

OVERVIEW of the Daf

1) Sixty (cont.)

R' Dimi and Abaye conclude their exchange related to our Mishnah.

2) The quantity of wool

A Beraisa clarifies that one must give the kohen enough wool so that when he whitens it he will be left with five selaim of wool.

R' Yehoshua ben Levi points to the source that the kohen must be given the quantity of wool that is considered a useful gift.

This exposition is unsuccessfully challenged.

3) Selling the sheep before he shears all of them

R' Chisda and R' Nosson bar Hoshaya debate whether one is obligated to give the first shearings if he started with five sheep and sold each one after it was shorn.

Each Amora explains his rationale.

R' Nosson bar Hoshaya's lenient opinion is unsuccessfully challenged.

4) A seller who retains the wool

R' Chisda asserts that the Mishnah that indicates that when a seller retains the wool of the sheep his intent is to retain the obligation to give the first shearings reflects the opinion of R' Yehudah.

Rava rejects this approach and points to another Tanna who maintains this position

הדרן עלך ראשית הגז

5) **MISHNAH:** The Mishnah presents some of the halachos of shiluach hakein.

6) Clarifying the Mishnayos

The Gemara relates that there is a disagreement between R' Avin and R' Meysha which of the statements that begins many of the perakim of the massechta is generally unnecessary. According to one opinion the statements concerning Eretz Yisroel are generally unnecessary whereas according to the second opinion the statements concerning the Beis HaMikdash are generally unnecessary.

It is agreed that the statement concerning the applicability to non-consecrated and consecrated animals is necessary.

This last statement is unsuccessfully challenged.

7) Consecrated birds

The reason the mitzvah of shiluach hekein does not apply to consecrated birds is explained.

Ravina applies the same rationale to a kosher bird that killed a person.

The Gemara begins to clarify this ruling. ■

Distinctive INSIGHT

Does the mitzvah apply even when one does not want the nest's contents?

שילוח הקן נוהג בארץ ובחוץ לארץ וכו'

The halacha of sending a mother bird away from her nest is delineated in the Torah in Devarim (22:6-7). There are two mitzvos in this regard, a negative command not to take the mother bird while it is hovering over its nest, and a positive command to send the mother away.

The Achronim discuss if the mitzvah of sending away the mother bird only applies when a person wants to take the chicks or eggs, the contents of the nest. Perhaps the mitzvah is that before taking the chicks a person must send away the mother, but if one has no interest in using the eggs or chicks he has no mitzvah to send the mother away. Or, perhaps the mitzvah applies even where a person has no interest to take the mother or the chicks.

There are indications among the Rishonim to support each of these views. Ra"n (139a) discusses the halacha of a mother bird who had killed a person and which was judged to be put to death. The mitzvah of sending away the mother bird does not apply in this case, because this bird must be captured and killed, and it may not be sent away. Ra"n raises the question that although there is a mitzvah to destroy this bird, which is a fulfillment of the mitzvah (Devarim 13:6) "to destroy the evil from your midst," on the other hand there are two mitzvos which are fulfilled when sending this bird away. Two mitzvos, one positive and one negative, should be able to defer the one positive mitzvah to destroy evil. Nevertheless, answers Ra"n, the mitzvah to destroy the evil killer-bird is incumbent upon us, whereas the mitzvah to send away a mother bird only applies when one wishes to take the contents of the nest, which is a limited case. This limited double mitzvah does not defer the one required mitzvah to destroy evil.

We see clearly that Ra"n holds that this mitzvah only applies when a person wants to take the contents of the nest.

Meiri writes that this mitzvah is that if one wishes to take the contents of the nest he should send the mother before doing so.

Chasam Sofer (141b; Responsa O.C. #100) shows that the view of Rambam is also that this mitzvah exists only when one wishes to take the contents of the nest.

