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שע"י "חדר הודאה" שכונת מנחת יצחק פניה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

Halochos compiled by HaRav Chaim Bleier – Translated from the Hebrew edition by R' Zerachya Shicker

Halochos of Shiluach Hakein

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Shiluach Hakein

Shelach [E"V] – Behaaloscha [Chu"l] 5780

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The Mitzvah of Shiluach Hakein

- In spring in Eretz Yisroel and other places it is very common for birds to lay eggs in all sorts of residential areas. Due to the many shailos that are asked, especially by people who, for Kabbalistic reasons, do not do shiluach hakein during the days of the Omer, (הג' הרש"ש על עץ חיים), we saw a need at this time to clarify and explain the halachos in an organized way in order to properly fulfill this mitzvah, and in order to arouse Hashem's mercy through its fulfillment (ע' רבינו בחי', פרשת כי תצא).

Chiyuv to Seek Out the Mitzvah

- It says in the Torah, "When a bird's nest happens to be in front of you on the road...and the mother is sitting over the chicks or the eggs, do not take the mother from the children. Send away the mother, and then take the children for yourself..." (פ' כי תצא כ"ב, ו').
- Strictly speaking, there is no chiyuv to search mountains and hills for a nest to fulfill the mitzvah of shiluach hakein, as it says "When [it] happens..." (חולין קל"ט ע"ב). Nevertheless, one should try to perform this mitzvah (הג' ברכי יוסף י"ד סי' רצ"ב סי' ש"ו בשם האריז"ל, ערוה"ש סי' א').

No Use for the Eggs

- The poskim discuss a scenario where one sees a nest but does not have any intention to take the eggs: is there still a mitzvah to send away the mother, or is the mitzvah only if one is interested in the chicks or eggs?
- Some hold there is a chiyuv to send away the mother even when there is no need for the eggs or chicks (שו"ת חו"י סי' ס"ז, פתח"ת סק"א, א), (הג' רע"א שם בשם חכ"צ סי' פ"ג).
- Others hold that the mitzvah is only when one wants the eggs or chicks (ר"ן ריטב"א ורשב"א חולין קל"ט, חת"ס א"ח סי' ק', חזו"א י"ד סי' קע"ה).
- Based on this, some people took the chicks to a shocheit to shecht them and ate them in order to fulfill the mitzvah in the best possible way, and also to demonstrate love for the mitzvah (אנמו"ד).
- Nowadays, we do not eat the eggs, nor do we raise chicks. Accordingly, our interest in the eggs or chicks is only for the mitzvah. Still, one who acquires the eggs or chicks solely for the mitzvah does fulfill the mitzvah (הג"ח קנייבסקי, ספר שלח תשלח בתשובות בסוף הספר אות כ"ה).

Brochah

- Some hold one should make a brochah on shiluach hakein, just like the mitzvah of ma'akeh or pidyon haben (תמים דעים להראב"ד סי' י' קע"ט, רוקח סי' שס"ו, ערוה"ש סי' י"ג, פאת השלחן ה"א י"ג פ"ג).
- However, most poskim hold no brochah is made. Several reasons are given: 1. It is a mitzvah which comes about through a sort of aveirah. Just like there is no mitzvah to steal in order to return the item, there is no mitzvah to take the mother in order to send it away (שו"ת הרשב"א סי' י"ח). 2. It is not an absolute chiyuv; it is only done if one chances upon it (ז' כי תצא כ"ב, ו'). 3. If the eggs are sterile, it is a brochah levatalah (see below, 33). Since there is a doubt, we are meikel not to make a brochah (שו"ת תורת שו"ת ברכי יוסף סי' ט' הובא בפתח"ת סק"ב). Also, there is a chance the mother will fly away on her own, causing a brochah levatalah (שו"ת בנין ציון סי' י"ד). 4. There is an aspect of tzaar baalei chayim, which the Rashba writes (תשובה י"ח) is the reason there is no brochah when Beis Din executes someone (שו"ת דברי יציב י"ד סי' קצ"ב).

