

# V.

---

## BAVLI NEDARIM CHAPTER FIVE

### FOLIOS 45B-48B

#### 5:1

- A. [45B] Partners who prohibited themselves by vow from deriving benefit from one another are prohibited from entering the common courtyard [ownership of which they share].
- B. R. Eliezer b. Jacob says, “This one enters the part which is his, and that one enters the part which is his.”
- C. [46A] And both of them are prohibited from setting up a millstone and oven there, or from raising chickens.
- D. [If] one of them was prohibited by vow from deriving benefit from his fellow, he should not enter into the common courtyard.
- E. R. Eliezer b. Jacob says, “He can say to him, ‘Into the part which is mine I enter, but I do not enter into the part which is yours.’”
- F. And they force the one who has taken the vow to sell his share [to the other].

#### 5:2

- A. [If] a third party [“someone from the market”] was prohibited by vow from deriving benefit from one of them, he should not enter into the common courtyard.
- B. R. Eliezer b. Jacob says, “He can say to him, ‘Into the part which belongs to your fellow I enter, but I do not enter into your part.’”

## 5:3

- A. He who is prohibited by vow from deriving benefit from his fellow, and he [the fellow] has a bathhouse or an olive press in town which is hired out [to other people] –
- B. If he [the fellow] has rights therein, it [the bathhouse or olive press] is prohibited [to the other].
- C. [If] he has no rights therein, he [the other] is permitted.
- D. He who says to his fellow, “Qonam if I enter your house,” or “...if I buy your field,”
- E. [if the other party] died or sold them to a third party, he [the one who took the vow, now] is permitted [to enter the house or the field].
- F. [If he said], “Qonam if I enter this house” or “...if I purchase this field” –
- G. [if the other party] died or sold it to a third party, it is [nonetheless] forbidden.

- I.1** A. [Partners who prohibited themselves by vow from deriving benefit from one another are prohibited from entering the common courtyard ownership of which they share. R. Eliezer b. Jacob says, “This one enters the part which is his, and that one enters the part which is his”:] The question was raised: *“Clearly, the dispute concerns a case in which each has taken a vow covering himself. But if this one imposed a vow on that one and vice versa, what is the rule? In such a case do rabbis concur with R. Eliezer b. Jacob that they are prohibited under duress? [Freedman: If they voluntarily take the oath, each renounces his share that is inseparable from the partner’s. But when each forbids the other, perhaps neither can prohibit that which the other enjoys as of right.] Or perhaps the dispute of rabbis covers even a case in which this one imposed a vow on that one and vice versa?”*
- B. *Come and take note: [If] one of them was prohibited by vow from deriving benefit from his fellow – and here, too, rabbis differ.*
  - C. *[Not necessarily:] Repeat the Tannaite formulation as, forbade himself by vow from his neighbor [a self-imposed vow]. And that stands to reason, for the further clause states as the Tannaite rule: **And they force the one who has taken the vow to sell his share [to the other].** Now, if you maintain, he has taken the oath [imposing it on himself], that explains why **And they force the one who has taken the vow to sell his share [to the other].** But if you*

*maintain that the vow was imposed upon him by the other party, then on what basis is he forced to sell, since he is subject to the compulsion of the other?*

- I.2** A. Said Rabbah said Zeiri, **[46B]** “The dispute concerns a court large enough to be subject to division, but if the courtyard is not large enough to be divided, all parties concur that they are permitted [each being deemed owner of the whole].”
- B. Said to him R. Joseph, “Lo, there is the case of a synagogue, which is equivalent to that which cannot be divided, *and we have learned in the Mishnah: And they are forbidden [to make use of property] belonging to that town [which each citizen owns jointly with all others] [M. 5:4G]!*”
- C. Rather, said R. Joseph said Zeiri, “The dispute concerns a court not large enough to be subject to division, but if it is large enough to be subject to division, all parties concur that both parties are forbidden.”
- D. Said R. Huna, “The decided law is in accord with R. Eliezer b. Jacob.”
- E. So, too, said R. Eleazar, “The decided law is in accord with R. Eliezer b. Jacob.”

- II.1** A. **He who is prohibited by vow from deriving benefit from his fellow, and he [the fellow] has a bathhouse or an olive press in town which is hired out [to other people] – if he [the fellow] has rights therein, it [the bathhouse or olive press] is prohibited [to the other]. [If] he has no rights therein, he [the other] is permitted:**
- B. How large a proportion of **rights therein** is contemplated?
- C. Said R. Nahman, “A half, third, or quarter – no less.”
- D. Abbaye said, “Even a share of less than that would leave him forbidden. *Under what conditions is he permitted? If the lessee rents it for less than the land tax that is owing for it.*”

- III.1** A. **He who says to his fellow, “Qonam if I enter your house,” or “...if I buy your field,” if the other party died or sold them to a third party, he [the one who took the vow, now] is permitted to enter the house or the field. If he said, “Qonam if I enter this house” or “...if I purchase this field” – if the other party died or sold it to a third party, it is nonetheless forbidden:**
- B. *Abimi raised this question:* “If he said, ‘Qonam be this house if you enter this house,’ and then he died or sold it to a third party, what is the law? Is it the

fact that a person has the power to prohibit something that falls within his domain even for the time after it leaves his domain? Or is that not the case?”

