וַאֲסוּרִים בְּדָבָר שֶׁל אוֹתָהּ הָעִיר. וְאֵיזֶהוּ דָּבָר שֶׁל עוֹלֵי בָבֶל – כְּגוֹן הַר הַבַּיִת, וְהָעֲזָרוֹת, וְהַבּוֹר שֶׁבְּאֶמְצַע הַדֶּרֶךְ. וְאֵיזֶהוּ דָּבָר שֶׁל אוֹתָהּ הָעִיר – כְּגוֹן הָרְחָבָה, וְהַמֶּרְחָץ, וּבֵית הַכְּנֶסֶת, וְהַתֵּיבָה, וְהַסְּפָרִים. וְהַכּוֹתֵב חֶלְקוֹ לַנָּשִׂיא.

But it is prohibited for them to benefit **from objects of that city,**[H] which are considered to be jointly owned by all its residents. **And what are** examples of **objects belonging to those who ascended from Babylonia?**[H] **For example, the Temple Mount,**[N] **and the** Temple **Courtyards, and the** water **cistern in the middle of the road. And what are objects of that city? For example, the** city **square,**[N] **and the bathhouse,**[N] **and the synagogue, and the ark**[N] which houses the Torah scrolls, **and the** Torah **scrolls.**[N] **And one who writes,** i.e., signs, **his portion** of the shared objects of that city over **to the *Nasi*.**[HB]

רַבִּי יְהוּדָה אוֹמֵר: אֶחָד כּוֹתֵב לַנָּשִׂיא וְאֶחָד כּוֹתֵב לְהֶדְיוֹט. מַה בֵּין כּוֹתֵב לַנָּשִׂיא לְכוֹתֵב לְהֶדְיוֹט? שֶׁהַכּוֹתֵב לַנָּשִׂיא – אֵין צָרִיךְ לְזַכּוֹת, לְהֶדְיוֹט – צָרִיךְ לְזַכּוֹת. וַחֲכָמִים אוֹמְרִים: אֶחָד זֶה וְאֶחָד זֶה צְרִיכִין לְזַכּוֹת, לֹא דִּבְּרוּ בְּנָשִׂיא אֶלָּא בַּהֹוֶה. רַבִּי יְהוּדָה אוֹמֵר: אֵין אַנְשֵׁי גָּלִיל צְרִיכִין לִכְתּוֹב, שֶׁכְּבָר כָּתְבוּ אֲבוֹתֵיהֶן עַל יֵדֵיהֶן.

Rabbi Yehuda says: This is the *halakha* with regard to **both** one who **writes** his portion over **to the *Nasi*[N] and one** who **writes** it over **to a common person.** Rabbi Yehuda adds: **What** is the difference **between** one who **writes** it over **to the *Nasi* and** one who **writes** it over **to a common person? That one who writes** it **to the *Nasi* need not** formally **confer possession** of the item, whereas one who writes it over **to a common person must confer possession** to him. **And the Rabbis say:**[N] **Both this** one **and that** one **must confer possession,** and **they** specifically **mentioned the *Nasi* only** so as to speak **in the present,** addressing situations that were prevalent. **Rabbi Yehuda says: The people of Galilee do not have to write** their portion over to the *Nasi* **because their fathers already wrote** it **for them,** declaring that all the public property belongs to him.

HALAKHA

But it is prohibited for them to benefit from objects of that city – וַאֲסוּרִים בְּדָבָר שֶׁל אוֹתָהּ הָעִיר: If two individuals vowed to prohibit one another from deriving benefiting from each other, it is permitted for them to benefit from objects that belong to all the Jewish people. However, it is prohibited for them to benefit from items or establishments which are jointly owned by residents of their city (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:2; *Shulḥan Arukh*, *Yoreh De'a* 224:1).

Objects belonging to those who ascended from Babylonia – דָּבָר שֶׁל עוֹלֵי בָבֶל: The following are examples of objects that belong to all the Jewish people: The Temple Mount, the Temple courtyards and chambers, and the wells on the roadways. Objects that belong to the city include the city square, the public bathhouse, the synagogue, the ark, and Torah scrolls (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:2; *Shulḥan Arukh*, *Yoreh De'a* 224:1).

One who writes his portion over to the *Nasi* – הַכּוֹתֵב חֶלְקוֹ לַנָּשִׂיא: If two people are prohibited by a vow from deriving benefit from one another, they may write over their respective portions of city property to the *Nasi*. A third party must perform an act of acquisition on behalf of the *Nasi*, in accordance with the opinion of the Rabbis. The *Shakh* notes that some hold it is permitted for the individuals to benefit from any item or property that cannot be divided, such as a synagogue. Nevertheless, the early Sages instituted that one cannot prohibit others from using his portion in a synagogue or Torah scrolls; if he attempts to do so, the prohibition has no effect (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:3; *Shulḥan Arukh*, *Yoreh De'a* 224:1 and *Oraḥ Ḥayyim* 153:16).