- Although most poskim hold no brochah is made, one may say a brochah without Hashem's Name (שו"ת שם, שו"ת ברוך אתה מלך העולם אשר קדשנו במצותיו וצונו): (מהרם שיק סי' רפט-רצא (הג"ח קנייבסקי, נחל איתן סי' ה' ס"ג סק"א) "לשלח הקן" (שו"ת מהר"ם שיק סי' רצ"ב) "על שלוח הקן".
- Another approach when there is a safeik brochah is to think the text of the brochah (כפה"ח סי' קנ"ז סק"י, מצותיך) (שעשועי ח"ג סוף פ"א (הג"ח קנייבסקי, שם בתשובה בסוף הפרק).
- Shehecheyanu. Some say to make a Shehecheyanu on this mitzvah (שו"ת סמא דחי' סי' ג' הובא בפתח"ת סק"ב, ברכי יוסף סי' רצ"ה סי' ע"פ הכו"פ).
- Many, however, hold Shehecheyanu is not said (יד סי' כ"ח). Practically, one should not make a brochah in order to avoid a safeik (ערוה"ש סי' י"י).

How to Send Away the Mother

- When sending away the mother, some say one should remove her with his hands from on top of her offspring and then send her away (רמב"ם פ"ג שחיטה ה"ה כפי שהבינו הר"ן ושו"ת חת"ס א"ח סי' ק', אמנם על תשובות) (והנהגות ח"ג סי' ש"ט בדעת הרמב"ם (הוכר) rather one should shoo her from the nest with a stick or the like (וכך נהג בעל ויאל משה הוכר בספר ק) (ציפור חזו"א י"ד סי' קע"ה, וכך נהג בעל ויאל משה הוכר בספר ק) (ציפור). This is the widespread minhag.
- When shooing the mother with a stick, one does not need to hit her with the stick; it is enough to rap on something nearby, causing her to get startled and fly away. One may also throw a stone toward her or shout to make her fly away (ספר שלח תשלח דין ו').
- Kavanah. When approaching the mother, sometimes the mother flies away on her own. This is common when opening a window, a door, or shutters. If this happens, one does not fulfill the mitzvah; since his intent wasn't for her to fly away yet, it is like she flew away on her own. Therefore, it is worthwhile for one to have in mind before approaching the mother that anything he will do which might cause her to fly away is for the sake of shiluach hakein. If he thinks this, he fulfills the mitzvah in any case (הג"ח קנייבסקי, שלח תשלח שם דין ו').

How Far

- One must send her "out of his hand" (שו"ת י"ד סי' רצ"ד סי' ט"ד), i.e., far enough that he would not be able to grab her if he tried (חזו"א י"ד סי' קע"ה). The main thing is that she should be off the nest, at which point he may take the eggs or chicks, even if she is on a nearby branch or structure and sees him taking her offspring.

Taking the Offspring

Must One Take the Offspring?

- Some say that if one sends away the mother but does not take her offspring, he does not fulfill the mitzvah. This opinion can be understood based on the idea (above, 6) that the mitzvah depends on interest in the offspring. According to this opinion, one certainly must take the offspring to fulfill the mitzvah (חזו"א שם).
- However, some hold one fulfills the mitzvah even without taking the offspring (שו"ת חכ"צ סי' פ"ג, הגר"י פישר בהסכמתו לספר שלח תשלח) (יסוד מורא להאבן עזרא שער ט') since taking the offspring is optional (ערוה"ש סוף סי' ט"ד) since what is optional in the Torah is a mitzvah.

Acquiring the Chicks

21. Since taking the offspring is part of the mitzvah, a real kinyan must be done. Therefore, if the eggs or chicks are small enough to fit entirely into one's palm, he may acquire them by using his hand for a kinyan chatzeir (נתייה"מ סי' קצ"ח ביאורים סק"ג). If they are too big for that, he may acquire them through hagbahah – lifting them three tefachim high (יא בשו"ע חו"מ סי' קצ"ח ס"ב, וכסתימת המחבר חו"מ) (סי' רס"ט ס"ד וביאור הגר"א שם סק"ד).

