility.

ספק דרבנן לקולא

The גמ' asks: "If one rents a house on י"ד ניסן, is there a חזקה that the house has been searched, or is there no such חזקה?" If the house is בחזקת בדוק, the שוכר does not need to perform בדיקה. However, if the house is not בחזקת בדוק, the שוכר must perform בדיקה, in order to remove all doubt.

The אחרונים ask: Even if the house is not בחזקת בדוק, why would the שוכר need to perform בדיקה to remove all doubt? He should still be exempt, on the basis of the principle of "ספק דרבנן לקולא" (when there is doubt concerning a דין דרבנן, we are lenient)!³ Since there is doubt as to whether the משכיר performed בדיקה, the שוכר should be exempt!

Two possibilities [see שער המלך הל' מקואות end of א']:

- a. The ש"ך holds that the rule of "ספק דרבנן לקולא" does not apply in a situation when there is a חזקת איסור present. Here too, the house was initially בחזקת איסור, on account of the חמץ that was constantly being brought into the house throughout the year. Now, if we accept that the house is currently בחזקת בדוק, this negates the initial חזקת איסור. [In other words, the initial חזקת איסור indicates that חמץ was constantly being brought into the house, and the current חזקת בדוק tells us that it was subsequently removed.] However, if we accept that the house is currently not בחזקת בדוק, the initial חזקת איסור remains unopposed. [In other words, the initial חזקת איסור indicates that חמץ was constantly being brought into the house, and there is nothing to negate this חזקת איסור.] Since the חזקת איסור remains in full force, the rule of "ספק דרבנן לקולא" does not apply.
- b. The מגיד משנה (in חמץ ומצה ב"י) explains that the בדיקה was instituted specifically to address a situation of ספק; the whole point of בדיקה is to search for חמץ that **might** exist. Since this is the whole basis for the תקנה to perform בדיקה, therefore, in situations of doubt, (**some** אחרונים are of the opinion that) the חכמים treated these doubts more stringently than usual. Accordingly, the שער המלך explains that the rule of "ספק דרבנן לקולא" does not apply.

When may one rely on a חזקה without asking questions, and when must he ask?

The גמ' asks: "If one rents a house on י"ד ניסן, is there a חזקה that the house has been searched, or is there no such חזקה?" The גמ' immediately counters: "What practical difference is there? Let the שוכר simply ask the משכיר if he performed בדיקה?"

According to the ר"ן, the גמ' means that even if the house is בחזקת בדוק, nevertheless, the שוכר should not rely on the חזקה when it is relatively easy to ask the משכיר⁵. From this גמ', the ר"ן infers that a חזקה (or ריב) should not be relied upon when it is possible to investigate the facts without too much bother.

The בית יוסף asks: An animal does not need to be checked for the טריפות, because we rely on the חזקת כשרות⁶. Why is the case of טריפות different from the case of חמץ; why may we rely on the חזקת כשרות even with regards to טריפות that are easy to investigate? [Similarly, מעיקר הדין, eggs do

³ See מהר"ם חלאווה.

⁴ These explanations only necessarily apply if the house is **not** "בחזקת בדוק". However, when in **doubt** as to whether the house is "בחזקת בדוק", these explanations may not necessarily apply, and it might be possible to say "ספק דרבנן לקולא".

⁵ See the ב"ח (in תל"ז ס"י) who asserts that this דין cannot necessarily be derived from the question in our גמ' – although he does concede with the דין itself.

⁶ Unless, of course, there is a ריעותא (a reason to suspect that the animal might be a טריפה), in which case, the חזקה may not be relied on.

⁷ כ"כ הברכת אברהם לדחות ת"י המגן האלף.

not need to be checked for blood, being that most of them – the רוב – do not contain blood⁸. Why may we rely on the רוב when it is easy to investigate?]

The Alter Rebbe in (סי' תל"ז) answers: An investigation must be conducted only in a case when there was an initial חזקת איסור, and the current חזקת היתר is coming to negate the former חזקת איסור. With regards to חמץ, בדיקת חמץ, the house was initially בחזקת איסור (on account of the חמץ that was constantly being brought in throughout the year), and the current "חזקת בדוק" is coming to negate the חזקת איסור. Therefore, the שוכר may not merely rely on the חזקה if he is easily able to ask the משכיר. Conversely, in a situation where there was no previous חזקת איסור, the current חזקת היתר may be relied upon, even without investigating the facts. Therefore, with regards to טריפות, the animal was never בחזקת איסור, being that there was never any reason to presume it to be a טריפה. Therefore, the חזקת כשרות may be relied upon, even without investigating the facts. [Similarly, eggs were never בחזקת איסור, and the רוב may therefore be relied upon, even without investigating the facts.]

Another answer may be derived from the חולין in ר"ן (quoted by the Alter Rebbe in הלכות שחיטה – see (קו"א אות ה'): An investigation is required only in a case when there is a "מיעוט המצוי" (i.e. a "common", or significant minority) of exceptions to the חזקה or רוב. For example, although a cow's חזקת כשרות applies even to its lungs, one must still check it for סירכות (lesions) when easily possible, being that there is a significant minority of cows with סירכות. Accordingly, with regards to בדיקת חמץ, even if the house is בחזקת בדוק, there is still a significant minority of people who don't perform בדיקה, and the שוכר must therefore ask the משכיר when it is relatively easy to do so. Conversely, with regards to טריפות, there is not even a significant minority of animals which present any of the טריפות (besides for lesions on the lungs), and one is therefore not required to look for them. [Similarly, not even a significant minority of eggs contain blood, and one is therefore not required to check them.]

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תוס' asks: A חבר's produce is "בחזקת מתוקנים", (i.e. we presume that he separated מעשרות,) and one may rely on this חזקה even without making any enquiries. [In making this observation, תוס' is certainly not referring to the חבר of our גמ', for it is obvious that inquiries are not required, being that there is no one to ask – the חבר passed away! Rather, תוס' is referring to the עירובין in גמ' (on דף דף) which states that one may eat produce that a חבר sent him, even without asking him whether he separated מעשרות!] In that case, the produce was initially "בחזקת אינם מתוקנים"; the produce was certainly טבל before מעשרות was separated! It is currently "בחזקת מתוקנים", being that the חבר is particular to separate מעשרות. However, since this is a case where the current חזקה is coming to negate the previous חזקה, why is an inquiry not required?

תוס' answers: A חבר surely appreciates the severity of sending produce without separating מעשרות; the recipient will almost certainly eat produce that is טבל! As such, we are so certain that the חבר separated מעשרות, that an inquiry is not required! In the case of חמץ בדיקת חמץ however, the משכיר does not necessarily appreciate the severity of renting a house without performing בדיקה. For, (according to תוס'), בדיקה is required in order to ensure that one does not encounter and eat חמץ. Accordingly, the משכיר might think: Who says that חמץ even exists in the property? Even if חמץ is present in the property, who says that the שוכר will encounter it during פסח? Even if the שוכר encounters it during פסח, who says that he will be interested in eating it? Even if the שוכר is interested in eating it, who says that he will forget that it is אסור for him to do so! Therefore, we are not as certain that the משכיר actually performed the בדיקה. Therefore, the שוכר must not merely rely on the חזקת בדוק when he is easily able to ask the משכיר!

⁸ However, the מנהג is to check them!