מתני׳ הַשּׁוּתָּפִין שֶׁנָּדְרוּ הֲנָאָה זֶה מִזֶּה – אֲסוּרִין לִיכָּנֵס לֶחָצֵר. רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אוֹמֵר: זֶה נִכְנָס לְתוֹךְ שֶׁלּוֹ, וְזֶה נִכְנָס לְתוֹךְ שֶׁלּוֹ.

MISHNA **Partners**[H] **who vowed** not to derive **benefit from one another are prohibited from entering into a courtyard** that they jointly own, since each one has a portion in it and benefits from the share owned by the other, thereby leading to a violation of the vow. **Rabbi Eliezer ben Ya'akov says:** It is permitted for both to use the courtyard, as it can be said that since each has a portion in the courtyard; **this one enters**[N] **into his own** portion **and that one enters into his own** portion.[N]

HALAKHA

Partners, etc. – הַשּׁוּתָּפִין וכו׳: If there are two partners in a courtyard, each of whom vows not to derive benefit from the other, and the courtyard is not large enough to be divided into four square cubits for each partner, it is permitted for them to enter the courtyard. This is in accordance with the opinion of Rabbi Eliezer ben Ya'akov and the subsequent explanation in the Gemara (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:4; *Shulḥan Arukh*, *Yoreh De'a* 226:1).

NOTES

This one enters – זֶה נִכְנָס: *Tosafot* write that Rabbi Eliezer ben Ya'akov permits entering only as much of the courtyard as can be said to be his own portion. However, he cannot make use of a majority of the courtyard at one time, since that would certainly entail using his partner's portion as well.

That one enters into his own portion – וְזֶה נִכְנָס לְתוֹךְ שֶׁלּוֹ: The reasoning of Rabbi Eliezer ben Ya'akov is apparently predicated upon a halakhic principle known as *bereira* (see *Bava Kamma* 51b). *Bereira*, retroactive clarification or designation, means that a later decision can be applied retroactively and thereby viewed as if it had been decided from the outset. Rabbi Eliezer ben Ya'akov appears to hold that due to retroactive clarification, one may consider every step that he takes in the courtyard as if it were taken in his own territory. Since there are several instances in this tractate where the Gemara rules in accordance with the opinion of Rabbi Eliezer ben Ya'akov, the Ri understands the principle of *bereira* as the accepted *halakha*. Elsewhere, however (*Beitza* 38a), the Talmud rejects *bereira* with regard to matters of Torah law. Rabbeinu Tam explains that the Gemara rules in accordance with Rabbi Eliezer ben Ya'akov in this instance for a different reason: Rights which are ordinarily waived, such as exclusive passage in a courtyard, are not forbidden by prohibitory vows.

וּשְׁנֵיהֶם אֲסוּרִים לְהַעֲמִיד רֵיחַיִם וְתַנּוּר וּלְגַדֵּל תַּרְנְגוֹלִים.

And all agree that **they are both prohibited**[NH] **from setting up a mill**[B] **or an oven** in the jointly owned courtyard, **or to raise chickens** in it.

NOTES

And they are both prohibited – וּשְׁנֵיהֶם אֲסוּרִים: *Tosafot* and the Ran explain that although partners generally do not mind one another performing these types of activities in their shared courtyard, each has a theoretical right to prohibit the other from doing so, thereby rendering these activities a tangible benefit and consequently, forbidden. *Tosafot* provide another reason for the prohibition. Since mills are normally set up for commercial purposes, they may lead to heavy foot traffic of clients who will end up on the partner's property as well. Rabbi Eliezer of Metz adds that chickens raised in the courtyard might eat food that belongs to the other partner. Other commentaries explain that the activities mentioned are forbidden because they create the appearance of establishing the courtyard as one's own, which is prohibited (*Tosefot Rabbeinu Peretz*; Rabbi Avraham min HaHar; see Rid).