Acquiring through a Shliach

22. If one sent away the mother but it is difficult for him to take the eggs, e.g., they are too high up, he can appoint a shliach to acquire the eggs, and the shliach should have in mind that he is taking them on behalf of his meshaleiach.
23. This approach can be used when the meshaleiach is elderly or weak, and several gedolim did this (כ"ק מרן גאב"ד) (ירושלים ועוד). Similarly, if a woman is doing the mitzvah but can't go up a ladder to get the eggs, she may appoint a shliach to take them on her behalf.

Returning the Offspring to the Nest

24. After taking the eggs or chicks, one may return them to their nest. Even if the mother returns, he fulfilled the mitzvah lechatchilah.
25. When one acquires the chicks, he is obligated to feed them. However, if he returns them and makes them hefker, he is exempt from feeding them even if it is unclear if the mother will return (הגר"ש"א, שלח תשלח אות י"ג).
26. **Hefker.** Some say one may return them and make them hefker in front of three people so that another person can then do the mitzvah (הגר"ח קנייבסקי). Others hold this does not work (הגר"ש"א).
27. Some take the eggs and display them with their silver in their breakfront to give them honor as objects used for a mitzvah (כ"ק מרן גאב"ד ירושלים). [However, someone once did this and woke up to a chick chirping in his breakfront. The spotlights had heated the egg and acted as an incubator.]

Only One Egg

28. Commonly found birds [pigeons and doves] usually lay two eggs. However, even if there was only one egg or chick in the nest, one must send away the mother, and in doing so, fulfill the mitzvah.
29. When there are two eggs, two people can perform the mitzvah with one nest: one sends away the mother and takes one egg, then the other waits for the mother to return to incubate and then sends her away again and takes the second egg (שלח תשלח אות י"ז).

Kashrus of Eggs and Chicks

Kosher Species

30. The mitzvah of shiluach hakein only applies to kosher birds (שו"ע סי' רצ"ב ס"א). If one is unsure if the bird is kosher, he should send away the mother to be safe (ע"פ שו"ת התעוררות תשובה ח"ד סי' קנ"ה, ע"פ). He does not need to worry about tzaar baalei chayim since he is doing it for a mitzvah, albeit an uncertain one.
31. The most commonly found kosher city birds in Eretz Yisroel, Europe, and the United States are pigeons, doves, and sparrows.

Treifah

32. If the chicks in the nest are treifos, i.e., they belong to a kosher species, but have treifah status, one does not fulfill the mitzvah by sending away the mother (שו"ע סי' רצ"ב ס"ז) since the Torah says "Take the offspring for yourself" – for yourself, not for your dogs (חולין ק"מ ע"א). However, one does not need to be concerned that they are treifos since most birds are not. If the mother is a treifah through some defect but the chicks are not, there is a chiyuv to send away the mother (שו"ע שם ס"א).

Sterile Eggs

33. Sometimes, birds lay eggs without a male. These eggs will not produce chicks. When the mother is sitting on this type of egg, there is no chiyuv to send her away (שו"ע שם ס"ז), but we do not assume eggs are sterile because they are uncommon (ערוה"ש ס"ז).

Eggs with Blood

34. Three days after an egg is laid, the chick usually begins to form. At that point, the egg may not be eaten due to its blood, as stated in Shulchan Aruch (יר"ד סי' ס"ו). Based on this, some claim that since the egg may not be eaten, shiluach hakein cannot be fulfilled at that stage, due to the drashah, "For yourself, not for your dogs" (above, 32), just like a treifah (ר"נ-רנ"ב).

35. However, all the poskim hold that even in this case, there is a mitzvah to send away the mother. Their reasoning is that the egg can be placed under another bird or in a warm place until a kosher chick hatches. Thus, this egg can be used "for yourself" and one can fulfill the mitzvah with it even if he does not actually hatch the egg (ר"ן חולין ק"מ, הג' ברכי יוסף בשם ספר דינא דחי, חזון יחזקאל תוספתא) (דף ל"ח ח" ס"ב, ספר שלח תשלח אות י"ח בשם גדולי הפוסקים).