BACKGROUND

One who writes his portion over to the *Nasi* – הַכּוֹתֵב חֶלְקוֹ לַנָּשִׂיא: Traditionally, the *Nasi* of the Sanhedrin was a descendant of Hillel, tracing his ancestry back to the house of David. He was accorded the status of a prince in a number of matters, held in high esteem by the gentile authorities, and represented the Jews in Eretz Yisrael with regard to diplomatic issues. Therefore, writing over one's portion in communal property to the *Nasi* was a form of showing respect. Moreover, the house of the *Nasi* had large land holdings, some of which were given to the house of the *Nasi* by the local ruling authorities. These holdings were essentially national property, used to finance the various costs incurred by the house of the *Nasi* on behalf of the community. It was therefore an accepted practice that people who wished to contribute their share in communal possessions for the benefit of the community would do so by writing their shares over to the *Nasi*.

NOTES

The Temple Mount, etc. – הַר הַבַּיִת וכו': It is permitted to benefit from the entire Temple area, and it appears that it is also permitted to benefit from any other property that belongs to all of the Jewish people, such as the walls of Jerusalem. The reason that these places are specified while other permitted areas are not is because they are used by everyone, unlike those parts of the Temple that are accessible only to the priests (*Tosefot Yom Tov*).

The city square – הָרְחָבָה: It says in the Jerusalem Talmud that a square through which a public thoroughfare passes is not considered to be the property of the residents of the city, but rather that of the general public.

The square and the bathhouse, etc. – הָרְחָבָה וְהַמֶּרְחָץ וכו': These sites are built by the residents of the city, who are therefore accorded the status of shareholders in their ownership. As noted in tractate *Megilla* (25a), the residents of the city also have the right to collectively sell such properties to others (Ritva).

The ark – הַתֵּיבָה: *Tosafot* explain that this is the ark that houses the Torah scrolls. Others say it is the table upon which the Torah scrolls are placed for reading (Ritva; Ran).

The scrolls [*sefarim*] – הַסְּפָרִים: Whenever the word *sefarim* is used in an unspecified form it refers to Torah scrolls, as they are the scrolls that are used by everyone (Rashi). Some commentaries explain that here *sefarim* refers to all the books in the synagogue bought by the community or donated specifically so the residents can study them (*Tosafot*). A number of commentaries note that Torah study is a mitzva, and the performance of mitzvot is not considered an act from which one derives benefit. As such, use of the *sefarim* would not constitute deriving benefit from communal property.

Rabbi Avraham min HaHar explains that while the performance of a mitzva is generally not viewed as an act from which one derives benefit, Torah study is different. The mitzva of Torah study was given for the benefit and delight of the one who studies. This idea is echoed in a number of other sources, which stress that the enjoyment of Torah study is an intrinsic part of the mitzva (see introduction to *Eglei Tal*). Furthermore, since one can fulfill the mitzva of learning Torah by reciting the daily *Shema*, any additional study is not strictly mandatory, and therefore it may be considered as benefit.

One who writes…to the *Nasi* – כּוֹתֵב לַנָּשִׂיא: One who signs over his portion of the communal property to the *Nasi* immediately relinquishes his rights to the property. The Sages determined that out of deference to the *Nasi*, no further act is required on behalf of the *Nasi* in order to validate the acquisition (see *Tosafot* and Rosh). According to the *Tosefot Yom Tov*, the Sages enacted this mechanism to protect one who is prohibited by a vow from needing to leave the city, which would cause him extreme hardship. The Rashash, however, explains that this mechanism was not instituted by the Sages, since in any event one may transfer property to someone who is accorded special honor without any further act of acquisition on his part. According to the Meiri, all public possessions are considered to be property of the *Nasi*, and one who relinquishes his rights to public property automatically transfers them to the *Nasi* without further need for an act of acquisition.

And the Rabbis say – וַחֲכָמִים אוֹמְרִים: The *Tosefot Yom Tov* explains that the opinion of the Rabbis is identical to the initial statement in the mishna with regard to signing over one's portion to the *Nasi*. The Rashash, however, explains that Rabbi Yehuda and the Rabbis disputed the meaning of this initial statement. According to Rabbi Yehuda, one may write his portion over to the *Nasi* without an act of acquisition, but writing one's portion over to a common person requires an additional act of acquisition. The Rabbis hold that there is no difference between the two, and the mishna mentioned the *Nasi* simply to reflect the common practice.

גמ׳ אַמַּאי מִיתְסַר? אֲמַר רַב שֵׁשֶׁת: הָכִי קָתָנֵי: וּמַה תַּקָּנָתָן – יִכְתְּבוּ חֶלְקָן לַנָּשִׂיא.

GEMARA

The mishna appears to teach that one who is prohibited by a vow from benefiting from another may not benefit from property written over to the *Nasi*. The Gemara asks: **Why is it forbidden? Rav Sheshet said: This is what** the mishna **is teaching: And what is their remedy,**[N] i.e., what can be done to enable the forbidden individuals to benefit from communal property? **They should write their portion** over **to the *Nasi*,** thereby relinquishing their shares in the communal property.