- C. Said Raba, *“Come and take note: He who says to his son, “Qonam! You will not derive benefit from anything that is mine!” – if the father died, the son may inherit him. [But if he had specified that the vow applied] in life and after death, if the father died, the son may not inherit him [M. B.Q. 9:10]. That proves that a person has the power to prohibit something that falls within his domain even for the time after it leaves his domain.”*

- D. *True enough.*

**III.2** A. *There we have learned: He who says, “Qonam be these pieces of fruit for me,” “They are qonam for my mouth,” “They are Qonam to my mouth” – he is prohibited from eating whatever he may exchange for those pieces of fruit and whatever grows from them, too, [M. 7:6A-B].*

- B. *R. Ammi bar Hama raised this question: “If he said, ‘Qonam be these pieces of fruit to So-and-so,’ what is the law as to things given in exchange for them? Do we take the view that with respect to oneself, since someone can impose a prohibition on himself even with regard to what belongs to someone else, he also can forbid for himself what does not yet exist, while, for a third party, since one cannot impose a prohibition of someone else’s produce on a third party, he also cannot forbid for him what does not yet exist? [47B] Or perhaps since what is exchanged for something is in the classification of what grows from something, there is no such distinction to be drawn between what pertains to him and what pertains to a third party?”*

- C. *Said R. Aha bar Minyumi, “Come and take note: He who says to his wife, ‘Qonam, if I accord benefit to you’ – she may borrow from third parties, and the creditors may then come and collect the debt from him. Now, why should it be the case that the creditors may come and collect from him? Is it not because what is given in exchange is not equivalent to what grows from something?”*

- D. *Said Raba, “But perhaps it is, to begin with, that one may not make such an exchange, but after the fact, an exchange is valid.”*

- E. *Rather, come and take note: He who betrothed a woman with (1) orlah fruit, (2) with fruit which was subject to the prohibition against Mixed Seeds in a vineyard, (3) with an ox which was to be stoned, (4) with a heifer the neck of which was to be broken, (5) with birds set aside for the offering of a person afflicted with the skin ailment, (6) with the hair of a*

Nazir, (7) with the firstborn of an ass, (8) with meat mixed with milk, (9) with unconsecrated animals [meat] which had been slaughtered in the courtyard [of the Temple] – she is not betrothed. [If] he sold them off and betrothed a woman with the money received in exchange for them, she is betrothed [M. Qid. 2:9]. [Therefore the prohibition does not hold on something exchanged for what is forbidden (Freedman).]

- F. *Not at all, here, too, to begin with that one may not make such an exchange, but after the fact, an exchange is valid.”*

#### 5:4

- A. [If one said to his fellow,] “Lo, I am herem unto you,”
- B. the one against whom the vow is made is prohibited [from using what belongs to the other, who made the vow].”
- C. [If he said,] “Lo, you are herem unto me,”
- D. the one who takes the vow is prohibited [from benefitting from the other] –
- E. [If he said,] “Lo, I am unto you and you are unto me [herem],” both of them are prohibited.
- F. But both of them are permitted [to make use of property belonging to] the immigrants from Babylonia [i.e., inalienable property, which is deemed ownerless].
- G. [48A] And they are forbidden [to make use of property] belonging to that town [which each citizen owns jointly with all others].

#### 5:5

- A. What is something which belongs to the immigrants from Babylonia?
- B. For example, the Temple mount and courtyards, and the well which is in the middle of the way.
- C. And what are things which belong to that town?
- D. For example, the town square, the bathhouse, the synagogue, the ark, and the scrolls.
- E. And he who writes over his share to the patriarch [of the court allows the fellow, prohibited by vow, to derive benefit from those things which are deemed to be held jointly by the town’s citizens].
- F. R. Judah says, “All the same is the one who writes over his share to the patriarch and the one who writes over his share to an ordinary person.

- G. “What is the difference between him who writes over his share to the patriarch and the one who writes over his share to an ordinary person?”
- H. “For: The one who writes over his share to the patriarch does not have to grant him title.”
- I. And sages say, “All the same are this one and that one. They have to grant title.
- J. “They referred to the patriarch only because they spoke of prevailing conditions.”
- K. R. Judah says, “The Galileans do not have to write [their share over to the patriarch]. For their forefathers already have written over their share in their behalf.”