HALAKHA

And they are both prohibited – וּשְׁנֵיהֶם אֲסוּרִים: When two partners in a courtyard prohibit each other from deriving benefit from their portions by means of a vow, they are both prohibited from setting up an oven or a millstone and from raising chickens in the courtyard. If only one of them was forbidden by means of a vow, then it is prohibited only for him to derive benefit from the other's portion. The *Shakh* notes that this holds true even with regard to a courtyard which is too small to be divided (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:4–5; *Shulḥan Arukh*, *Yoreh De'a* 226:2).

BACKGROUND

Mill – רֵיחַיִם:

Roman bas relief of a donkey and mill dating back to the first century

הָיָה אֶחָד מֵהֶם מוּדָּר הֲנָאָה מֵחֲבֵירוֹ – לֹא יִכָּנֵס לֶחָצֵר. רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אוֹמֵר: יָכוֹל הוּא לוֹמַר לוֹ: לְתוֹךְ שֶׁלִּי אֲנִי נִכְנָס, וְאֵינִי נִכְנָס לְתוֹךְ שֶׁלְּךָ. וְכוֹפִין אֶת הַנּוֹדֵר לְמְכּוֹר אֶת חֶלְקוֹ.

If only **one of the** partners **was prohibited by a vow**[H] **from deriving benefit from the other, he may not enter the courtyard. Rabbi Eliezer ben Ya'akov says: He can say to** the partner: **I am entering into my own** portion **and I am not entering into your** portion. **And** the court **forces the one who took** such **a vow**[NH] **to sell his portion**[N] so that he does not cause the other to transgress.

הָיָה אֶחָד מִן הַשּׁוּק מוּדָּר בְּאֶחָד מֵהֶם הֲנָאָה – לֹא יִכָּנֵס לֶחָצֵר. רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אוֹמֵר: יָכוֹל הוּא לוֹמַר לוֹ: לְתוֹךְ שֶׁל חֲבֵירְךָ אֲנִי נִכְנָס, וְאֵינִי נִכְנָס לְתוֹךְ שֶׁלְּךָ.

If **someone from the marketplace**[N] **is prohibited by a vow from deriving benefit from one of the** partners, **he may not enter a courtyard** of the partners, since it belongs partly to the one from whom he may not benefit. **Rabbi Eliezer ben Ya'akov says: He can say to him: I am entering into the** portion **of another** resident of the courtyard[NH] **and I am not entering your** own portion since it does not belong entirely to you.

הַמּוּדָּר הֲנָאָה מֵחֲבֵירוֹ וְיֵשׁ לוֹ מֶרְחָץ וּבֵית הַבַּד מוּשְׁכָּרִין בָּעִיר, אִם יֵשׁ לוֹ בָּהֶן תְּפִיסַת יָד – אָסוּר, אֵין לוֹ בָּהֶן תְּפִיסַת יָד – מוּתָּר.

With regard to **one prohibited by a vow from deriving benefit from another and he has a bathhouse**[H] **or an olive press in the city that is leased out** and available for public use, **if** the one who took the vow **has a right** to profits from **usage in** the property, i.e., he retains some rights in the property and has not leased them out completely, it is **forbidden** for the one who took the vow to use it. If **he has no right of usage in the** property, it is **permitted.**

הָאוֹמֵר לַחֲבֵירוֹ: ״קוֹנָם לְבֵיתְךָ שֶׁאֲנִי נִכְנָס וְשָׂדֶךָ שֶׁאֲנִי לוֹקֵחַ״, מֵת אוֹ שֶׁמְּכָרוֹ לְאַחֵר – מוּתָּר. ״קוֹנָם בַּיִת זֶה שֶׁאֲנִי נִכְנָס, שָׂדֶה זוֹ שֶׁאֲנִי לוֹקֵחַ״, מֵת אוֹ שֶׁמְּכָרוֹ לְאַחֵר – אָסוּר.