רַבִּי יְהוּדָה אוֹמֵר: אֶחָד כּוֹתֵב לַנָּשִׂיא וְאֶחָד כּוֹתֵב לְהֶדְיוֹט. וּמַה בֵּין כּוֹתֵב לַנָּשִׂיא לְכוֹתֵב לְהֶדְיוֹט? הַכּוֹתֵב לַנָּשִׂיא – אֵין צָרִיךְ לְזַכּוֹת, וְהַכּוֹתֵב לְהֶדְיוֹט – צָרִיךְ לְזַכּוֹת. וַחֲכָמִים אוֹמְרִים: אֶחָד זֶה וְאֶחָד זֶה צְרִיכִים לְזַכּוֹת, לֹא דִּבְּרוּ בְּנָשִׂיא אֶלָּא בַּהֹוֶה.

The Gemara continues its quotation from the mishna: This is the *halakha* with regard to **both** one who **writes** his portion over **to the *Nasi* and one** who **writes** it over **to a common person.** Rabbi Yehuda adds: **What** is the difference **between** one who **writes** it over **to the *Nasi* and** one who **writes** it over **to a common person? That one who writes** it **to the *Nasi* need not** formally **confer possession** of the item, whereas one who writes it over **to a common person must confer possession** to him. **And the Rabbis say: Both this** one **and that** one **must confer possession,** and **they** specifically **mentioned the *Nasi* only** so as to speak **in the present.**[N]

״רַבִּי יְהוּדָה אוֹמֵר: אֵין אַנְשֵׁי גָּלִיל צְרִיכִין לְזַכּוֹת, שֶׁכְּבָר כָּתְבוּ אֲבוֹתֵיהֶן עַל יְדֵיהֶן״. תַּנְיָא, רַבִּי יְהוּדָה אוֹמֵר: אַנְשֵׁי גָּלִיל קַנְטְרָנִין הָיוּ, וְהָיוּ נוֹדְרִין הֶנָּאָה זֶה מִזֶּה, עָמְדוּ אֲבוֹתֵיהֶם וְכָתְבוּ חֶלְקֵיהֶן לַנָּשִׂיא.

§ The mishna teaches: **Rabbi Yehuda says: The people of Galilee do not have to confer possession** of their portion to the *Nasi* **because their forefathers already wrote** it **for them. It is taught** in a *baraita* that **Rabbi Yehuda says: The people of Galilee were quarrelsome** [*kanteranin*][L] **and would** often **take vows prohibiting benefit from one another.** So **their forefathers arose**[N] **and wrote their portions** of the public property over **to the *Nasi*** so that they would be able to use communal property.

מתני׳ הַמּוּדָּר הֲנָאָה מֵחֲבֵירוֹ וְאֵין לוֹ מַה יֹּאכַל – נוֹתְנוֹ לְאַחֵר לְשׁוּם מַתָּנָה, וְהַלָּה מוּתָּר בָּהּ. מַעֲשֶׂה בְּאֶחָד בְּבֵית חוֹרוֹן שֶׁהָיָה אָבִיו נוֹדֵר הֵימֶנּוּ הֲנָאָה, וְהָיָה מַשִּׂיא אֶת בְּנוֹ, וְאָמַר לַחֲבֵרוֹ: חָצֵר וּסְעוּדָה נְתוּנִים הֵימֶנּוּ לְפָנֶיךָ, אֶלָּא כְּדֵי שֶׁיָּבֹא אַבָּא וְיֹאכַל עִמָּנוּ בַּסְּעוּדָה.

MISHNA

With regard to **one who is prohibited by a vow from deriving benefit from another and he does not have anything to eat,**[H] the other **may give** the food **to someone else as a gift and he is** then **permitted** to eat **it.** The mishna recounts: **An incident** occurred **involving someone in** the city of **Beit Ḥoron**[B] **whose father had vowed not to derive benefit from him, and** the son **was marrying off his** own **son** and wanted his father to be able to participate in the wedding meal. **And** he therefore **said to another: The courtyard** where the wedding will take place **and** the wedding **meal are given before you** as a gift, but **only so that my father will come and eat with us at the meal.**

אָמַר: אִם שֶׁלִּי הֵם – הֲרֵי הֵם מוּקְדָּשִׁין לַשָּׁמַיִם. אָמַר לוֹ: נָתַתִּי לְךָ אֶת שֶׁלִּי שֶׁתַּקְדִּישֵׁם לַשָּׁמַיִם?! אָמַר לוֹ: נָתַתָּ לִי אֶת שֶׁלְּךָ – אֶלָּא שֶׁתְּהֵא אַתָּה וְאָבִיךָ אוֹכְלִין וְשׁוֹתִין וּמִתְרַצִּין זֶה לָזֶה, וִיהֵא עָוֹן תָּלוּי בְּרֹאשִׁי. אָמְרוּ חֲכָמִים: כָּל מַתָּנָה שֶׁאֵינָהּ שֶׁאִם הִקְדִּישָׁהּ תְּהֵא מְקוּדֶּשֶׁת – אֵינָהּ מַתָּנָה.

