

22 Tammuz 5775
July 9, 2015



Nedarim Daf 46

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Mishna

The *Mishna* states: If two partners vowed against deriving benefit from each other, they are both forbidden to enter the courtyard (*because that would be regarded as benefiting from the other; this Tanna is of the opinion that indulgence (something that the owner would normally give away without charging for it) is forbidden for one who has been forbidden benefit by a neder*).

Rabbi Eliezer ben Yaakov said: Each one of them is permitted to enter into his own portion of the courtyard.

Both cannot place grindstones, and oven, or grow chickens (*in their mutual yard*). If one of them vowed not to benefit from his friend, he should not enter the courtyard. Rabbi Eliezer ben Yakov says: He can say to him, “I am going into my own share of the courtyard, not your share.” We force the person who vowed not to have benefit to sell his share. If someone from the marketplace vowed not to benefit from one of them, he cannot enter the courtyard. Rabbi Eliezer ben Yakov says: He can say to him, “I am going into my own share of the courtyard, not your share.” If one took a vow not to have benefit from his friend and his friend has a bathhouse or press that is rented out to someone else in the city, the *halacha* is as follows: If his friend has some kind of stake in these things, despite the fact that they are rented out, he cannot benefit from them. If he does not have any stake in them at all, he is permitted to benefit. If someone says to his friend, “Konam” (*term indicating vow of forbidding*) that I will enter your house,” or “that I will buy your

property,” if the original owner died or sold the house/property, he may buy it. However, if he said “Konam” that I will enter *this* house or buy *this* field,” even if the original owner died or sold the property he is forbidden to purchase them. (46a)

What is the Argument in the Mishna?

The argument in the Mishna is when each partner vowed not to have benefit from the other. The Gemora asks: What would be the law if each forbade the other to benefit from his share? Do we say they only argued when they forbade themselves, but the Rabbanan would agree to Rabbi Eliezer ben Yaakov that if each forbade the other that they could benefit as they are in a forced situation? Or do we say that the Rabbanan argue with Rabbi Eliezer ben Yaakov even in this case?

The Gemora tries to prove this from the Mishna. The Mishna states: If one of them was forbidden from benefit by his friend. [*This clearly implies that it is even when he was forced!*] The Gemora answers: It should read that he vowed to abstain from the benefit of his friend.

The Gemora says: This is the logical text. The second part of the Mishna says: We force the one who made the vow to sell his portion. It is understandable if he made the vow, this is why it says we force him. However, if the case is where someone else forced him (*by making him unable to benefit from his portion*), why should we force him to sell? He was forced!



Rabbah says in the name of Zeiri: Their argument is regarding a courtyard that can be divided. If the courtyard cannot be divided, everyone agrees that each is permitted (using Rabbi Eliezer's claim that he is going in his own area).

Rav Yosef asked: A shul is considered not to be able to be divided. Yet the Mishna states: *[If a person forbids someone else to benefit from his share in a public building, and the other person does the same]* They are both forbidden from the public things (facilities) of that city!

Rather, Rav Yosef said in the name of Zeiri: The argument is when the courtyard cannot be divided. However, if it can be divided, everyone agrees they are forbidden.

Rav Huna states: The law follows the opinion of Rabbi Eliezer ben Yaakov. Rav Elazar states: The law follows the opinion of Rabbi Eliezer ben Yaakov. (46a – 46b)

The Forbidden Stake

What does it mean that he has a stake? Rav Nachman says: He gets a half, third, or quarter of the earnings. However, not less than that. Abaye says: Even less than that makes him forbidden. How would it be permitted? If he gets a set amount (regardless of earnings). (46b)

Ra"n Elucidated

[The permitted case is called "taska," where he doesn't take a certain portion of the profits of the bathhouse, but rather is given a fixed amount of payment per year. In any such case, the owner of the bathhouse has completely removed himself from his bathhouse.

The Ra"n asks: Even in this case, why is it permitted? The bathhouse still physically belongs to the landlord, and he is able to forbid it to the renter himself, as the Gemora in Meseches Arachin (21a) states: One who rented a house

to someone else and dedicated it to the Beis Hamikdosh, the one who lives there is required to pay the rent to the Temple treasury. The Gemora there explains: It is referring to a case where the landlord dedicated it to the Beis Hamikdosh and the tenant pays the rent to the Temple treasury.

The Gemora there objects: How can he live in it? He is guilty of me'ilah! It follows that he is able to forbid it to the tenant since the ground physically belongs to him, and all the more so that he is able to forbid it to others. So why is it permitted if he doesn't have any interest in it?

Tosfos answers: It is true that if he explicitly forbade the bathhouse, then, the prohibition would take effect, since it physically belongs to him, just like the Gemora in Arachin where he dedicated the house itself. But here, we are referring to a case where he forbade his property in general; he was not intending to forbid that which he had rented.

Rabbeinu Tam answers: The discussion in Arachin applies to hekdesch and hekdesch has the strength to free property from obligations. Our Gemora is discussing konamos, and although a general konam can free property from obligations, our Gemora is discussing an individual konam, which is not similar to hekdesch. Here, the Rabbis strengthened the rights of the other person so that it not be freed from them.

The Ra"n concludes that the question was based on a faulty assumption. Although the landlord is certainly able to forbid it to the tenant, and he is also able to forbid it to everyone, including the tenant. However, he doesn't have the power to forbid it to everyone else if he is not prohibiting it upon the tenant. This is because the tenant has the rights of usage, and when the people the landlord has forbidden have benefit, they are not benefiting from the landlord; rather, from the tenant, and that is permitted.] (46b)