With regard to one **who says to another: Entering your house is *konam* for me,**[H] **or: Purchasing your field** is *konam* **for me,** then if **he,** i.e., the owner of the house or field, **dies or sells** the house **to another,** it is **permitted** for the one who took the vow to enter the house or purchase the field, as it is no longer in the possession of the prior owner. But if he said: **Entering this house is *konam* for me,**[H] or: **Purchasing this field** is *konam* **for me,** then even if the owner **dies or sells it to another,** it is **forbidden.**

גמ׳ אִיבַּעְיָא לְהוּ: בְּנָדְרוּ פְּלִיגִי, הִדִּירוּ זֶה אֶת זֶה מַאי? מִי אָמְרִינַן: בְּנָדְרוּ הוּא דְּפְלִיגִי, אֲבָל בְּהִדִּירוּ זֶה אֶת זֶה – מוֹדוּ לֵיהּ רַבָּנַן לְרַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב, דְּכִי אֲנוּסִין דָּמוּ. אוֹ דִילְמָא: אֲפִילּוּ בְּהִדִּירוּ זֶה אֶת זֶה פְּלִיגִי רַבָּנַן?

GEMARA **A dilemma was raised before** the Sages: In the mishna, the Rabbis and Rabbi Eliezer ben Ya'akov **disagree** with regard to the permissibility of entering a jointly owned courtyard **where** the partners **vowed** not to derive benefit from one another. However, if they instead **vowed to prohibit one another** from deriving benefit from them and their property, **what** is the *halakha*? **Do we say that they disagree where** the partners **each vowed** not to benefit from the other, **but where they** each **vowed to prohibit one another** from deriving benefit from them, **the Rabbis concede**[N] **to Rabbi Eliezer ben Ya'akov, as they are** each **considered to be** forbidden **due to circumstances beyond their control? Or perhaps the Rabbis disagree even in** a case where **each vowed to prohibit one another** from deriving benefit?

NOTES

And the court forces the one who took such a vow, etc. – וְכוֹפִין אֶת הַנּוֹדֵר וכו׳: Several commentaries explain that this statement is the opinion of the Rabbis, who prohibit entering the jointly owned field (Rashi; Rabbi Avraham min HaHar). Others explain that even Rabbi Eliezer ben Ya'akov agrees that there are some limitations on the prohibited partner's use of the courtyard, and therefore there is still a legitimate fear that he will violate the vow if he does not sell his portion (Rashba; *Tosefot Rabbeinu Peretz*; Ran).

The Ran explains that the one who vowed is forced to sell his share only if he alone prohibited his partner with a vow, but he is not forced to sell if both took vows prohibiting the other from using the courtyard. In a case where only one partner is limited in his rights of usage, he may become jealous of his partner's use of the courtyard and be tempted to transgress the vow (see Rashba).

The straightforward understanding of the Gemara's conclusion, accepted by the majority of the commentaries, is that the one who took the vow is forced to sell his share, since he has a responsibility to ensure that the vow is not transgressed. However, other commentaries (Ra'avad; Ramban) hold that the forbidden party must sell his share, since only he is in danger of transgressing the vow.

To sell his portion – לְמָכּוֹר אֶת חֶלְקוֹ: Some commentaries explain that when both partners are prohibited from deriving benefit from each other, they cannot purchase from nor sell to one another either. When only one partner is prohibited from benefiting from the other, he may sell his share to his partner to avoid transgressing the vow. However, he must sell for slightly less than the market value so as not to benefit from the sale.

If someone from the marketplace – הָיָה אֶחָד מִן הַשּׁוּק: *Tosafot* explain that according to the Rabbis there is no novelty in this statement. Rather, it is merely mentioned in the mishna to illustrate that Rabbi Eliezer ben Ya'akov permits this case as well. The novelty with regard to his opinion is that even an outsider who owns no portion of the field can rely on retroactive clarification to claim that he is not benefiting from the forbidden partner, despite having no rights to usage of the property. The Ran, however, understands that even according to the Rabbis this statement presents a novelty.