However, Chavos Yair (#67) shows that this mitzvah applies even if one does not want the contents of the nest. He cites the Beraisa (139b) which says that a person need not search through the hills and valleys to find a nest. Rather, when one comes across a nest, he may do the mitzvah. We see that the mitzvah applies immediately upon finding a nest, because if even when finding a nest one is still exempt if he does not care to take its contents there would be no reason to think that one should have to search the hills and mountains to fulfill it. Rather, the mitzvah applies immediately, but only when one comes across a nest. ■

HALACHA Highlight

Declaring one's chicken ownerless in order to perform the mitzvah of shiluach hakein

ואינו נוהג אלא בשאינו מוזמן

And it applies only to those birds that are not "prepared"

The Mishnah teaches that the mitzvah of shiluach hakein applies only to birds that are "not prepared – אינו מוזמן." The Mishnah explains that geese and chickens that have nested in one's orchard are considered "not prepared" and those that have nested in one's home are considered "prepared." Teshuvah Hisorerus Teshuvah¹ asserts that if one declares in the presence of three people that his chicken is ownerless and he leaves his door open so that people could enter and take the chicken if they want, the chicken is considered ownerless and the "owner" may perform the mitzvah of shiluach hakein with this chicken. One should not argue that since he could take possession of the chicken and the eggs at any time since they are on his property they should be considered "prepared" and thus unfit for the mitzvah of shiluach hakein. The reason is that the definition of "not prepared" is that it is not one's possession. Proof to this contention is that doves in a dovecote can be taken at any time but nevertheless since they are legally ownerless one may perform the mitzvah of shiluach hakein with them.

He then expresses hesitation about the matter. Although the chicken is ownerless but since he could take possession of it without having to perform a proprietary act since he could just have in mind that his yard will acquire the chicken on

REVIEW and Remember

1. What is the source that one must give the kohen a useful amount of wool ?

2. What is the point of dispute between R' Chisda and R' Nosson bar Oshaya ?

3. What are examples of birds that are not "prepared" ?

4. Why doesn't the mitzvah of shiluach hakein apply to consecrated birds ?

his behalf perhaps it is already considered "prepared." The author of Hisorerus Teshuvah sent the question to the author of Imrei Yosher² and he answered that one can not fulfill the mitzvah of shiluach hakein so easily. The Gemara below (139b) entertains the possibility that one would have to go to great lengths to fulfill the mitzvah of shiluach hakein, therefore, the Torah teaches that the mitzvah is fulfilled when it presents itself and one is not obligated to pursue the fulfillment of the mitzvah. If the mitzvah could be so easily fulfilled by declaring one's bird ownerless the thought of the Gemara becomes difficult to understand. Therefore, it must be that one may not fulfill the mitzvah with a bird declared ownerless but kept on one's property. ■

¹ שו"ת התעוררות תשובה יו"ד סי' קנ"ד.
² שו"ת אמרי יושר ח"א סי' קנ"ח. ■

STORIES off the Daf

A New Mitzvah Opportunity

"שילוח הקן נוהג בארץ ובחור"ל..."

Rural areas have both advantages and disadvantages, even in terms of observing mitzvos. One of the advantages is bona fide opportunities to fulfill the mitzvah of shiluach hakein, sending away the mother bird to take the eggs or chicks discussed in the last chapter of Chullin, which begins with today's daf. One of the strange things about fulfilling rare mitzvos is that that one has no experience of exactly how to fulfill the mitzvah or various details relevant to it.

One man who lived in a rural area

found a nest while walking through a public forest: the paradigm of shiluach hakein. He was about to do the mitzvah when he realized that he was uncertain as to whether one makes a brochah on this mitzvah. Secondly, he wondered if he should make a shehechyanu on this unusual opportunity. If it was a questionable situation, perhaps he should put on a new garment to be able to make a shehechyanu, like many do who begin wearing tefillin at age thirteen.

When these questions reached the author of the Aruch Hashulchan, ז"ל, he ruled decisively, even explaining the reasoning behind his opinion. "It seems obvious to me that one must make a brachah when he is about to do the mitzvah of shiluach hakein. Although this question is a disputed by the rishonim, several ris-

honim clearly require a blessing. They are the Ba'al HaTzur, the Halachos Gedolos and the Raavad."

He added, "Although the first edition of Biur Heitev rules that one should make a blessing without saying shem and malchus—and so does the Pischei Teshuvah in the name of the Toras Nesanel—it is not fitting to follow them in this instance. As far as shehechyanu, there is clearly no need to make shehechyanu here at all. Firstly, this mitzvah does not give one physical simchah—one reason for making shehechyanu. It is also not a mitzvah that comes from time to time. Since one can easily live a full life without fulfilling it, this reason for shehechyanu is not relevant here."¹ ■

¹ ערוך השלחן, סי' רצ"ב, סי"י ■