Chicks Immediately after Hatching

36. A chick may not be eaten after it hatches until it grows wings [about six days later] due to the issur of sheketz, as explained by the poskim (שו"ע יר"ד סי' ט"ו סק"ב). Nevertheless, shiluach hakein may be done with them because they will soon be fit to be eaten (שלח תשלח שם).

Mother, Not Father

37. In some bird species, the father sits on the eggs at certain times. Since the mitzvah is only fulfilled by sending away the mother (חולין ע"ב ע"ב), one must do research to find out with certainty when the mother is the one on the egg.
38. In these species, the male or female incubates by day, but only the female incubates at night. Thus, the mitzvah should only be done between shekiyah and neitz. If one can tell the male and female apart, he can send away the female by day. For example, if the bird that incubates at night has white spots, and the one that sometimes incubates by day does not, one can send away the one with the spots by day.

Only When Brooding

39. The mitzvah is only fulfilled when the mother sits on top of the eggs or chicks. If the mother leaves the nest and sits near them, not on top, it is too late to fulfill the mitzvah (שו"ע סי"א).

Location of the Nest

Chancing upon It

40. One is only obligated to send away the mother from a nest that is hefker, based on a drashah from the posuk that excludes privately-owned birds. Therefore, the mitzvah does not apply to chickens or pigeons that are raised in houses (שו"ע סי' תצ"ב ס"ב).

Unguarded Chatzeir

41. An unguarded chatzeir, e.g., a yard in front of a house, a parking lot, or a public stairwell, is considered hefker for the purposes of shiluach hakein since it does not acquire items for its owner. Therefore, shiluach hakein can be fulfilled in these areas.
42. **Shul.** Sometimes, nests are found high up in shuls, e.g., on top of shelves, the aron kodesh, fluorescent lights, or on windowsills. The consensus of the poskim is that a shul is considered an unguarded area since anyone can walk through (שלח תשלח דין) (כ"ב, היכל הוראה ח"ד הוראה קכ"ז).

Guarded Chatzeir

43. A guarded chatzeir, i.e., an area where people place things without worrying they will be stolen, causes hefker items placed within it to belong to its owner, even without his knowledge (שו"ע חו"מ רס"ו ס"ג).
44. It is very common in Eretz Yisroel for birds to build nests on porches, service rooms, windowsills, "tris" boxes, and air conditioner compressors. These areas are generally considered guarded chatzeiros since people place things on or in them. That being the case, they acquire the offspring and the owner cannot fulfill shiluach hakein since they belong to him.
45. Nevertheless, Chazal determined that as long as the mother has been sitting on her eggs since laying them, since one may not take the eggs, his chatzeir does not acquire them for him. Right when the mother leaves – even for a short time – the chatzeir acquires the eggs, and even if the mother would come back, the owner cannot fulfill shiluach hakein (שו"ע יר"ד סי' רצ"ב ס"ב).

Having in Mind That the Chatzeir Should Not Acquire

46. Therefore, if one sees a bird building a nest in his guarded chatzeir, he can think to himself before the eggs are laid that he does not want his chatzeir to acquire the mother or eggs. In such a case, his chatzeir does not acquire them and he may fulfill the mitzvah even if the mother had left the nest for a short time, as is common today (ד"ח חולין קמ"א) (ע"ב, שו"ת אג"מ יר"ד ח"ד סי' מ"ה, שו"ת אבן ישראל ח"ה סי' ס"ז) (הגר"ש"א, שלח תשלח דין כ"א).
47. Some say that nowadays that people are not interested in the eggs or chicks and even prefer they not be there due to the mess they make, a person's default position ["stam daas"] is that his chatzeir should not acquire the birds or eggs, especially since he knows that to do the mitzvah of shiluach hakein, they must be hefker. Thus, even if one did not have in mind not to acquire them, he may do the mitzvah (הגר"ח קנייבסקי, שלח תשלח שם).