I am entering into the portion of another resident of the courtyard – לְתוֹךְ שֶׁל חֲבֵירְךָ אֲנִי נִכְנָס: According to the Ra'ah, this individual may enter the jointly owned courtyard for any reason. The Rashba, however, limits the license to situations where his activity in the courtyard benefits the permitted partner (see Ritva).

Where they each vowed…the Rabbis concede – בְּהִדִּירוּ זֶה אֶת זֶה, מוֹדוּ...רַבָּנַן: If this is the case, the dispute between the Rabbis and Rabbi Eliezer ben Ya'akov cannot be based on the principle of retroactive clarification. If there really is no retroactive clarification according to the Rabbis, the fact that the partner is not in control of his prohibition is irrelevant. Rather, all agree that there is retroactive clarification but disagree as to whether one who vowed not to benefit from his partner should be punished by limiting his access to the courtyard. In cases where the prohibition is beyond the partner's control, there is no reason to punish him even according to the opinion of the Rabbis (Ritva; Ran).

HALAKHA

Was prohibited by a vow – מוּדָּר: If someone was prohibited by a vow from deriving benefit from his partner, he is permitted to enter his partner's house and a jointly owned courtyard, but he cannot make any use of them. This ruling is in accordance with the opinion of Rabbi Eliezer ben Ya'akov (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:5; *Shulḥan Arukh*, *Yoreh De'a* 226:1).

And the court forces the one who took such a vow – וְכוֹפִין אֶת הַנּוֹדֵר: If one partner in a courtyard vows that the other partner may not derive benefit from him, he is forced to sell his portion of the field (Rambam). The Ra'avad and the Ramban explain that the Rambam's ruling is in accordance with the understanding presented in the Jerusalem Talmud. It is stated in the Babylonian Talmud, however, that the one forbidden by the vow must sell his portion (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:5 and Radbaz and *Kesef Mishne* there; *Shulḥan Arukh*, *Yoreh De'a* 226:2).

I am entering into the portion of another resident of the courtyard – לְתוֹךְ שֶׁל חֲבֵירְךָ אֲנִי נִכְנָס: If a third party was prohibited by a vow from deriving benefit from one of the partners, he is still permitted to enter the jointly owned courtyard solely for the purpose of engaging with the permitted partner. This ruling is also in accordance with the opinion of Rabbi Eliezer ben Ya'akov (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:6; *Shulḥan Arukh*, *Yoreh De'a* 226:1).

And he has a bathhouse, etc. – וכו׳ וְיֵשׁ לוֹ מֶרְחָץ: If one is prohibited by a vow from deriving benefit from another, and the other has a bathhouse or olive press which he leases to others, the forbidden party may use the bathhouse or olive press only if the owner has forfeited his right of usage and has not explicitly prohibited him from entering (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 6:12; *Shulḥan Arukh*, *Yoreh De'a* 221:6).

Entering your house is *konam* for me – קוֹנָם לְבֵיתְךָ שֶׁאֲנִי נִכְנָס: If one takes a vow prohibiting himself from benefiting from the house or possessions of another, and the other dies or sells his possessions, it is permitted for the one who took the vow to use them (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 5:5, 8:11; *Shulḥan Arukh*, *Yoreh De'a* 216:4).

Entering this house is *konam* for me – קוֹנָם בַּיִת זֶה שֶׁאֲנִי נִכְנָס: If one takes a vow prohibiting himself from deriving benefit from a specific item by mentioning it explicitly, he is prohibited from using it even if it changes ownership (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 5:5, 8:11; *Shulḥan Arukh*, *Yoreh De'a* 216:5).

תָּא שְׁמַע: הָיָה אֶחָד מֵהֶן מוּדָּר הֲנָאָה מֵחֲבֵירוֹ, וּפְלִיגִי רַבָּנַן. תְּנִי: נָדוּר מֵחֲבֵירוֹ הֲנָאָה.