- I.1** A. [And he who writes over his share to the patriarch of the court:] *Why is he forbidden?* [That is, if the one who takes an oath assigns his portion to the patriarch, why is the one against whom the vow is taken still forbidden (Freedman)?]
- B. *Said R. Sheshet, “This is the sense of the statement:* and what is the remedy for their situation [Freedman: since the use of communal property as defined in the Mishnah is essential to them]? Let them write their share over to the patriarch.

- II.1** A. **R. Judah says, “The Galileans do not have to write [their share over to the patriarch]. For their forefathers already have written over their share in their behalf”:**
- B. *It has been taught on Tannaite authority:* R. Judah says, “The Galileans were contentious and would take vows against deriving benefit from one another. So their ancestors went and wrote over their shares in public property to the patriarch.

### 5:6

- A. **He who is forbidden by vow from deriving benefit from his fellow and who has nothing to eat –**
- B. **he [the fellow] gives it [food] to someone else as a gift, and this one [prohibited by vow] is permitted [to make use of] it.**
- C. **A precedent: There was someone in Bet Horon whose father was prohibited by vow from deriving benefit from him.**
- D. **And he [the man in Beth Horon] was marrying off his son, and he said to his fellow, “The courtyard and the banquet are given over to you as a gift.**

But they are before you only so that father may come and eat with us at the banquet.”

- E. The other party said, “Now if they really are mine, then lo, they are consecrated to Heaven!”
- F. He said to him, “I didn’t give you what’s mine so you would consecrate it to Heaven!”
- G. He said to him, “You did not give me what’s yours except so that you and your father could eat and drink and make friends again, and so the sin [for violating the oath] could rest on his [= my] head!”
- H. Now the case came before sages. They ruled, “Any act of donation which is not so [given] that, if one sanctified it to Heaven, it is sanctified, is no act of donation.”

- I.1 A. *Is the purpose of the precedent to contradict the rule that it illustrates?*
- B. *The formulation of the paragraph is flawed, and this is the proper Tannaite statement: But if the end result proves that, to begin with, an improper motive was in play, it is forbidden. And there was also a precedent in Beth Horon in which case the end result proves that, to begin with, an improper motive was in play.*

- I.2 A. Said Raba, “This rule has been taught only for a case *in which he said to him, ‘And lo, they are before you only so that father may come...,’* but if he said to him, ‘They are before you so that, on your intentionality, father may come,’ [there is no objection to such a donation].”

B. *Another version: Said Raba, “Do not say that the only operative consideration is that he said to him, ‘Lo, they are before you,’ in which case the transaction is forbidden, but if he said, ‘They are before you so that father may come,’ it is permitted. Not at all, not at all – even if he said, ‘They are yours; let father come and eat,’ it is forbidden. How come? Because the holding of the banquet is what tells us the governing intentionality.”*

- I.3 A. *There was a man who had a son who would swipe bundles of flax. He forbade him by a vow from deriving benefit from his property. They said to him, “But if your son has a son who is a neophyte of the rabbis, what will be?”*

B. *He said to them, “Let him take title, and if my grandson is a neophyte of the rabbis, it shall belong to him.”*

C. *So what's the upshot of the matter?*

D. *Said the Pumbeditans, "It is a case of: 'Take title on condition of handing on title,' and any case involving the condition, 'Take title on condition of handing on title,' does not yield a transfer of title."*

E. *And R. Nahman said, "The son acquires title, for the very act of a transfer of title through the exchange of a symbolic piece of cloth constitutes a case of 'Take title on condition of handing on title.'"*

F. *Said R. Ashi, "In the case of an exchange effected through the symbolic transfer of a cloth, who is going to tell us that, if he retains the property [rather than transferring title to a third party,] it is not his! And, furthermore, the transfer of title through the symbolic transfer of a cloth is a case of both 'Take title on condition of handing on title,' and also of 'acquire title as from this point.' But as for the property at hand, at what point will the man gain title? It is only when his grandson turns out to be a neophyte of the rabbis. But by then the cloth [through which the symbolic transfer has taken place] will have returned to its owner [the grandson not having been in existence at the time of the transfer]."*

G. *Said Raba to R. Nahman, "Anyhow, the donation of Beth Horon was also a case of 'Take title on condition of handing on title.' And yet it was not a valid transfer of title!"*

H. *On one occasion he replied to him, "Because the fact that he was holding a banquet proves his actual intent," and on one occasion he replied to him, "It represents the position of R. Eliezer, who has said, 'Even the freely given extra handed by a seller to a customer [for which no compensation is paid] is forbidden to one who is forbidden by a vow to gain benefit from the other.'"*

**I.4** A. *We have learned in the Mishnah: They ruled, "Any act of donation which is not so [given] that, if one sanctified it to Heaven, it is sanctified, is no act of donation." So what does the any encompass? Is it not a case such as the*



*son who steals flax?* [Freedman: Such a gift is invalid not merely because of the greater stringency of vows but because 'acquire to transfer title' does not confer title.]

B. *No, it covers the second version of Raba's ruling.*