The recipient **said: If they are mine, they are** all **hereby consecrated to Heaven,** i.e., the Temple, and are forbidden to everyone. The son **said to him** in anger: And **did I give you my** property **so that you should consecrate it to Heaven? He,** the recipient, **said to him: You gave me your** property **only** so that **you and your father would eat and drink and** thereby **appease each other, and the sin** of transgressing the vow would **be hung on his,** i.e., my, **head,** as I enabled the transgression. **The Sages** therefore **said: Any gift**[H] **that is not** so absolute so **that if** the recipient **were to consecrate** the gift **it would be consecrated,**[N] **is not a gift.** In other words, in order for it to be a gift, the recipient must have the ability to consecrate it.

NOTES

And what is their remedy – וּמַה תַּקָּנָתָן: The reason that this solution is not used in the case of two partners in a shared courtyard is because the courtyard is owned only by the two partners. If they were to sign it over to the *Nasi* they would relinquish their right to use the property. By contrast, communal property belonging to a city is shared equally by all residents, and therefore no one loses his right to usage by assigning his portion to the *Nasi* (*Tosafot*).

In the present – בַּהֹוֶה: Property was commonly written over to the *Nasi* because there was no concern that the *Nasi* would subsequently vow to render the property forbidden to a resident of the city. This is not necessarily true with regard to a private individual, who is a resident of the city and may vow to render the property forbidden to another in the future (Ran).

Their forefathers arose, etc. – עָמְדוּ אֲבוֹתֵיהֶם וכו׳: Some commentaries explain that the leadership in the Galilee foresaw a situation in which residents would constantly render communal property forbidden to one another. Therefore, they compelled all the members of their community to give their portions over to the *Nasi*. Others explain that the language of the Gemara is meant to indicate that even in earlier generations, the forefathers wrote their portions over to the *Nasi* (*Shita Mekubbetzet*).

That if he were to consecrate it, it would be consecrated – שֶׁאִם הִקְדִּישָׁהּ תְּהֵא מְקוּדֶּשֶׁת: The Ran asks: When one gives a gift and stipulates that it must be returned, the gift is valid for the allotted period, despite the fact that the recipient cannot consecrate it. What is the distinction between that *halakha* and the concept discussed in the Gemara here, which states that any gift that cannot be consecrated is not considered a gift? He answers that although a gift given based on the condition that it be returned is valid, the gift described here is invalid since it is given only for a limited purpose.

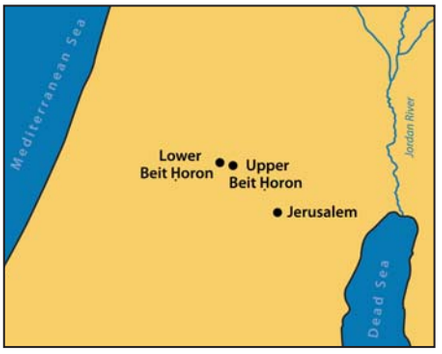
It is explained in the Jerusalem Talmud that the Sages did not render any gift invalid if the giver cannot consecrate it, as one may stipulate that the gift he gives not be consecrated. This principle applies only in cases where there is legitimate concern that the gift is a legal fiction.

LANGUAGE

Quarrelsome [*kanteranin*] – קַנְטְרָנִין: Derived from the Greek κεντρόω, *kentroo*, meaning to sting or pierce.

BACKGROUND

Beit Ḥoron – בֵּית חוֹרוֹן: Beit Ḥoron was a city located near the northern border of the land allocated to the tribe of Judah, and was divided into two neighboring towns, Upper Beit Ḥoron and Lower Beit Ḥoron. These cities are mentioned in the Bible, and due to their strategic location on the main road to Jerusalem they were the site of many famous battles, including the victory of Judah Maccabee and a victory over the Romans during the Great Revolt. Ancient settlements such as these, which were resettled upon the return from the Babylonian exile, were often host to a tradition of Torah learning. The incident recounted here illustrates the sensitivity of the local residents and their commitment to observing the mitzvot with great care.



Location of Beit Ḥoron

HALAKHA

And he does not have anything to eat – וְאֵין לוֹ מַה יֹּאכַל: If one takes a vow prohibiting another from deriving benefit from him, and that person does not have anything to eat, the one who vowed may give items to a third party in the form of a gift, and that individual can in turn give it to the one prohibited by the vow. If, upon giving the gift, he specifies that it is only for the purpose of benefiting the other, or if it is otherwise obvious from his behavior that the gift is a legal fiction, then the one prohibited by the vow may not derive benefit from it (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:15; *Shulḥan Arukh*, *Yoreh De'a* 221:9).

Any gift, etc. – כָּל מַתָּנָה וכו׳: Any gift that one gives while stipulating that the recipient cannot consecrate it is invalid (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 7:16).