Come and **hear** a proof from the mishna: If only **one of the** partners **was prohibited by a vow from deriving benefit from the other,** he may not enter the shared courtyard. Here, the prohibitive vow was stated by the other party, **and** still **the Rabbis disagree** and forbid the use of the courtyard. Evidently, the dispute in the mishna applies equally to cases beyond the control of the one forbidden by the vow. The Gemara responds: **Teach** an emended version of the mishna: If one **had vowed to prohibit himself** from deriving **benefit from another.** According to this emended version, the mishna may be addressing only the one who brought the prohibition upon himself.

הָכִי נַמִּי מִסְתַּבְּרָא, דְּקָתָנֵי סֵיפָא: וְכוֹפִין אֶת הַנּוֹדֵר לְמָכוֹר אֶת חֶלְקוֹ. אִי אָמְרַתְּ בְּשֶׁלָּמָא דְּנָדַר הוּא – הַיְינוּ דְּקָתָנֵי כּוֹפִין, אֶלָּא אִי אָמְרַתְּ דְּאַדָּרֵיהּ – אַמַּאי כּוֹפִין אוֹתוֹ? הָא מֵינַס אֲנִיס!

So too, it is reasonable to assume that the mishna is referring to one who imposes the prohibition upon himself, **as it was taught in the latter clause** with regard to the same case: **And** the court **forces the one who took** such **a vow to sell his portion. Granted, if you say** that the mishna is speaking of a case where **he** himself **vowed** not to benefit from the other, **this is** consistent with **that which teaches** that the court **forces** him to sell his portion; since he created the problem, he is forced to resolve it. **But if you say that** it is referring to a case **where the other prohibited him with a vow, why does** the court **force him** to sell his property? **He is put in a situation beyond his control.** This clause offers no proof, and the Rabbis may still concede in a case where one is forbidden due to another's vow.

אָמַר רַבָּה אָמַר זְעֵירִי:

Rabba said that **Ze'eiri said:**

Perek **V**
Daf **46** Amud **b**

מַחֲלוֹקֶת שֶׁיֵּשׁ בָּהּ כְּדֵי חֲלוּקָה, אֲבָל אֵין בָּהּ כְּדֵי חֲלוּקָה – דִּבְרֵי הַכֹּל מוּתָּר.

The **dispute** between Rabbi Eliezer ben Ya'akov and the Rabbis is with regard to a courtyard **where there is sufficient** area **in** the courtyard[N] for it to be **divided**[N] into four square cubits for each partner, so each can be said to have a real portion that can be forbidden to the other. **But** if **there is not sufficient** area **in it** to be **divided,**[H] **everyone agrees** that it is **permitted** to benefit from it, since the entire courtyard is viewed as belonging to both of them and each one can say that he is entering his own portion.

אָמַר לֵיהּ רַב יוֹסֵף: הֲרֵי בֵּית הַכְּנֶסֶת, דִּכְמִי שֶׁאֵין בּוֹ כְּדֵי חֲלוּקָה דָּמֵי, וּתְנַן: שְׁנֵיהֶן אֲסוּרִין בְּדָבָר שֶׁל אוֹתָהּ הָעִיר!

Rav Yosef said to Rabba: **A synagogue**[N] belongs to the entire public and is therefore **considered like** a courtyard in which **there is not sufficient** area **in it** to be **divided, and we learned in** a mishna later in the chapter (48a) that with regard to two people who vow not to derive benefit from each other, **both are prohibited** from deriving benefit **from an entity belonging to that city** such as a synagogue. Evidently, the Rabbis prohibit deriving benefit even from such entities.

HALAKHA

There is not sufficient area in it to be divided – אֵין בָּהּ כְּדֵי חֲלוּקָה: Even though Rabbi Eliezer ben Ya'akov permits the prohibited partner to use a portion of a jointly owned courtyard, this applies only when the courtyard cannot be divided. If the courtyard is of sufficient area to be divided, he concedes that the partners should divide the property between themselves and neither should use the portion of his partner, in accordance with the ruling of Rav Yosef (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:4; *Shulḥan Arukh*, *Yoreh De'a* 226:1).

