

Disputes Regarding Property

Ref: *Sefer Mishpatim, Hilchot Toen Venitan, Chapters 8–13*

Reminder

Pack on Expropriation of Property



Movable property made for loan	Belongs to defendant	Oath / Explanation
Movable property in general belongs to the possessor	✓	Defendant takes <i>shvuat hesset</i>
Plaintiff has witnesses who says that property belongs to plaintiff	✓	Defendant takes <i>shvuat hesset</i>
Defendant claims property he is holding is security	✓	Takes Rabbinic oath
Movable articles specifically made for renting out, found in defendant possession and can be seen	×	× But plaintiff takes <i>shvuat hesset</i> and retrieves his article
Article made for renting in defendant possession, but cannot be seen	✓	Defendant takes <i>shvuat hesset</i> and keeps article (Because he could have claimed he does not have it)
Plaintiff claims article in defendant possession was lost or stolen, even if it is an article to be rented	✓	× Because plaintiff has no definite claims
If it is well known that article was stolen	✓	✓ Depends on claim. Either <i>Derabanan</i> oath or <i>shvuat hesset</i>

Craftsman	Belongs to defendant	Oath / Explanation
Article visibly in possession of craftsman and plaintiff brings witnesses to say that article belongs to plaintiff	×	✓ Owner given upper hand to promote trade. It is presumed that articles held by craftsmen belong to public.
Article not visible in possession of craftsman	✓	✓ <i>Shvuat hesset</i> and craftsman keeps article (Because he could have claimed article was never given to him – <i>miggo</i>)
Enters into a house and exits hiding articles: Plaintiff does not rent out property and defendant comes in and goes out with articles hidden. He is seen by witnesses	×	✓ Owner takes <i>shvuat hesset</i> and articles returned

Plaintiff normally sells goods, and it is normal practice to hide them, and witnesses see this	✓	✓ Defendant takes <i>shvuat hesset</i>
Articles are made to be rented in above situation of walking out of owner's house	×	
Tree chopped down: Chops down tree in plaintiff property (tree is landed property but a chopped tree is regarded as movable property)	✓	✓ <i>Shvuat hesset</i> . A person would not be so bold as to chop down someone else's tree and therefore presumed to belong to him.
Produce: Defendant eats produce from the land of the plaintiff	✓	✓ Same as 'trees' above
2 people holding an article: Two people holding and both claim that the whole article belongs to them. (the term division of article refers to its value, and not the article itself.)	shared	✓ Both take oath <i>Derabanan</i> (holding sacred article) that they own no less than half (oath taken regarding what they will receive rather than what they claim)

Livestock	Belongs to defendant	Oath / Explanation
Animal owned by someone but not kept in an enclosed space	×	✓ Owner takes <i>shvuat hesset</i> to have it returned Defendant has lower hand because animal can wander anywhere
Animal normally kept in an enclosed space and cannot wander anywhere and plaintiff brings witnesses saying that enclosed animal belongs to him	✓	✓ <i>Shvuat hesset</i> taken by person who possesses the animal
SERVANTS In possession of someone and plaintiff brings witnesses to say that servant belongs to him	×	✓ <i>Shvuat hesset</i> taken by owner (plaintiff) and servant returned to his possession. A Scriptural oath is never taken for servants
In possession of a child servant	✓	Because he can't move so freely he is considered as other movable property and presumed to belong to the person where he is located

Landed property	Belongs to defendant	Oath / Explanation
Defendant living and working on landed property but plaintiff says it is his, and brings witnesses.	×	

Same situation where plaintiff does not bring witnesses	✓	Defendant must take a <i>shvuat hesset</i>
Defendant has been on the land 3 years or more and plaintiff brings witnesses	✓	Defendant brings witnesses to say he has been there for 3 years. Also takes <i>shvuat hesset</i> that he was entitled to field.
If plaintiff was prevented from protesting defendant's possession due to factors beyond his control i.e. war, and defendant was on field for 3 years	x	

Continuity of use of landed property	Belongs to defendant	Oaths / Explanation
Property used continually and 3 years pass fully e.g. fields continually irrigated	✓	
One day short of 3 years	x	
Field watered from rain or an orchard which gives crops once a year after 3 harvests	✓	Even although 3 years have not passed
Dwelling in a home day and night for 3 years	✓	Witnesses need to testify that this was the case
Dwelling in this home only by day or only by night	x	
Store operated only during day for 3 years	✓	This is the normal procedure for a store
Non-consecutive years i.e. cultivated field for one year and then left fallow	x	Unless this was an accepted local custom of how fields are treated
Father and son used fields alternately for 3 years	✓	They are regarded as one entity
Productivity of landed property Person performed work on field continually but did not derive any benefit e.g. did not sow seeds	x	
Person sowed seeds but still did to derive benefit i.e. he did not make a profit	x	
Person worked 3 years and derived benefit, but his benefit was through transgression e.g. he planted <i>kilayim</i> (mixed species)	✓	
Land was rocky and could not be cultivated, but he used it say to dry fruit etc for 3 years	✓	

Part use of field Person derives benefit of part of a field for 3 years	✓ only that part	
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Landed property Exceptions	Belongs to defendant	Oaths / Explanation
<i>Umanim</i> (craftsmen)	×	
<i>Arisin</i> (sharecroppers)	×	
<i>Apotropos</i> (guardians)	×	
<i>Shutafin</i> (partners)	×	This only applies in a small field which did not have the capacity to be divided
Husband / Wife	×	 Reminder Pack on Wife's Property
Son / Father	×	
Officials who have power to confiscate land	×	
<i>Gazlanim</i> (robbers)	×	
<i>Cheresh</i> (deafmute)	×	Do not have the mental capacity
<i>Shoteh</i> (Intellectually handicapped)	×	Do not have mental capacity
<i>Katan</i> (minor)	×	Do not have mental capacity