גמ׳ מַעֲשֶׂה לִסְתּוֹר! חֲסוּרֵי מִיחַסְּרָא וְהָכִי קָתָנֵי: וְאִם הוֹכִיחַ סוֹפוֹ עַל תְּחִילָּתוֹ – אָסוּר. וּמַעֲשֶׂה נָמִי בְּבֵית חוֹרוֹן בְּאֶחָד דַּהֲוָה סוֹפוֹ מוֹכִיחַ עַל תְּחִילָּתוֹ.

GEMARA The Gemara asks: Was **an incident** cited **to contradict**[N] that which was initially stated in the mishna? The mishna explicitly stated that one may give a gift to another in order to bypass the prohibition of a vow. The Gemara answers: The mishna **is incomplete and is teaching like this:**[B] **And if his ultimate** actions **prove** the nature of **his initial** intent, i.e., if the prior owner protests that he gave the gift only as a technicality in order to bypass the vow, it is **forbidden. And** to illustrate this point, **there was also an incident in Beit Ḥoron concerning someone whose ultimate** protest **proved** that **his initial** intent was not to give a true gift.

אֲמַר רָבָא: לֹא שָׁנוּ אֶלָּא דַּאֲמַר לֵיהּ ״וְהֵינָךְ לְפָנֶיךָ אֶלָּא כְּדֵי שֶׁיָּבֹא אַבָּא״. אֲבָל אֲמַר לֵיהּ ״שָׁיְיהוּ לְפָנֶיךָ, שֶׁיָּבֹא אַבָּא״ – מַדְּעָתֵיךְ הוּא דַּאֲמַר לֵיהּ.

Rava said: They taught this prohibition **only** in a case **where he said to him: And** the gifts **are** given **before you only so that** my **father should come,** as he explicitly mentioned that he did not intend to give an absolute gift. **But** if **he said to him** less explicitly: **That they should be before you that** my **father should come,** there is no prohibition, **since he is** essentially **saying to him:** It is **up to your judgment** whether or not to invite him.

לִישָׁנָא אַחֲרִינָא אָמְרִין לָהּ, אֲמַר רָבָא: לָא תֵּימָא טַעְמָא דַּאֲמַר לֵיהּ ״וְהֵינָךְ לְפָנֶיךָ״ הוּא דְּאָסוּר, אֲבָל אֲמַר לֵיהּ ״הֵן לְפָנֶיךָ, שֶׁיָּבֹא אַבָּא וְיֹאכַל״ – מוּתָּר. אֶלָּא אֲפִילּוּ אֲמַר לֵיהּ ״הֵן לְפָנֶיךָ, בָּא אַבָּא וְיֹאכַל״ – אָסוּר. מַאי טַעְמָא – סְעוּדָתוֹ מוֹכַחַת עָלָיו.

Some say another version of this statement. **Rava said: Do not say** that **the reason** for the prohibition **is because he said to him: And** the gifts **are** given **before you** only so that my father will come, and **that** is why **it** is **forbidden; but** if **he said to him: They are before you so** my **father should come and eat,** it would be **permitted.** This is not so. **Rather, even if he said to him: They are before you,** my **father should come and eat,** it is **forbidden. What is the reason** for this? **His** wedding **meal proves about him**[N] that his sole intention was to bypass the vow.

Perek **V**
Daf **48** Amud **b**

הַהוּא גַּבְרָא דַּהֲוָה לֵיהּ בְּרָא דַּהֲוָה שָׁמֵיט כֵּיפֵי דְּכִיתָּנָא, אֲסִרִינְהוּ לִנְכָסֵיהּ עֲלֵיהּ. אֲמְרוּ לֵיהּ: וְאִי הַוַאי בַּר בָּרָךְ צוּרְבָא מֵרַבָּנַן מַאי? אֲמַר לְהוֹן: לֵיקְנֵי הָדֵין, וְאִי הַוַאי בַּר בְּרִי צוּרְבָא מֵרַבָּנַן – לְקָנְיֵיהּ. מַאי?

There was **a certain man who had a son who seized** in theft **sheaves** [***keifei***] **of flax,**[LN] and the father took a vow **prohibiting** his son **from** deriving any benefit **from his possessions. They said** to the father: **And if the son of your son**[HN] **would become a Torah scholar,** and you would want him to be able to inherit your possessions, **what** would you do? **He said to them: Let this** son of mine **acquire** the possessions,[N] **and** only **if the son of my son becomes a Torah scholar** then **let him,** my grandson, **acquire them** from my son. They asked: **What** is the ruling?

NOTES

An incident cited to contradict – מַעֲשֶׂה לִסְתּוֹר: The Ran writes that this incident does not truly contradict the aforementioned *halakha*, but it does limit its application. The *halakha* seems to indicate that the prohibition may be circumvented by any gift to a third party, while the incident recorded seems to indicate that only gifts that can be consecrated by the recipient suffice.

His wedding meal proves about him – סְעוּדָתוֹ מוֹכַחַת עָלָיו: Certainly, such a large feast was not prepared for the benefit of the recipient of the gift. The giver clearly sought only to circumvent the prohibition of the vow and enable his father to attend his son's wedding. The Rambam writes that this type of gift is forbidden even if the giver did not make the stipulation at the outset and mentioned this only later on. The Rashba, however, holds that the gift is invalid only if the stipulation was stated explicitly at the time the gift was given. Some explain that this issue revolves around the two versions of the statement made by Rava, as recorded in the Gemara (see *Kesef Mishne*).