NOTES

The dispute is where there is sufficient area in the courtyard – מַחֲלוֹקֶת שֶׁיֵּשׁ בָּהּ: According to the Ran, the Rabbis disagree with Rabbi Eliezer ben Ya'akov with regard to a field that can be divided, since they reject the principle of retroactive clarification. However, other commentaries explain that even the Rabbis accept this principle and dispute only its scope. In a field that is large enough to be divided one cannot claim retroactive clarification, as either partner could have stipulated that the courtyard be divided at the outset (Rosh; *Tosefot Rabbeinu Peretz*). According to this understanding, when the courtyard cannot be divided, all agree that it is permitted for each partner to benefit from the courtyard, since neither has the right to demand a division of the property (Rashi).

Sufficient area in it to be divided – כְּדֵי חֲלוּקָה: In tractate *Bava Batra* (11a), the Sages explain that a courtyard is considered sufficiently large to be divided provided it contains four square cubits for each partner. In such a case, one may force his partner to divide the courtyard.

A synagogue, etc. – בֵּית הַכְּנֶסֶת וכו': The Ran explains that this mishna cannot be reconciled with the opinion of Rabbi Eliezer ben Ya'akov, as he maintains that it is permissible to derive benefit from a shared courtyard that cannot be divided. Since the opinion of Rabbi Eliezer ben Ya'akov is accepted as *halakha*, it seems that this mishna is not accepted as such. The Rambam, however, rules in accordance with the mishna. Various explanations have been provided to defend the Rambam's ruling. Rabbi Avraham min HaHar, for example, explains that a courtyard provides only the right of passage, and is therefore treated more leniently. A synagogue, however, is used more frequently, and is therefore forbidden.

HALAKHA

Even in a case where he receives less it is forbidden – אֲפִילּוּ בִּבְצִיר אָסוּר: If one is prohibited from deriving benefit from another, he may use the other's bathhouse as long as it is rented out to a third party and the owner retains no rights to profits from its usage, in accordance with the concluding statement of Abaye (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 6:12; *Shulḥan Arukh*, *Yoreh De'a* 221:6).

LANGUAGE

Annual rental fee [*taska*] – טַסְקָא: Similar to the Arabic, طسق, *ṭasq*, this word usually denotes a land tax in the Talmud. Here it refers to a fixed rental payment which, like the *taska* tax, is not tied to the amount of profit the property generates.

אֶלָּא אָמַר רַב יוֹסֵף אָמַר זְעֵירִי: מַחֲלוֹקֶת שֶׁאֵין בָּהּ כְּדֵי חֲלוּקָה, אֲבָל יֵשׁ בָּהּ כְּדֵי חֲלוּקָה – דִּבְרֵי הַכֹּל אָסוּר.

Rather, Rav Yosef said: Ze'eiri must have **said:** The **dispute** holds **where there is not sufficient** area **in** the courtyard for it to be **divided, but** if **there is sufficient** area **in it** for it to be **divided, everyone agrees that** it is **forbidden,**[N] since if either enters it he may be entering the other's portion.

אָמַר רַב הוּנָא: הַלָּכָה כְּרַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב, וְכֵן אָמַר רַבִּי אֶלְעָזָר: הַלָּכָה כְּרַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב.

Rav Huna said: The *halakha* is in accordance with the opinion of **Rabbi Eliezer ben Ya'akov. And so too, Rabbi Elazar said: The *halakha* is in accordance with** the opinion of **Rabbi Eliezer ben Ya'akov.**

״הַמּוּדָּר הֲנָאָה מֵחֲבֵירוֹ וְיֵשׁ לוֹ שָׁם מֶרְחָץ״ וכו׳. וְכַמָּה תְּפִיסַת יָד? אָמַר רַב נַחְמָן: לְמֶחֱצָה לִשְׁלִישׁ וְלִרְבִיעַ, אֲבָל בִּבְצִיר – לָא. אַבַּיֵי אָמַר: אֲפִילּוּ בִּבְצִיר – אָסוּר. הֵיכִי דָּמֵי דְּשָׁרֵי – דִּמְקַבֵּל בְּטַסְקָא.