BACKGROUND

The mishna is incomplete and is teaching like this – חֲסוּרֵי מִיחַסְּרָא וְהָכִי קָתָנֵי: This method of explanation is often found in the Gemara as a means of understanding passages in the mishna that seem to be incomplete. Generally, after raising difficulties with regard to the text of the mishna that render the mishna in its original form incoherent or inconsistent with another authoritative source, the Gemara introduces an addition to the mishna that provides the necessary clarification.

LANGUAGE

Sheaves [*keifei*] – כֵּיפֵי: This word, which appears in both Hebrew and Aramaic, has several meanings, some of which are interrelated. One meaning of *keifei* is rocks, sometimes referring specifically to precious stones and jewelry. It can also mean piles of grain. At other times it refers to bundles of plants, palm leaves, or other vegetation. Due to these multiple meanings, there are often disputes among the commentaries concerning how to understand the word in a given context, thereby leading to variant interpretations of this Gemara.

HALAKHA

And if the son of your son, etc. – וְאִי הַוַאי בַּר בָּרָךְ וכו׳: If one prohibits his son from deriving benefit from him, but stipulates that if his grandson becomes a Torah scholar the son will acquire his possessions in order to transfer them to the grandson, it remains forbidden for the son to benefit from his father's possessions. However, it is permitted for the grandson to benefit from them, in accordance with the opinion of Rav Naḥman. This is the ruling of the Rambam as cited in the *Shulḥan Arukh*.

The Ra'avad understands the ruling of the Rambam to mean that the grandson is permitted to benefit from the possessions only if he is a Torah scholar. However, the *Kesef Mishne*, the *Perisha*, the Ra'avad, and the *Tur* understand that the grandson can use the property regardless. The Rosh and the Ran rule that the grandson acquires nothing in this manner, in accordance with the opinion of Rav Ashi (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 5:7; *Shulḥan Arukh*, *Yoreh De'a* 223:3).

NOTES

Seized sheaves of flax – שָׁמֵיט כֵּיפֵי דְּכִיתָּנָא: Most commentaries explain that the son stole bundles of flax from their owners. According to Rav Hai Gaon's version of the text, the son would steal bundles of flax from his father. Others explain that he would steal women's caps that were made of flax (Rosh), or that he stole cloaks or sheaves from the field (Meiri). According to another explanation found in the Commentary on *Nedarim*, the son spent his time purchasing bundles of flax, keeping some for himself and selling the remainder for a profit, instead of engaging in Torah study (*Arukh*; Rabbeinu Yitzḥak).

If the son of your son, etc. – אִי הַוַאי בַּר בָּרָךְ וכו׳: The Ran maintains that a father cannot prevent his son from inheriting his property by means of a vow, but he can formulate a vow which prevents his son from deriving benefit from the inheritance. Since the son actually inherits the property and is merely prohibited from using it, the inheritance will pass on to the grandson anyway. It is therefore difficult to understand the father's need to add such a proviso. The Ran explains that the father had another son, to whom he wished to leave the entire inheritance in the event that the grandson was not a Torah scholar, and therefore the stipulation that the inheritance would go to the first son is contingent only upon the grandson's actions. The Rosh and the Rashba explain similarly. The Meiri maintains that the need for this acquisition was to enable the grandson to benefit from the inheritance even when his father was alive, since otherwise he may not have anything to eat.

Let this son acquire the possessions, etc. – לֵיקְנֵי הָדֵין וכו׳: The straightforward understanding of this case is that the grandfather allows his son to perform an act of acquisition on behalf of the grandson. Some explain that the reason the son must acquire it on behalf of the grandson is because the child has not yet been born, and therefore the grandfather cannot confer possession to him directly (Rashi; *Talmidei Rabbeinu Peretz*).

The Meiri notes that even if the grandson is already born, he has not yet become a Torah scholar, and as such cannot acquire the possessions directly at the time of the stipulation. The Rashba, however, interprets the statement of the grandfather as referring to a third party who would acquire the property on the condition that he transfer it to the grandson in the event that he becomes a Torah scholar. According to the *Ḥatam Sofer*, the grandfather also intended that this gift would indirectly benefit his own son, who may use the possessions to cover his own expenditures on behalf of the grandson.

אָמְרִי פּוּמְבְּדִיתָאֵי: ״קְנֵי עַל מְנָת לְהַקְנוֹת״ הוּא, וְכָל ״קְנֵי עַל מְנָת לְהַקְנוֹת״ – לָא קָנֵי.

The Sages **of Pumbedita say:** This is just as if he stated: **Acquire** the property **on the condition that you transfer**[N] it to your son. In such a case he has not given anything to the recipient, but has merely made him a conduit to transfer the item to someone else. **And** in **any** case where one says: **Acquire** this item **on the condition that you transfer** ownership, the recipient **does not acquire** the item, and the statement has no effect.

וְרַב נַחְמָן אָמַר: קָנֵי, דְּהָא סוּדָרָא קְנֵי עַל מְנָת לְהַקְנוֹת הוּא.

But Rav Naḥman said: He does acquire, as an acquisition by means of **a cloth**[B] **is** a case of an act of **acquisition** performed only **in order to transfer** ownership. In such a case, one gives another a cloth in order to confer ownership of some other item, but the cloth itself does not assume new ownership. Still, this is an effective means of acquisition. So too, the property of the grandfather may be effectively conferred upon the grandson through the son, without the son acquiring it himself.

אָמַר רַב אַשִׁי: וּמַאן לֵימָא לָן דְּסוּדָרָא, אִי תָּפֵיס לֵיהּ לָא מִיתְפֵּיס? וְעוֹד: סוּדָרָא – ״קְנֵי עַל מְנָת לְהַקְנוֹת וּקְנֵי מִן הַשְּׁתָּא״, הָלֵין נִיכְסִין דְּהָדֵין, לְאֵימָתַי קָנֵי – לְכִי הֲוֵי בַּר בְּרִיהּ צוּרְבָא מֵרַבָּנַן, לְכִי הֲוָה – הֲדַר סוּדָרָא לְמָרֵיהּ!

Rav Ashi said: And who will say to us concerning the cloth that if the recipient of the cloth would **seize it** with the intention of keeping it that it would **not** be an effective **seizure?** While the cloth is technically transferred, the recipient does not usually exercise his right to it. **And furthermore,** an acquisition by means of **a cloth**[H] is a case where the giver is saying: **Acquire** only **in order to transfer** ownership, **but acquire from now.**[N] However, with regard to **these possessions of this** one who took the vow, **when does** the son **acquire?** Only **when his son's son becomes a Torah scholar. And when he becomes** a Torah scholar, **the cloth has** already been **returned to its owner,**[N] i.e., the act of acquisition had taken place long before the grandson became a Torah scholar. The initial transfer therefore has no effect.

אָמַר לֵיהּ רָבָא לְרַב נַחְמָן: וְהָא מַתָּנַת בֵּית חוֹרוֹן, דִּקְנֵי עַל מְנָת לְהַקְנוֹת הוּא, וְלָא קָא קָנֵי!

Rava said to Rav Naḥman: But the gift of Beit Ḥoron[N] discussed in the mishna **is** an example of an **acquisition** performed only **in order to transfer** ownership, **and** there **he did not acquire** it at all.

BACKGROUND

Cloth – סוּדָרָא: Transferring ownership by means of a cloth is a means of acquisition rooted in the principle of property exchange. When two articles are exchanged for one another, the formal acquisition of one of the articles automatically transfers ownership of the second. While exchanging articles is generally performed when they are of equal value, there is no formal requirement that this be so. Therefore, the practice of formalizing acquisitions using a cloth can be understood as an extension of the principle of exchange. In this form of acquisition, the symbolic transfer of a handkerchief or some other small article from one party to another formalizes an agreement made between them, as it is indicative of their willingness to proceed with the acquisition.

The source for the validity of this form of acquisition is in the book of Ruth, where Boaz purchases land and property by means of exchanging a shoe with his kinsman (Ruth 4:7). Normally, with regard to the transfer of ownership by means of a cloth, the seller takes the buyer's cloth in his hand and then returns the cloth to the buyer, having symbolically formalized the sale.

HALAKHA

Cloth, etc. – סוּדָרָא וכו׳: Some commentaries rule that an acquisition by means of a cloth is ineffective unless the transfer of property occurs immediately. However, if one expressly stipulates: Acquire immediately and after thirty days, the acquisition takes effect. The Rema, citing the *Terumat HaDeshen*, rules that even without an express stipulation it is assumed that the intention was to state: Acquire now and after thirty days, since one presumably does not perform an act of acquisition with the intention of its having no effect (*Shulḥan Arukh*, *Ḥoshen Mishpat* 195:5).

NOTES

Acquire on the condition that you transfer – קְנֵי עַל מְנָת לְהַקְנוֹת: The *halakha* generally allows one to confer property upon an absentee recipient by permitting a third party to perform an act of acquisition on the recipient's behalf. *Tosafot*, however, explain that the situation here is different. Typically, the third party acts only as an agent for the recipient, and he himself does not acquire ownership of the property. Here, however, the son is receiving ownership of the gift on the condition that he will later transfer it to someone else. His ability to convey the gift to the grandson is therefore contingent upon his ability to acquire it himself.

Similarly, the Ran explains that this case is different from a gift given on the condition that it later be returned to the giver, which is generally valid. In such a case, although the recipient does not acquire the item permanently, he may benefit from it during the period of his ownership. Here, however, it is prohibited for the son to derive benefit from that which was given to him.