§ The mishna teaches: With regard to **one prohibited by a vow from deriving benefit from another and he has a bathhouse** or an olive press in the city that is leased out and available for public use, the forbidden party may use it only if the owner has forfeited his own right to profits from usage. The Gemara asks: **And how much** is this **right** to profits from **usage** that prohibits the subject of the vow from entering the bathhouse? **Rav Naḥman said:** In cases where he receives **one half, one-third,**[N] **or one-quarter** of the profits of the bathhouse. **But in** a case where he receives **less,** it is **not** forbidden.[N] **Abaye said: Even in** a case where he receives **less,** it is **forbidden.**[H] If so, **what are the circumstances in which** it is **permitted** and he is not considered to have a right to profits from usage? **Where he** completely forfeits all profits and **receives** only **an annual rental fee** [*taska*][LN] from a tenant.

NOTES

But if there is sufficient area in it for it to be divided, everyone agrees that it is forbidden – אֲבָל יֵשׁ בָּהּ כְּדֵי חֲלוּקָה דִּבְרֵי הַכֹּל אָסוּר: According to the Rashba, this prohibition remains in effect even after the division is made. The Rambam, however, maintains that the prohibition is in effect only prior to the division of the property. In the Jerusalem Talmud it appears that the dispute between Rabbi Eliezer ben Ya'akov and the Rabbis concerns a courtyard that has not been divided, but all agree that once the property is divided with a fence, each partner has exclusive rights to his respective portion.

One half, one-third, etc. – לְמֶחֱצָה לִשְׁלִישׁ וכו׳: This explanation is found also in the Jerusalem Talmud. The reasoning seems to be that less than one-quarter of the profits is considered insignificant, and therefore does not qualify as a right to profits from usage of the property.

But in a case where he receives less [*bivetzir*] it is not forbidden – אֲבָל בִּבְצִיר לָא: Most of the commentaries had an alternate version of the Gemara text that read *beveitzim*, meaning eggs, rather than *bivetzir*. According to this version, if one's rights in the bathhouse extend only to eggs, then one is viewed as not having a right to profits from usage of the property. The commentaries explain this clause in several ways. The Ran explains that if the owner of the property retains rights only to profits generated from the concession stands of eggs that were customarily sold outside of a bathhouse, then he is not considered to have a right to profits from usage of the property.

Others explain that the Gemara is referring to eggs of the potter, spheres of clay from which vessels are made and were left to dry in bathhouses. If the owner of the property retains only the minor right of placing his potter's eggs there (*Arukh*; Rashi), or in a small area therein (Meiri; *Shita Mekubbetzet*), he is not considered to have a true right of usage in the property.

The Rid explains that eggs were used as a common form of payment for the right to use a bathhouse, and therefore if the owner of the property sold the entire usage of the bathhouse for the day for a specified sum of eggs, then he is considered to have sold his right to profits from usage of the bathhouse for that day. Abaye, however, reasons that since the rental is only for one day, the property owner retains a general right to profits from usage of the property.

Annual rental fee [*taska*] – טַסְקָא: The commentaries discuss the nature of the *taska* payment. Most understand it as referring to an annual fee paid by the tenant regardless of the profits. Since there is no connection between the owner and the bathhouse itself other than the fixed annual payment, he is considered to no longer have his right to profits from usage of the property. The Rosh has a similar understanding but offers another explanation, found in Rabbeinu Tam's *Sefer HaYashar*: The *taska* is the property tax due to the government from the owner of the property. If the tenant pays this in addition to his rental fee, the owner is considered to be removed from the property and to have forfeited his right to profits from the usage of the property. Based on the statements of the Ran further on, it seems that others explain that the rent for the property is considered to be like a *taska*, or royal property tax, in the sense that the renter is the primary owner and simply assumes an obligation to pay a fixed sum each year.