But acquire from now – וּקְנֵי מִן הַשְּׁתָּא: The Rashba discusses whether Rav Naḥman also holds that immediate acquisition is necessary in order to render an acquisition by means of a cloth as acceptable. The Ran writes that Rav Naḥman might respond to Rav Ashi by saying that the father implicitly intends for the transfer of ownership to his son to take effect immediately, just as an acquisition by means of a cloth takes effect immediately.

The cloth has already been returned to its owner – הֲדַר סוּדָרָא לְמָרֵיהּ: This implies that the desired transfer of ownership can occur only at the moment of the symbolic act of acquisition. The Rashba, however, explains that this principle applies only to acquisition by means of a cloth or similar formal acts of acquisition. If the grandfather had instead signed the item over to his grandson, the document would remain in effect even after it had been written, and the transfer of ownership could occur at a later date, once the grandson had proven himself. According to *Tosafot* and the Ran, no method of acquisition can go into effect at a later date alone, unless the intermediate recipient gains some right to the acquired item in the meantime.

But the gift of Beit Ḥoron, etc. – וְהָא מַתָּנַת בֵּית חוֹרוֹן וכו׳: Rava understands that the gift of Beit Ḥoron was invalid from the outset, since the recipient did not acquire true rights to the courtyard or the meal. His acquisition of the meal was limited to only one day and did not entitle him to any greater benefit than the other guests (see Meiri).

זִימְנִין אָמַר לֵיהּ: מִשּׁוּם דְּסָעוּדָתוֹ מוֹכַחַת עָלָיו, וְזִימְנִין אָמַר לֵיהּ: רַבִּי אֱלִיעֶזֶר הִיא, דְּאָמַר: אֲפִילּוּ וִיתּוּר אָסוּר בְּמוּדַּר הֲנָאָה.

The Gemara recounts: **Sometimes** when Rav Naḥman was asked this question **he said to him:** That is **because his** wedding **meal proves about him**[N] that he did not truly intend to give the items to the recipient, and not because such an acquisition is invalid per se. **And sometimes he said to him**[N] that in **that** case they followed the stringent opinion of **Rabbi Eliezer, who said: Even** negligible benefits ordinarily **waived** are **forbidden**[N] **to one prohibited by a vow from deriving benefit** from another. So too, Rabbi Eliezer holds that one cannot rely on an act of acquisition performed merely in order to transfer ownership to a third party.

תְּנַן: אָמְרוּ חֲכָמִים, כָּל מַתָּנָה שֶׁאֵינָהּ שֶׁאִם הִקְדִּישָׁהּ תְּהֵא מְקוּדֶּשֶׁת – אֵינָהּ מַתָּנָה. ״כָּל״ לְאֵיתוּיֵי מַאי, לָאו לְאַתּוּיֵי הָא מִילְּתָא דְּשַׁדְיָא בְּכֵיפֵי? לָא, לְאַתּוּיֵי לִישָׁנָא בַּתְרָאָה דִּשְׁמַעְתֵּיהּ דְּרָבָא.

§ **We learned** in the mishna (48a): **The Sages** therefore **said: Any gift that is not** so absolute so **that, if** the recipient **were to consecrate** the gift **it would be consecrated, is not a gift.** The Gemara asks: **What is added** by the word: **Any? Is it not adding this matter of** one who **seized sheaves** of flax, and to say that the gift of the father has no effect? The Gemara responds: **No,** the intent is **to add the latter version of the** aforementioned **statement of Rava,** that a gift given as a means of circumventing a vow has no effect, even when the giver mentions the nature of the gift only casually and does not stipulate it as a formal condition.

הדרן עלך השותפין

NOTES

His meal proves about him – דְּסָעוּדָתוֹ מוֹכַחַת עָלָיו: Some explain that the festive wedding meal proves he did not intend to give anything to the recipient, as the elaborate meal was clearly prepared for the wedding celebration and not for him alone. The gift is rendered invalid only because it is a legal fiction, and not because the giver wanted the recipient to acquire it on behalf of someone else. According to the Ran, the meal illustrates the son's desire to directly benefit the forbidden party, his father. Here, by contrast, the grandfather wants only to benefit his grandson, which is permitted; however, he must do so indirectly, using his son as a conduit.

And sometimes he said to him, etc. – וְזִימְנִין אָמַר לֵיהּ וכו׳: Some explain that Rav Naḥman did not find his first answer to be sufficient, so he later provided a revised, more thorough answer (Rabbi Eliyahu Mizraḥi).

Even benefits ordinarily waived are forbidden – אֲפִילּוּ וִיתּוּר אָסוּר: Most commentaries hold that there is no substantive connection between these two rulings. Rav Naḥman means that just as Rabbi Eliezer is stringent with regard to benefits which are ordinarily waived, so too, he is stringent with regard to gifts which are given in order to bypass vows. According to this understanding, any acquisition undertaken on the condition that the property be transferred to a third party remains in effect, but if the acquisition is used as a means to circumvent a vow it is rendered invalid (*Tosafot*; Ran; see Meiri). The *Ḥatam Sofer* explains that Rabbi Eliezer deems the gift of Beit Ḥoron forbidden due to the giver's explicit statement that he is giving the items only to circumvent the vow.